



AGENDA

ASTORIA CITY COUNCIL

Tuesday, September 8, 2015
7:00 p.m.
2nd Floor Council Chambers
1095 Duane Street * Astoria OR 97103

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **REPORTS OF COUNCILORS**

4. **PRESENTATIONS**

- (a) Sunset Empire Transportation District

5. **PROCLAMATIONS**

- (a) Constitution Week

6. **CHANGES TO AGENDA**

7. **CONSENT CALENDAR**

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

- (a) City Council Minutes of 8/3/15
(b) City Council Work Session Minutes of 8/3/15
(c) City Council Special Meeting Minutes of 8/14/15
(d) City Council Minutes of 8/17/15
(e) Boards and Commission Minutes
(1) Historic Landmarks Commission Meeting of 7/21/15
(2) Historic Landmarks Commission Meeting of 8/18/15
(3) Library Board Meeting of 7/28/15
(4) Parks Board Meeting of 6/24/15
(5) Planning Commission Meeting of 7/28/15
(f) City Service Fair on September 10, 2015
(g) Astoria Downtown Development Association (ADHDA) Contract (Finance)
(h) Authorization to Light the Astoria Column a Pink Hue for the Month of October in Recognition of Breast Cancer Awareness Month

8. **REGULAR AGENDA ITEMS**

- (a) Public Hearing and Ordinance – Amendment Request (A15-01) by Clatsop Community College to the Land Use and Zoning Map to Rezone an Area at 16th and Franklin Streets from R-3 (High Density Residential) to C-3 (General Commercial) (1st reading) (Community Development)
(b) Authorization to Approve Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT) for 33rd Street and Highway 30 Street Lights (Public Works)

REGULAR AGENDA ITEMS (con't)

- (c) Authorization to Award Progressive Design Build Contract for Pump Station No. 1 Upgrades (Public Works)
- (d) Contract Amendment for Engineering Services for Pump Station No. 1 Upgrades (Public Works)
- (e) Public Hearing and Ordinance Amending City Code to Prohibit Tobacco and Marijuana Use in City of Astoria Parks (1st reading) (Parks)
- (f) Removal of Fill from Heritage Square (Public Works)
- (g) Resolution Expressing Opposition to the Proposed Oregon LNG Liquefied Natural Gas Terminal and the Oregon LNG and Washington Expansion Project Pipelines (City Council)

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

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



CITY OF ASTORIA

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September 3, 2015

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA CITY COUNCIL MEETING OF SEPTEMBER 8, 2015

PRESENTATIONS

Item 4(a): Sunset Empire Transportation District

Executive Director Jeff Hazen will be presenting a current overview of the Transit District's services, community partnerships, growth, goals and recent bus route changes and improvements.

PROCLAMATIONS

Item 5(a): Constitution Week

The Mayor will proclaim the week of September 17-23, 2015 as Constitution Week.

CONSENT CALENDAR

Item 7(a): City Council Minutes

The minutes of the City Council meeting of August 3, 2015 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

Item 7(b): City Council Minutes

The minutes of the City Council Work Session of August 3, 2015 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

Item 7(c): City Council Minutes

The minutes of the Special City Council meeting of August 14, 2015 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

Item 7(d): City Council Minutes

The minutes of the City Council meeting of August 17, 2015 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

Item 7(e): Boards and Commissions Minutes

The minutes of the (1) Historic Landmarks Commission meeting of 7/21/15, (2) Historic Landmarks Commission meeting of 8/18/15, (3) Library Board meeting of 7/28/15, (4) Parks Board meeting of 6/24/15, and (5) Planning Commission meeting of 7/28/05 are enclosed. Unless there are any questions or comments regarding the contents of these minutes, they are presented for information only.

Item 7(f): Astoria City Service Fair (City Manager)

The City of Astoria will hold a Service Fair on Thursday, September 10, 2015, at the Columbia River Maritime Museum's Barbey Center located at 20th and Marine Drive from 4:00 p.m. to 6:30 p.m. This City-wide event will give citizens an opportunity to meet elected officials, employees and volunteers; learn about the various departments; and express comments or concerns about the different aspects of City operations. Games, prizes and food will be provided at no charge. In addition, the City has been granted the use of the Maritime Museum's off-street parking lot.

Item 7(g): Astoria Downtown Development Association (ADHDA) Contract (Finance)

City Code Section 8.045.18 requires organizations receiving funds from the Promote Astoria Fund to enter into a contract with the City. An Agreement for Professional Services with the ADHDA is attached for Council consideration. It is recommended that Council approve execution of the Agreement for Professional Services with the Astoria Downtown Development Association in order to make the first payment as provided for in this Agreement.

Item 7(h): Authorization to Light the Astoria Column a Pink Hue for the Month of October in Recognition of Breast Cancer Awareness Month (Parks)

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 the 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 Harbor, 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. Under City Council's authorization, the October pink and April teal lighting events repeated for the second year in 2014-2015. In partnership with Columbia Memorial Hospital and the Friends of the Astoria Column, the Parks and Recreation Department is requesting permission to change the lighting color on the Astoria Column for the third year to a pink hue for the month of October 2015 in recognition of Breast Cancer Awareness Month. This will be the second and final lighting of the Column for this calendar year. It is recommended that Council authorize the change in lighting at the Astoria Column to a pink hue for the month of October 2015 in recognition of Breast Cancer Awareness Month.

REGULAR AGENDA ITEMS

Item 8(a): Public Hearing and Ordinance – Amendment Request (A15-01) by Clatsop Community College to the Land Use and Zoning Map to Rezone an Area at 16th and Franklin Streets from R-3 (High Density Residential) to C-3 (General Commercial) (1st reading) (Community Development)

Clatsop Community College (College) is selling the building known as the “Josie Peper” building to a private individual, who has stated that she would be using it as a residence (a second home) as well as a short term rental. Because the College properties are located in the R-3, High Density Residential Zone, staff advised the College and the prospective owner that the only way a short term rental could be allowed would be if there was a zone change to a zone that allowed lodging, such as the C-3, General Commercial Zone. On June 1, 2015, the College applied for an amendment to change the designation of the Performing Arts Center (the PAC), the Josie Peper building, and the surrounding parking areas from R-3 to C-3. On July 28, 2015, the Planning Commission held a public hearing and heard testimony from College officials, as well as three property owners in the vicinity who objected to the amendment. The basis of their objection was that the use of the Josie Peper building as a vacation rental would change the nature of the use, creating more traffic and late night noise and disruption. The Planning Commission voted 4-1 to recommend approval of the amendment. A public hearing on the amendment has been advertised and is scheduled for the September 8, 2015 City Council meeting. It is recommended that the Council hold a public hearing and adopt the ordinance as recommended by the Planning Commission. If the Council is in agreement with the recommendation of the Planning Commission, it would be in order for Council to hold a first reading of the Ordinance.

Item 8(b): Authorization to Approve Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT) for 33rd Street and Highway 30 Street Lights (Public Works)

The area around the intersection of 33rd Street and Highway 30 (Safeway) is in need of illumination enhancements. This intersection currently accommodates State highway traffic, Safeway grocery store access, pedestrian users, and links

the area to a well-used bus stop. City staff worked with the Oregon Department of Transportation to secure funding for street light improvements through ODOT's Quick Fix Grant Program. The cost estimate for illumination enhancements at the intersection is \$34,512. The Quick Fix Grant will fund the total estimated project cost. To move forward with the project, an ODOT Intergovernmental Agreement (IGA) will need to be approved by Council. The City Attorney reviewed the IGA and has approved it as to form. It is recommended that Council approve the Intergovernmental Agreement with the Oregon Department of Transportation for the planned illumination improvements.

Item 8(c): Authorization to Award Progressive Design Build Contract for Pump Station No. 1 Upgrades (Public Works)

In August 2015, the City Council authorized soliciting proposals and utilizing a Progressive Design Build contract for the Pump Station No. 1 Upgrades Project. On August 25, 2015, the City received two proposals: Portland Engineering, Inc., and Industrial System, Inc. The selection committee used the following criteria to evaluate the proposals from both qualified firms: Experience and capabilities; organization, management and safety; project approach; and fee and rate proposal. Based on the scores, Portland Engineering was chosen to negotiate a Progressive Design Build Contract in two phases. Phase 1 includes design and development of a Guaranteed Maximum Price for installation of the equipment. Portland Engineering will perform this task for a total not-to-exceed fee of \$30,000. Phase 2 will consist of equipment purchase, installation, programming and training. A contract amendment for Phase 2 is anticipated to be presented to Council for authorization by the end of October. The planning level budget for Phase 2 is \$175,000; however, additional funds may be needed if bypass pumping becomes essential for the installation strategy. The project budget is as follows:

PROJECT BUDGET	
Phase 1 Progressive Design Build	\$ 30,000
Phase 2 Progressive Design Build	\$175,000
Construction Project Management	\$ 19,500
Electrical Permit	<u>\$ 500</u>
TOTAL	\$225,000

A grant incentive offer of \$72,940 has been executed with Energy Trust for the project. Preparation of the official Energy Trust Agreement is underway and is anticipated to be presented to Council for authorization within a month. Funding for the project is available in the Public Works Improvement Fund and Energy Trust of Oregon incentives. The Contract has been reviewed and approved as to form by the City Attorney. It is recommended that Council award Phase 1 of the Pump Station No. 1 Upgrades Project to Portland Engineering, Inc., through a Progressive Design Build Contract, for a not-to-exceed amount of \$30,000.

Item 8(d): Contract Amendment for Engineering Services for Pump Station No. 1 Upgrades (Public Works)

The City of Astoria's wastewater treatment facility, interceptor, and the main pump and lift stations were constructed in the mid-1970s. Pump Station No. 1 is the largest pump station in Astoria and is located in the Alderbrook neighborhood. Pump Station No. 1 contains three wastewater pumps with two variable speed 125 horsepower pumps and one fixed speed 75 horsepower pump. The system has provided reliable service for the past 40 years but lacks efficiency. Replacement parts are no longer readily available and parts of the system have reached the end of their useful life. On June 1, 2015, the City Council authorized Richwine Environmental to prepare a Concept Design Report for this project. The project was advertised as a Progressive Design Build Contract with award being included in the current Council agenda packet. The Contract Amendment with Richwine Environmental is in the amount of \$19,500 for contract management through completion of the project. Funding for this project is available in the Public Works Improvement Fund. It is recommended that Council execute a Contract Amendment for Construction Project Management with Richwine Environmental for a total not to exceed \$19,500 for the Pump Station No. 1 Project.

Item 8(e): Public Hearing and Ordinance Amending City Code to Prohibit Tobacco and Marijuana Use in City of Astoria Parks (1st reading) (Parks)

During their August 17, 2015 meeting, the City Council and held a public hearing to consider an ordinance banning smoking and tobacco use in City parks. The City Council voted to approve the ordinance but requested that staff update the ordinance to also ban the use of marijuana in City parks. The City Attorney reviewed the proposed changes and recommended a new hearing be held with the addition of banning marijuana use in City of Astoria Parks; therefore, an additional public hearing and first reading of the updated ordinance is needed. If the City Council approves the proposed ordinance, signage informing users of the law will be printed and installed in all City of Astoria Parks. The cost to print the needed signage is estimated to cost between \$2,500 - \$6,750 depending on quality and size. To assist in offsetting the signage printing costs, \$750 in funding is available from the Oregon Tobacco Prevention and Education Program via Clatsop County. The remainder of the funding to install signage would come from the Capital Improvement Fund. In the event that enforcement is needed, Section 5.933 of the Astoria City Code provides that the director, the director's authorized representative, and police officers have the authority to eject a person from the park. If further enforcement is needed, the penalties identified in Section 1.010 of the Astoria City Code also apply. These are the same laws that are used to oversee all other City of Astoria Parks Rules and Regulations, such as horseback riding, alcohol consumption, or dumping of refuse. The City Attorney has reviewed and approved the proposed ordinance and it is recommended that Council amend the Astoria City Code to prohibit tobacco and marijuana use in City of Astoria Parks.

Item 8(f): Removal of Fill from Heritage Square (Public Works)

The City of Astoria was awarded a United States Environmental Protection Agency (EPA) Multi-purpose Brownfield Pilot Grant in 2012 for assessment and cleanup of the Heritage Square site. During the construction of the Garden of Surging Waves project, approximately 1,200 cubic yards of unsuitable material was excavated and stockpiled within the former Safeway building basement. The spoil material was left on-site with the understanding that the City would be receiving grant funds to be used for removal costs. The material has been tested and is currently undergoing additional testing as a part of the EPA grant requirement. It is expected that the EPA will authorize local disposal. If the material can be placed at a local site, the project will remain within the grant budget. It has been determined that the City-owned quarry property located along Pipeline Road would be a qualified site. Once placed, the material will be covered with a geotextile fabric to serve as a demarcation and also covered with a minimum of three feet of soil. The site will then be seeded. In regard to the potential contamination of the groundwater, the contaminants associated with the stockpile soil are not considered highly leachable. In other words, they are not easily susceptible to movement within the ground if exposed to groundwater. The material will be placed above the high water table and covered with approximately 30 feet of cover minimizing the potential for contact with groundwater and the material impacting the surrounding area. The EPA Multi-purpose Brownfield Pilot Grant requires a \$40,000 match from the City. In the near future, staff will bring a request to the Astoria Development Commission to allocate \$40,000 from the Astor East Urban Renewal District for use as a match. It is recommended that Council approve the use of the quarry property for placement of the Heritage Square material.

Item 8(g): Resolution Expressing Opposition to the Proposed Oregon LNG Liquefied Natural Gas Terminal and the Oregon LNG and Washington Expansion Project Pipelines (City Council)

Mayor LaMear has requested that the City Council consider the enclosed resolution.



CITY OF ASTORIA

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PROCLAMATION

WHEREAS, September 17, 2015, marks the 228th anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week.

NOW, THEREFORE, I, Arline LaMear, by virtue of the authority vested in me as Mayor of the City of Astoria, Oregon, do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

and ask our citizens to reaffirm the ideals of the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

IN WITNESS WHEREOF, I have herewith set my hand and caused the Seal of the City of Astoria to be affixed this 8th day of September, 2015.



Mayor

Immediately following the Executive Session, a regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

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

Councilors Excused: None

Staff Present: City Manager Estes, Assistant City Manager/Police Chief Johnston, Community Development Director Cronin, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Ames, Interim Planner Morgan, 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 5(a): Councilor Nemlowill had no report.

Item 5(b): Councilor Herzig reported that he and Director Cosby attended the Police Academy. The Police Department would like feedback on when it would be best to schedule future classes. Citizens can also sign up for a police ride along. It is interesting to see what the police have to do during their 12-hour shifts. On Monday, August 10th, the Lower Columbia Diversity Project (LCDP) will host a free roll and stroll that will begin at 5:00 pm at the Garden of Surging Waves. Director Cronin will be part of a free follow up panel discussion on livability and age friendly communities, beginning at 7:00 pm at the Judge Boyington Building.

Item 5(c): Councilor Price reported that she did not meet with her constituents in July. However, she would schedule a meeting for August.

Item 5(d): Councilor Warr reported that late in the afternoon, Willis Van Dusen called him to say he would be unable to attend the meeting. Mr. Van Dusen would like the community to forgive his absence, as he appreciates the proclamation.

Item 5(e): Mayor LaMear thanked Councilor Warr for leading the last City Council meeting in her absence. She attended the Oregon Mayors Association Conference in Cottage Grove. The sessions were excellent and she has come back with a renewed sense of purpose and some good ideas.

PROCLAMATIONS

Item 6(a): Willis L. Van Dusen Day

Mayor LaMear read the proclamation declaring Saturday, August 8, 2015 as Willis L. Van Dusen Day. She noted that Saturday, August 8th is same Saturday as the Regatta. After the parade, cake will be served in the square in honor of Mr. Van Dusen. He gave 30 years of his life to the city and it is very fitting that Astoria honors him with the proclamation.

Item 6(b): 225th Birthday of the United States Coast Guard

Mayor LaMear read the proclamation recognizing August 4, 2015 as the 225th birthday of the United States Coast Guard. She presented the proclamation to Captain David Berliner.

Captain Berliner said he moved to Astoria three weeks ago and thanked the community for the warm welcome he and his wife have received. They love being in an area where the Coast Guard is recognized and appreciated so much.

CHANGES TO AGENDA No changes

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 8(a) City Council Minutes of 7/6/15
- 8(b) Boards and Commission Minutes
 - (1) Historic Landmarks Commission Meeting of 6/16/15
 - (2) Library Board Meeting of 6/23/15
 - (3) Planning Commission Meeting of 4/7/15
 - (4) Planning Commission Meeting of 4/28/15
 - (5) Traffic Safety Advisory Committee Meeting of 4/28/15
- 8(c) Authorization to Apply for HEAL Cities Small Grant Award (Parks)
- 8(d) Resolution Creating a Pilot Program to Allow “Parklets” on Side Streets in the Downtown Area (Community Development/Public Works)**
- 8(e) Authorize Hybrid Contract and Soliciting Proposals for Pump Station No. 1 Upgrades (Public Works)

Councilor Herzig requested Item 8(d) be removed for further discussion.

City Council Action: Motion made by Councilor Price, seconded by Councilor Warr, to approve Items 8(a), (b), (c), and (e) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Item 8(d): Resolution Creating a Pilot Program to Allow “Parklets” on Side Streets in the Downtown Area (Community Development/Public Works)

Councilor Herzig said staff had been directed to bring this proposal back to Council with some additions and the language is much more precise. However, he was concerned that only two parklets would be allowed over the next two years and only in the downtown area. If the parklets are successful within the first year, he wanted Council to permit more than just two.

City Manager Estes explained that the Astoria Downtown Historic District Association (ADHDA) is only comfortable allowing two parklets at this time because they want the merchants to provide feedback as they consider the impacts of the parklets. However, Council could reconsider the resolution.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Price to approve Item 8(d) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

REGULAR AGENDA ITEMS

Item 9(a): Authorization to Purchase Two Police Patrol Vehicles (Police)

As explained in the memo from Police Chief Johnston, the Police Department proposes purchasing two patrol vehicles. One vehicle will replace a 2010 Chevy Tahoe 2WD Police Pursuit Vehicle and the second vehicle will be used for the second Detective position. Staff researched options to purchase these vehicles using the Oregon State Purchasing Program. Quotes were received from Gresham Ford for a 2015 Ford Police Interceptor Utility in the amount of \$26,928.87 and a 2016 Ford Fusion in the amount of \$17,415.00. Funds for these purchases are budgeted in the Capital Improvement Fund for Fiscal Year 2015-16. It is recommended that the City Council authorize these purchases from Gresham Ford.

Councilor Herzig noted that this expense was already budgeted and is not a new appropriation of funds.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Nemlowill, to authorize the purchase of a 2015 Ford Police Interceptor Utility in the amount of \$26,928.87 and a 2016 Ford Fusion in the amount of \$17,415.00 from Gresham Ford. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Item 9(b): Revised Job Description and Salary Resolution for Planner Position (Community Development)

The Community Development Department has five Full Time Equivalent (FTE) split between the planning and building divisions. The Planner position (1 FTE), which provides project management services to all types of customers and projects, has been vacant since Rosemary Johnson retired from the City of Astoria last year. As part of a larger full-scale review of service delivery and development services, the Community Development Director has been reviewing staffing levels, existing and needed skill sets, as well as professional development and organizational development opportunities.

The current planner job description has not been reviewed since Rosemary Johnson was hired for the position in 2002. Before a recruitment strategy can be implemented, the position description needs to satisfy the current workforce development needs of the Department, the City, and the current marketplace. The proposed revisions to the job description accomplish three objectives: 1) increase the educational and experience requirements for a professional planner to an "Associate" level, 2) clearly focus the position on providing excellent customer service, and 3) reframe the position as a project manager/city planner that provides service to a number of programs, customer bases, and functions at the City of Astoria. A copy of the revised job description is attached.

In addition to the revised job description, the salary range was increased during the FY2015-16 budget process, but the Salary Schedule has not been updated to reflect the budgeted amount. The current range is set at 28 - \$44,999 through \$54,696 annually and the proposed increase will reset the range at 34 - \$52,162 through \$63,403 annually. This increase will allow the Director to recruit a qualified candidate pool. It is recommended that the City Council approve the revised job description and revised salary range contained in the attached resolution. With this action, the Director will initiate the recruitment strategy to fill the planner position vacancy.

City Council Action: Motion made by Councilor Price, seconded by Councilor Warr, to approve the revised job description and revised salary range for the Planner position contained in the attached resolution. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

Item 9(c): Water Supply Update (Public Works)

Given the unusually dry spring and summer weather to date, Public Works staff has analyzed the City's levels of consumption, water storage, and volume of stream flows in the watershed. Staff has determined that the storage volume is currently at 95 percent of average of normal storage for this time of year. July is historically the driest month of the year with an eight-year average of 0.75 inches of rain, the August eight year average is 1.01 inches, and September is 3.63 inches. The City of Astoria and outlying water districts and associations' current water demand averages 3.0 million gallons per day, with peak demand as high as 3.5 million gallons per day. With dry weather potentially continuing over the next few months, staff will continue to monitor storage volumes and reevaluate the volumes as the summer and fall progresses to determine if the lack of rainfall is impacting the water supply. If necessary, recommendations will be brought to the City Council to enact mandatory water use restrictions. As a precaution, it may be advisable to inform water customers about the impacts on the City's water volumes during these unusually dry conditions and request that they voluntarily conserve water whenever possible.

City Manager Estes said a list of suggested water reduction methods was provided to Councilors at the dais and to the public on the table at the front of City Council Chambers. The list would also be published on the Public Works Department website.

Director Cook stated the City was nowhere near a crisis, but the weather service, using sophisticated computer models, did not anticipate any substantial rainfall until October 31st. This is significant because Astoria usually gets a few inches of rain in August. He hoped the model would shift and the community would get some rain. However, water reduction methods are recommended as a precaution because they would delay the need to request mandatory controls. He believed that as a group, citizens could help Astoria's storage capacity remain strong until the rains begin. He reviewed some of the ways to reduce water usage, noting the amount of water that could be saved with each method.

Councilor Price noted that Port Commissioner Steve Fulton was present. She attended the Port's special meeting where the Commission heard from the three 'suitors' for taking over the Riverwalk Inn.

Councilor Herzig asked what the storage capacity would be in September and October if there were no rain. Director Cook said with the current water consumption, staff estimates the water storage capacity would be down to a critical level by October 31st. If the current trend continues, the City would have to enact mandatory water conservation measures in order to be prudent. As summer continues, staff can use information from the weather service to predict a more accurate outlook. Staff will consider weather predictions, water use, and water storage capacity to ensure the City has enough water to last until the rains come.

Councilor Herzig believed a major El Nino event was forecast for the winter. He asked if Astoria was in danger of landslides. Director Cook said no one wants too much rain too fast and El Niño's are famous for putting out a lot of rain. Councilor Herzig said the Coast Guard was grateful for the dry weather because they have been able to construction in the new housing area without mud. Director Cook said all of the construction projects in the area are benefiting from the dry weather.

City Council Action: Motion made by Councilor Price, seconded by Councilor Warr, to support voluntary water reduction measures. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

Item 9(d): Lease Agreements with Verizon for Shively and Reservoir Sites (Police)

Following direction from the Astoria City Council at the April 1, 2013 meeting, City staff and consultants have worked with Verizon Wireless to negotiate a Lease that moves all communications facilities out of Astor Park at Coxcomb Hill and returns the park entrance to park grounds. This work was done in support of a 2014–2015 City Council goal: "Complete emergency communications systems." Staff initially identified the Reservoir Ridge site as a possible relocation site. The Reservoir Ridge site is acceptable for public safety radio. To retain status quo coverage that they provide from Astor Park, Verizon required additional locations. Staff provided Verizon with a list of all City owned and some privately owned properties near the area attempting to be covered with an additional site, all but Shively Park were eliminated. Verizon will also be adding a third site joining the cellular antenna arrays atop the building at 351 14th Street. The solution identified requires two Leases of City property to be approved by City Council.

The terms of the proposed Leases are favorable to the City and would provide income to the City for both locations. The Leases also require any future Subleases (collocations) to negotiate access rights with the City in addition to Leases with Verizon. The value of the first five years of the Shively Lease is \$24,000 or a total of \$120,000. Beginning in the sixth year, both the Reservoir Ridge Lease and the Shively Lease will each generate \$27,600 per year in lease payments. These amounts will escalate automatically at 15% for each subsequent 5-year renewal term, based on a 3% per year inflation factor. It is recommended that the lease payments from the Shively Lease be transferred as income to the Parks Operations Fund and that the income from the Reservoir Ridge Lease be transferred to the Capitol Improvement Fund. The Astoria Parks and Recreation Board has recommended approval of the Lease with Verizon to develop the site at Shively Park. More information may be found in the "Historical Information" that is attached to Chief Johnston's memo.

At the time for publication of the Council packet, the Leases were still being reviewed by the City Attorney. The Leases will be forwarded under separate cover to the City Council and hard copies will be available on the night of the council meeting. It is recommended that Council approve of the Leases for both Reservoir Ridge and Shively Park. It is also recommend that council authorize the City Manager to sign documents allowing for the development review process to proceed.

City Manager Estes noted this item was discussed at the work session held prior to this meeting, which included a presentation by staff and consultants. If the leases are approved by Council, the land use applications would be reviewed by the Planning Commission and the Historic Landmarks Commission.

Councilor Herzig noted public comments have not been requested for any of the items on this agenda. He asked if public comments should be allowed for this item. Mayor LaMear wanted to hear Council's comments before inviting public comments. Councilor Nemlowill believed a public hearing would be conducted and supported public feedback. Councilor Price thanked Converge for their presentation at the work session and said she was also in favor of public comments.

Mayor LaMear invited the public to speak about the leases with Verizon.

Mary Eng, Astoria, said she interviewed the man who was arrested at a City Council meeting who is passionate about this issue. She supported the idea of a citizen's arrest in instances of a dangerous mad man with a knife. However, a citizen's arrest for issues of information accountability is possibly an extreme standpoint. He had told her there were issues with information transparency and the historic value of Shively Park. She believed the man had a reasonable interest in understanding the processes and procedures of public meetings in Oregon that regulate the accountability of audio files of meetings. She was unsure if she should get involved in the issues surrounding the community's greater security, communications, and historical interests in the park. One day, development would replace the Column with a massive condominium. Public safety is important, but she wanted to know more about what is going on because she had not been able to find any audio archives, videos or accurate minutes of this issue. She believed there was a better way to make a Freedom of Information Act request for information about how the contracts are allocated. It is typical in small towns for Councilors to hand off contracts to their friends. However, this is a Homeland Security issue because communication is a matter of extreme importance and the storm in 2007 resulted in a catastrophe. She noted that she would forward a copy of a diagram to City Council. Access to open meetings and information is protected by Oregon State Law and she believed more information should be made available to the public.

Chris Farrar, 3023 Harrison Avenue, Astoria, said he believed the information provided at the work session was being presented to City Council for the first time. The first 40 minutes of the presentation contained information that was of little use. The presentation did not include pictures of what the tower would look like, how tall it would be, or where it would be located in the park. He understood pictures could have been shown after he left the meeting at 6:22 pm. The tower would likely be located at the south or southwest of the looped paved trail, but he wanted to know the exact location. He asked if Council knew the exact location and what the tower would look like, noting that these were the two most important aspects to consider. An industrial tower looks more appropriate next to the Column, which is not located in a natural park. Shively Park is a natural park set in a spruce forest and he believed the park should be kept natural. Public safety receives the best communications from the facilities on the Reservoir Ridge site, not in Shively Park. Therefore, the Shively site has nothing to do with public safety. The Friends of the Column are getting their way again after forcing Council to pick up the tab for the communications consulting firm. This issue has been run poorly and he was disappointed about how things have proceeded. He did not believe situations like this should be allowed to continue. When the City has the final say, the City should be involved from the very beginning. The City should have selected the consultant and set the parameters.

Norma Hernandez, 92335 Youngs River Road, Astoria, said she was speaking as President of the Astoria Parks and Recreation Board. The Board has recommended City Council approve the leases with Verizon after studying and arguing about the issues over several conversations. The Board trusts City staff to give them accurate and educational information, and pictures were presented to the Parks Board. She reminded that the Parks Board meetings are open to the public and everyone is welcome. While the Board respects the city and the community, there are times when changes need to be made and compromise is necessary. This is not a perfect world, but this is a very good solution for communications that will allow the City to be progressive. Progress is scary sometimes because things are being done differently; however, this project honors the community. The Board had serious conversations before making their recommendation to Council. Some Board members did not support the recommendation until after it was discussed at several meetings. A lot of work has been put into this and she believed the Board did a good job of considering what would be best for the city. The Board exists to be the voice of the community, so all of the arguments that occur at City Council meetings have already occurred at the Board meetings. This issue was not taken lightly, nor was the recommendation approved immediately without discussion.

Councilor Price said she had seen photographs and had heard the presentation several times. She was sure the presentation was given at least once at a public meeting prior to the work session. City Council has studied the issue and has had long conversations about reimbursing the Friends and the leases with Verizon. She believed this issue has been discussed pretty openly.

Mr. Farrar said the pictures should have been shown at the work session.

City Manager Estes reminded that the Planning Commission and Historic Landmarks Commission will review land use applications for the communications towers during public meetings.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Price to approve leases with Verizon for Reservoir Ridge and Shively Park, and authorize the City Manager to sign documents allowing for the

development review process to proceed. Motion carried 4 to 1. Ayes: Councilors Price, Warr, Nemlowill and Mayor LaMear; Nays: Councilor Herzig.

Councilor Herzig said that during the work session, Converge Communications acknowledged that Shively Park was not the only possible location for a cell phone tower. According to their studies, it was the most feasible location, but not the only possible location. He believed the City could have worked harder to get the tower out of a public park.

Item 9(e): Public Hearing and Ordinance to Vacate Nile Street (1st Reading) (Public Works)

The City has been working with Verizon to facilitate the relocation of the wireless communication facility currently located on Coxcomb Hill. The proposed relocation area is located in the forested area in Shively Park. Staff will be bringing a draft Lease for the Shively Park location to the City Council for consideration separately. The site proposed for the new facility is located on property owned by the City; however, a portion of the facility would need to be located within an unimproved portion of the Nile Street right-of-way in order to accommodate the structure. This process will result in the ability of the City to potentially lease the proposed site to Verizon for a wireless communication within the Shively Park. At their July 6, 2015 meeting, the City Council set a public hearing for the August 3, 2015 meeting. It is recommended that the Astoria City Council conduct the scheduled public hearing and if deemed appropriate, hold a first reading of the ordinance to approve the vacation of the south 30 feet of Nile Street within Shively Park area.

City Manager Estes displayed a map as he explained the exact location of the right-of-way.

Mayor LaMear opened the public hearing at 8:15 pm and asked anyone wanting to speak about the vacation of the Nile Street right-of-way to come forward. Seeing none, she closed the public hearing at 8:15 pm.

Councilor Price requested the location of the right-of-way be shown on a Google map. Staff displayed a satellite image using Google Earth and compared the image to the map shown when this item was introduced.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Price to conduct the first reading of the Ordinance amending Vacating Nile Street. Motion carried unanimously. Ayes: Councilors Price, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Director Cronin conducted the first reading of the ordinance.

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

Councilor Price requested an update on the task force on homelessness.

Mayor LaMear said she has extended some requests for people to serve on the task force, but she has not received responses from everyone. She believed the task force would be complete by the end of the week. She explained the task force would not be tasked with trying to solve the problems of homelessness, but will consider how law enforcement and mental health facilities handle social disorder caused by the homeless and transient population.

Shel Cantor, 1189 Jerome, Astoria, said during deliberations of the Civic Greenway and Bridge Vista areas of the Riverfront Vision Plan, discussion of potential new development north of the Rivertrail has been contentious. The public has been told that the Neighborhood Greenway Area will be discussed next, then the Urban Core Area. He reminded that the Riverfront Vision process was initiated in 2008 as a result of complaints from residents about a slew of riverfront development projects, especially those over the river within the Urban Core area, which included the Englund Condominiums, River Park Landing Condominiums, and Borenstein Condominiums. Therefore, he anticipated the deliberations of implementing the Urban Core could be the most controversial of all. He wanted to minimize the impending confrontation by learning from the past. So far, the controversies have been caused by disagreements about what Astoria wants. The Plan was written through an inclusive process, but this did not and will not overcome the objections from people who assert the Plan does not reflect what the majority of Astorians want today. It is possible that the plan for the Urban Core is what Astoria wants today, but there is no proof one way or the other. No one wants elected representatives to precede every vote by polling their constituents. However, for the highly consequential and controversial issues of new overwater development in the Urban Core, Council has the time and the authority to let Astorians decide what

they want. The most respected method to gauge the will of the constituents would to allow them to vote on how the elected representatives should represent them. He understood the concern about whether voters would see the big picture and vote wisely. Thomas Jefferson responded to this concern by saying, "I know of no safe depository for the ultimate power of a society but the people themselves. If we think them not enlightened enough to exercise their control with their wholesome discretion, the remedy is not to take it from them, but to inform their discretion." He suggested the City put a nonbinding referendum on the ballot of the next regularly scheduled election. Then, the Planning Commission and staff could draft the proposed zoning ordinances for the Urban Core based on proof of what the constituents want today.

Mary Eng, Astoria, said Black Lives Matter events would be held at the First Unitarian Church in Portland August 7th – 9th. The Department of Justice (DOJ) has filed a lawsuit against the Portland Police Department, which was initiated by JoAnn Hardesty, a civil rights activist. She believed Ms. Hardesty was disappointed when the DOJ appeared to migrate to the general concept of mental health during the court proceedings because she was more concerned with racial profiling. She enjoyed the tension, drama, and activism surrounding this issue. Discussion at the Portland City Council meetings made her more aware of the National Alliance on Mental Illness (NAMI) and various ways of thinking about the issue of mental health. She was concerned about the safety of the police and did not want riots to erupt in Astoria, like the riots happening across the nation. She wanted beautiful people with mental health issues to get resources. She thanked the City for the stop gap she was experiencing with the domestic violence and restraining order process. The Police have been incredibly gracious in how they handle dangerous situations. She sought out this community because she believed the community operated with intelligence and sensitivity. However, there are a lot of unmet social needs that would pertain to the homelessness task force.

Chris Farrar, 3023 Harrison Avenue, Astoria, said it sounds great that Astoria's water supply is currently at 95 percent; however, if the weather continues as the weather forecasters expect, the water supply may be down to a critical level. He suggested the water bills include information about how much water average households use each month. This would allow people to compare their current and past usage to the averages. He also suggested public comments be timed with an hour glass so that each speaker can see how much time they have left.

Councilor Herzig said he knew someone who found out they had a leak when they received an unusually high water bill. The water department waived most of the bill. He believed Mr. Farrar's suggestion was a good one because a new resident would have no idea about how much water usage was normal.

Councilor Price noted the audio files for public meetings used to be published on www.coastradio.org; however, she was sure the files could be published on this website again. City Manager Estes said staff would work with the radio station to get the audio files online. Councilor Price confirmed with Mr. Cantor that the deadline for getting a referendum on the November ballot was August 14, 2015. If Council wanted to move forward with this idea, a special meeting would be necessary.

Councilor Herzig thanked Mr. Cantor for his suggestions. The most contentious part of the discussion about implementing the Riverfront Vision Plan has been about what people want. The City only hears from the people who show up at meetings to say what they want, but it is difficult to gauge the wants of people who do not attend the meetings. It seems too late to get a referendum on the November ballot. However, he believed this issue would have to be brought back to the people eventually. The City needs input from people now, not from five years ago.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:30 pm to convene the Astoria Development Commission meeting.

ATTEST:

APPROVED:

Finance Director

City Manager

A work session of the Astoria Common Council was held at the above place at the hour of 5:30 pm.

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

Councilors Excused: None

Staff Present: City Manager Estes, 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.

PRESENTATION – RELOCATION OF COXCOMB HILL COMMUNICATIONS FACILITIES

City Manager Estes noted two items on the agenda for the regular session City Council meeting were related to the relocation of the Coxcomb Hill communications facilities and he encouraged Council to ask questions during the presentation.

Assistant City Manager/Police Chief Johnston said Staff is working to support a 2013 City Council Goal to complete emergency communication systems, which included the removal of the tower on Coxcomb Hill in Astor Park. He gave a PowerPoint presentation that reviewed the history of the tower at Astor Park and the City Council goal to remove the tower. Key comments from his presentation were as follows:

- The site made sense when the tower was built in 1989 because not much attention was given to the park at that time. The tower improved communications by combining several pieces of ad hoc equipment on to one facility.
 - A few years later, GTE Mobile, now Verizon Wireless, added 20 feet to the height of the tower, installed their equipment and a building, then turned ownership of the tower back over to the City, which retains ownership of the tower.
 - In years following, communication systems needs changed as the City's equipment had to be relocated from a water tower, upgraded after the 2007 storm, and because Verizon added equipment to the tower that significantly impacted the structural integrity of the tower.
 - In 2008, Verizon wanted to replace Omni antennae with 4G panel antennas. Structural analysis and intermodulation studies indicated the City had some conflicts with the public safety radio systems and the tower could not be upgraded to handle the excessive weight of the new equipment. Therefore, a new tower would be necessary.
 - The County communications committee significantly upgraded communications infrastructure with grant funds. Sites were diversified and all of the sites except one were connected.
 - Federal funding allowed Astoria to build a radio site at Skyline to diversify the equipment on Coxcomb Hill.
- Currently, Coxcomb Hill is the only site that has not been upgraded. The tower is over capacity, cannot be updated, and cannot house all of the City's equipment. The generator was not built to handle network communication systems.
 - In 2013, City Council rejected Staff's proposal to allow Verizon to build a large monopole just north of the existing tower and directed Staff to get Verizon to move their equipment.
 - The Friends of the Astoria Column hired Converge Communications to develop a solution that would satisfy both the City and Verizon.

Marsha Spellman, Converge Communications, introduced herself and the team of people who worked for and with Converge on this project. She gave a brief history of Converge and explained how the company helps public entities build telecommunications networks.

Adam Haas, Converge Communications, noted that as an independent consultant, Converge is unaffiliated with wireless telecommunications providers and hardware providers. He described how Converge worked with the Friends, the City, and Verizon to negotiate a solution that would accommodate each party's needs, noting the

considerations and steps taken that led Converge to make the proposed recommendations. Converge has recommended the Reservoir Ridge site because:

- The location is secure because it is away from people.
- It provides excellent coverage for public safety radio.
- Power is only half a mile away.
- The site is easy to develop.
- However, because this site does not provide Verizon with adequate coverage, Converge also recommended towers be installed at the Astor Hotel and Shively Park. Communication facilities at all three sites are necessary to make this plan work. Benefits to the City and community include improved public safety communications and improved 3G and 4G mobile broadband coverage for Verizon customers.
 - The City will also have a brand new and secure tower with future expansion capabilities. Benefits to the City include obtaining revenue to the City from each site and [35:06] all of the following will be done at no cost to the City:
 - All equipment will be moved from Coxcomb Hill to the Reservoir Ridge tower.
 - A new radio shelter with a generator will be installed.
 - Existing tenants on the tower will be moved to new tower at no cost to tenants or the City.
 - The site a Coxcomb Hill will be restored.
- At the end of the lease, ownership of the Reservoir Ridge tower reverts back to the City at the City's option. Astoria will have critical public safety radio equipment on the tower and the City can retain its capabilities if Verizon decides to move their equipment or not to renew the lease.

Councilor Price asked if the negotiations included a discussion about Verizon providing citywide Wi-Fi, whether the City contracts with Verizon for services, and whether the City is contractually obligated to use Verizon for a specified amount of time in exchange for this arrangement. Director Johnston did not believe Verizon provided Wi-Fi. Several years ago, the City informally considered Wi-Fi as a public utility. He confirmed that the City uses Verizon as a provider of cell phones and data services on police vehicles, but the City is not obligated to purchase services from them for any amount of time. The City piggybacks on the State's contract for services through the Oregon Cooperative Purchasing Program.

Councilor Nemlowill thanked Converge for putting so much work into negotiating with Verizon. She found it interesting that City Council directed Staff to find a location other than Coxcomb Hill, but it was the Friends that hired Converge. She questioned whether the goals and outcome would have been different if the City had hired Converge directly, noting that the Friends goal was to move the tower from Coxcomb Hill. She found it difficult to move the tower from one City park to another and asked Converge to respond.

Ms. Spellman explained that Converge was only hired by the Friends and therefore did not have any input into what the Friends decided. She believed public safety was the most important consideration. Verizon would have been happy to keep their equipment on Coxcomb Hill and have a bigger tower. When it comes to public safety for the City, there is no comparison to Coxcomb Hill because the tower is so much higher and provides much better coverage for public safety. Once Verizon realized how serious Astoria was about moving communications off Coxcomb Hill, they agreed to help develop another plan.

City Manager Estes added that when City Council directed Staff to remove the tower at Coxcomb Hill, the City and the Friends had the same goal. Throughout the entire process, City Staff worked with Converge in an attempt to complete the task assigned to them by Council. Therefore, he believed the outcome would have been the same if the City had contracted with Converge. Director Johnson said geography was the number one factor in site considerations. The terrain dictated where the equipment would need to be installed. While Converge was under contract with the Friends, they consulted with City Staff throughout the process because Staff had the local knowledge they needed to draw from. The City, the Friends, and Converge were all headed in the same direction. Staff was sure that Verizon was not ready to move their equipment, but Converge provided a more open-minded approach and a wider spectrum of possibilities.

David Olson, former Cable and Franchise Director, City of Portland, said he worked with the City and the Friends from April 2013 until Converge was hired in July. On his advice, the Friends decided to seek out a technical solution that would help Verizon clearly understand that the City, the Friends, and the community needed and wanted the tower removed from Coxcomb Hill. City Staff participated in the interviews of respondents to the RFP. He agreed with Staff that selecting Converge was the right choice.

Councilor Herzig believed City Council had issues with this process because it was initiated by a former Council. This Council has only received small reports from Staff, but no regular updates on the process.

Ms. Spellman noted that telecommunications issues are very complicated. Issues are based on engineering and technology, but people are more concerned about the hill. She could talk for a long time about the benefits to the City of 4G. However, Converge is simply trying to find a solution. She appreciated that this issue was new to City Council. While Converge was engaged by the Friends, they have worked hand in hand with City Staff. Converge's work with the Friends just consisted of sending them monthly reports, but Converge worked with City Staff on a day-to-day basis.

Councilor Herzig said the Friends did not forward those monthly reports to City Council. He also found it hard to believe that the site on the south slope was the only adequate location for the tower.

Mr. Haas responded that physically, a tower could be placed in many locations, like a residential neighborhood or a public right-of-way. Putting a tower in a park is not an ideal situation. However, fortunately or unfortunately, there is tremendous demand for wireless services. He understood there were sensitivities to using Shively Park, but the location is ideal because it is so unobtrusive. Verizon originally wanted the tower at the top because it provided the best coverage. However, this would have been terribly disruptive. The tower will be a monopole with very little equipment on it, compared to what would be necessary if a new tower were built at Coxcomb Hill. He understood the perception was that a problem was simply being moved from one park to another. However, putting a monopole at Shively Park is the lesser of two evils. While cell sites are getting smaller, more sites are necessary. This type of telecommunication infrastructure, just like roads, water, and power, is needed in this community because it facilitates commerce, education, and all kinds of things that rely on wireless connections. This solution is a trade-off. After considering other sites and working with Verizon, Converge believes Shively Park is the best alternative for the third site.

Mayor LaMear asked if the 6-foot dish would remain on the Verizon tower at the caretaker's home. Mr. Haas said the dish would be moved on the new tower at the Reservoir Ridge because the tower will be able to handle the weight, as well as public safety equipment. This will address both current and future needs. Director Johnston added the tower at Shively Park would be at the back corner near the edge of the urban forest, not at the entrance like at Astor Park.

Councilor Nemlowill said Director Johnston mentioned but did not go into detail about the significant impact this would have on public safety. She asked how this plan would impact public safety communications in an event like the storm of 2007. Director Johnston explained that in 2007, Staff could not get to the tower to find out why it failed and they were worried fallen trees had caused the problems. This situation will not occur at the Reservoir Ridge because trees will not be planted near the tower. The City will have the ability to connect anywhere because the Reservoir Ridge has a remarkable line of sight to all of Astoria's communications sites, with the possible exception of Cathlamet due to distance. The site will provide pristine radio frequency coverage without interference and good vertical separation between antennas, eliminating the need for so much filtering. The Police Department will be able to link directly to the site, instead of connecting to Coxcomb through the fiber installed on telephone poles, which could be disabled by an automobile accident. The new communications shed is necessary because the existing building cannot be retrofitted to accommodate current needs.

Councilor Price said her constituents are concerned about the need for a pole in Shively Park and the City's reimbursement to the Friends for Converge's services. She wanted to know how the City went from not having the funds for this to reimbursing tens of thousands of dollars. City Manager Estes explained that initially, the Friends agreed to hire a consultant through the RFP process with the assistance of City Staff. At the last City Council meeting of 2014, former Mayor Van Dusen stated he hoped the City of Astoria would reimburse the Friends for the work completed by Converge. The reimbursement was proposed and approved by Council in the spring of 2015. Director Johnston said there was never any intent to get around public contracting laws. The Friends hired Converge and by the end of the project, it became apparent that the work done by Converge largely benefited the City much more so than the Friends. The expense also prevented the Friends from doing other work.

Councilor Herzig said people are troubled that the City never had a formal agreement with the Friends. While the former Mayor asked Council to consider the reimbursement, nothing was formalized until Council was asked to approve the \$50,000 or \$60,000 payment to the Friends. The issue is water under the bridge now. However, in

the future, the City needs to make sure that the party responsible for the bill is understood when partnering with an entity that will hire a third party.

Councilor Warr and Mayor LaMear thanked Converge for their help.

RECESS TO EXECUTIVE SESSION

Item 4(a): ORS 192.660(2)(e) – Real Property Transactions

The work session was recessed at 6:30 pm to convene the Executive Session of the Astoria City Council.

ATTEST:

APPROVED:

Finance Director

City Manager

DRAFT

A special meeting of the Astoria Common Council was held at the above place at the hour of 1:00 pm.

Councilors Present: Herzig, Warr, Price, Nemlowill (via telephone), and Mayor LaMear

Councilors Excused: None

Staff Present: City Manager Estes, Community Development Director Cronin, Public Works Director Cook, and City Support Engineer Cindy Moore. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

REGULAR AGENDA ITEMS

Item 3(a): 16th Street CSO Separation Project – Pay Adjustment No. 2 (Public Works)

City Manager Estes said several pay adjustments were going to be proposed at the next regular City Council meeting on August 17, 2015. However, one item had to be reviewed by Council as soon as possible so that staff could let the contractor know whether to proceed. These pay adjustments total \$83,063.46. On Pages 1 and 2 of the memorandum, Items 1 through 5 are the items that were to be proposed at Council's regular meeting, but were being presented now to make the process smoother.

Item 6 is the item that needs to be considered in a timely manner. This item is for replacing 290 feet of 10-inch water line on 15th Street. When the contractor was working within the 15th Street right-of-way, the contractor found that the water line had deteriorated far more than initially expected. The replacement would cost \$58,070. Staff would like Council to approve this pay adjustment so that materials can be purchased and work can be completed quickly.

Director Cook added that when the cast iron water line was manufactured, air bubbles got into the cast and made a bunch of voids. The problem was unknown because the pipe is in an area of town with low water pressure. However, breaks in the pipe occurred when machines began to work in the intersection. The street cannot be put back together and prepared for paving without breaking the water line.

City Manager Estes said staff could answer questions about the other line items. Staff recommended City Council authorize a pay adjustment for \$83,063.46, bringing the project's contingency balance to 85 percent.

Councilor Herzig said he was glad this issue was discovered before the road was paved.

City Council Action: Motion made by Councilor Price, seconded by Councilor Warr to authorize Pay Adjustment Number 2 for \$83,063.46 for the 16th Street CSO Separation Project. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Councilor Price asked for an update on 16th Street. City Manager Estes said staff could provide updates on 16th Street, water service, and answer Council's questions.

Councilor Herzig said people have expressed a lot of interest in the water conservation tips. He asked if staff could find better ways to get the tips out to the public and suggested the tips be printed and placed at the front desk during the Fire Department's open house. It would be up to the Finance Department to decide if the tips should be included with the water bills. He was unsure if the full list of tips were published in the newspaper. He had previously asked staff how Astoria's water storage capacity could be increased in case the dry weather continued. He was told this would be cost prohibitive; however, it would be possible to install pumps to tap into ground water. He wanted Council to direct staff to do some research on pumping ground water.

Councilor Warr understood that under normal circumstances, Astoria had two or three times the water needed in any given year. Being cautious is good, but he did not believe it was absolutely necessary at the moment. He did not believe Astoria would need more storage capacity.

Councilor Herzig believed the dry weather could be the new normal for Astoria's climate and the city could experience climate extremes in the future. It would be good to have at least one possible solution researched to see if Astoria could increase its pumping ability in the watershed. Director Cook explained that he would begin research by talking to the Knappa Water District because their entire district is fed by wells. He would also consider talking to Gearhart because they just installed a well system for their drinking water. He believed it would be easy to present Council with some concept costs. However, a detailed plan would take a lot of work. A basic concept would include estimates of how many gallons per minute and capacity.

Councilor Price appreciated that Councilor Herzig and staff were thinking about pumping ground water in case dry weather continues.

Mayor LaMear was concerned about pulling out all of the ground water. In some places, aquifers are now dry. Director Cook said water would be pumped from the lower part of the watershed because much of the upper part of the watershed feeds the creeks. However, a lot of water bypasses the creeks and flows under the dam. Mayor LaMear said if doing some research was not a very onerous task, she would appreciate the information. Director Cook said normally, water storage capacity is not an issue. However, a series of dry summers would result in less water in the creeks.

Councilor Warr believed that when Astoria's water system was developed, the canneries were running full bore. Therefore, the system was developed to enable about seven or eight million gallons per day. He confirmed with staff that average water use is currently three and a half million gallons per day, which is less than half of the initial build capacity. He asked how long it had been since Astoria has anticipated a water shortage. Director Cook said water shortages have been anticipated twice, in 1976 when the canneries were still operating and in 1989. No one can predict what the climate will be. However, several consecutive years of dry summers will cause problems.

Councilor Herzig said in anticipation of an El Nino and excessive rainfall this winter, he spoke to staff about Astoria's semi-active landslide areas. Director Cook added that staff has considered a project in the area of Valley and Skyline where trees have blown down. All of the storm water flows through a ditch in the center of the area and is piped out to the Columbia River. The City could collect more of the water that seeps into the soil. A geologist suggested much of this area could have cause the slide on Bond Street.

Councilor Herzig asked if Council would direct staff to do some preliminary research on increasing drainage capacity in the area near Valley and Skyline. Director Cook explained that the area does have some drainage in the center; however, drainage branching off of the center could prevent even more water from seeping into the soil. The geotechnical engineer said increased drainage would be a benefit. There may be Federal Emergency Management Agency (FEMA) funds available for this pre-hazard mitigation project. He estimated the costs would be about \$150,000 to \$200,000. This project was on the Public Works spreadsheet presented during the budget process for Fiscal Year 2015-2016.

City Manager Estes understood there was a consensus from City Council and confirmed he would direct staff to research pumping ground water and increasing drainage in the area near Valley and Skyline.

Councilor Price asked for an update on 16th Street. City Manager Estes said since the pay adjustment was just approved, staff would provide a complete update at the regular City Council meeting.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:25 pm to convene the Astoria Development Commission meeting.

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.

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

Councilors Excused: None

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

City Council proceeded to Item 4: Presentation from Clatsop County Health Department at this time.

REPORTS OF COUNCILORS

This item was addressed immediately following Item 4: Presentation from Clatsop County Health Department.

Item 3(a): Councilor Nemlowill No report.

Item 3(b): Councilor Herzig reported that about 30 people attended the Roll and Stroll event the previous week. He thanked Chief Johnston and Director Cronin for participating, noting that Director Cronin and Mr. Mahoney were on the discussion panel that was part of the event. The 10-block stroll exposed the challenges to people with physical limitations. Michelle Lewis from Northwest Senior Disability Services, who also attended, had suggested the City plot an accessible walking path from Owens-Adair to the Senior Center. He believed this would be a manageable task. The Fire Department held a fun and educational open house on Saturday, August 15. He thanked Brett Bishop for serving tofu hot dogs. At the open house, Jim Pierce, who had just returned from Walldorf, Germany, said representatives from Walldorf were preparing to come to Astoria in August 2016 for the 50th Anniversary of the Astoria Megler Bridge Opening. The next Citizens Helping Improve Parks (CHIP-in) event will be on Saturday, August 22 from 9:00 am to 12:00 pm. Volunteers will meet at the Barbey Maritime Center to clean up the Riverwalk. All of the necessary tools and materials will be provided. On the same day, Lewis and Clark National Park will celebrate the National Park Service's 99th Birthday from 11:00 am to 3:00 pm at Nettle Landing. The next movie night will feature *Ghostbusters* on Saturday, September 5 at McClure Park. Admission is \$5.00 for all ages and the beer garden will be segregated from minors.

Item 3(c): Councilor Warr reported that he toured the Bornstein's fish factory. He was amazed by the automation of fish processing and the impact of the industry on the local community. Astoria has three large fish processors. Bornstein's has a payroll of about \$8 million per year and they estimate the boat crews' wages are an additional \$8 million. The Lower Columbia River is the largest fish processing port in the western United States. Astoria is unique because the companies are committed to maintaining their resources and refrain from overfishing. Over the last couple of weeks, he spent a lot of time working on issues related to tourism at the Goonies house. Tourism to the house has exploded over the last three or four years and it is estimated that perhaps 1200 people visit the house each day, making it impossible for the private owners of the house. From about 7:00 am until about 10:00 pm, tourists will come into the yard, stand on the deck, and look in the windows. The City and Chamber of Commerce are working to slow down the tourism and the homeowners have covered two sides of the house in blue tarps. He believed it would take some time to solve the problems, but the City and Chamber are trying very hard to figure out a solution.

Item 3(d): Councilor Price reported that she had been invited by the Chamber of Commerce to attend the Environmental Quality Board mixer. She was glad to learn that the Department of Environmental Quality (DEQ) had a policy board. She was unable to attend, but Mayor LaMear did attend the mixer. Her next salonical was scheduled for Thursday, August 27 from 6:30 pm to 8:30 pm at the Boyington Building. Councilor Herzig's salonical would be on Saturday, August 22 from 12:30 pm to 2:00 pm in the Flag Room of the Astoria Library.

Item 3(e): Mayor LaMear announced that she had renamed the task force for the homeless to the Coalition to Develop Partnerships for Dealing with Homeless/Community Interactions (Mental Health, Medical,

and Law Enforcement). The members of the task force are Chief Johnston (Police), Elaine Bruce (CCA), Sumner Watkins (Clatsop Behavioral Health), Brian Mahoney (Clatsop County Health Department), Drew Herzig (Astoria City Council), Karin Temple (citizen representative), Lisa Reid (ADHDA and Chamber of Commerce), and Father Lance Peeler (faith community representative). Columbia Memorial Hospital will name a representative from the emergency room once task force meetings have been scheduled. She believed the task force included a good mix of representatives from entities that deal with homeless people. She reported that she attended 11 City meetings the previous week, including the Infrastructure Finance Authority (IFA) meeting. Astoria currently has 12 projects funded by the IFA. Cindy Moore and Jeff Harrington did a great job presenting the projects to the IFA at the meeting. She believed the IFA enjoyed hearing how their funds were being spent.

City Council continued to Item 5: Changes to the Agenda.

PRESENTATIONS

This presentation was given immediately following Roll Call.

Item 4(a): Stephen Blakesley and Brian Mahoney of Clatsop County Health Department

Brian Mahoney, 1341 Miller Lane, Astoria, Clatsop County Department of Public Health Director, thanked Council for inviting him to speak about the services provided by the Health Department. One of the Department's goals is to promote and encourage healthy behaviors because public health ensures a liveable and prosperous community. Over the last 100 years, public health has doubled the life expectancy through immunizations, providing clean water, encouraging healthy behaviors and food safety. He gave Councilors printed copies of his PowerPoint presentation, which included details about the Health Department's health programs, as follows:

- Community health programs include: Support of tobacco control measures, a worksite wellness program, the "Prescription for Play" program, increased access to fresh fruits and vegetables, and increased access to healthcare.
 - Some of these programs require the Health Department to work with Clatsop Community Action, food trucks, farmers markets, and the Women, Infants, and Children (WIC) program.
 - "Prescription for Play" addresses obesity and inactivity, a priority health concern in the County that leads to other chronic conditions.
- Environmental health programs include: licensing and inspections of restaurants, residential and small business wastewater systems, small-scale drinking water systems, pools, spas, and visitor accommodations; and an annual household hazardous waste collection event.
 - The Department plans to build a collection facility for the household hazardous waste event at the landfill across from the new stadium.
- Other programs include: Immunizations, family planning services, birth and death records, home visits from nurses for mothers and infants, medical case management for high-risk youth, public health emergency preparedness, and nutrition programs.

Councilor Nemlowill asked for details on the argument in support of banning e-cigarettes in a public space. Mr. Mahoney explained that e-cigarettes are a type of nicotine delivery system, not smoke.

Stephen Blakesley, 31928 Ocean View Lane, Arch Cape, Clatsop County Department of Public Health Promotion Specialist, added that it is not possible to distinguish between a plume of smoke, aerosol, or marijuana smoke. Public health is data driven and there is not enough data to say that e-cigarettes are harmless. Therefore, enforcement is easier when e-cigarettes are categorized with smoking.

Councilor Price asked how many people are served by the Health Department. Mr. Mahoney said there are about 1200 people enrolled in the WIC program and the Health Department visits about 400 restaurants, inspects about 6 water systems, as well as an unknown number of pools and spas, follows up on several reports each day of communicable diseases, and serves between 5 and 25 people each day at each of the clinics.

Councilor Price asked what the Health Department does for women seeking abortions. Mr. Mahoney said the Health Department does not offer any abortion services, but he would find out if the clinics offered referrals.

Councilor Herzig noted that Mr. Mahoney helped the Warming Center explore healthcare options for its homeless guests last winter. He learned the homeless have very few options, so they usually end up in the

emergency room of Columbia Memorial Hospital. However, the hospital reported no visits from homeless people on the nights the Warming Center was open.

City Council returned to Item 3: Reports of Councilors.

CHANGES TO AGENDA

This item was addressed immediately following Item 3: Reports of Councilors.

City Manager Estes requested the addition of Regular Agenda Item 7(i): 16th Street CSO Project Update (Public Works). Councilor Nemlowill requested the addition of New Business Item 8(a): Fluoride in the Drinking Water. The agenda was approved with both additions.

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 6(a) City Council Minutes of 7/20/15
- 6(b) Authorization to Submit Annual Ready to Read Grant (Library)
- 6(c) Set up and Equipment for Two Police Vehicles (Police)
- 6(d) Authorization of Easement to PacifiCorp – Yacht Club (Public Works)
- 6(e) License to Occupy a Portion of the Alameda Avenue Right-of-Way Adjacent to 553 Alameda Avenue (Public Works)
- 6(f) Astoria-Warrenton Area Chamber of Commerce Contract (Finance)**
- 6(g) Promote Astoria Funds – Arts and Cultural Grants (Finance)

City Manager Estes said Council had requested Item 6(f) be removed for further discussion.

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

Item 6(f): Astoria-Warrenton Area Chamber of Commerce Contract (Finance)

City Manager Estes explained that City Code requires organizations receiving funds from the Promote Astoria Fund to enter into a contract with the City that includes a scope of work and budget to be approved annually by City Council. Council directed Staff to draft an updated agreement prior to making disbursements from the Promote Astoria Fund for the Visitors' Center and the Lower Columbia Tourism Committee. Council has been given a draft of a professional services agreement between the City and the Chamber of Commerce, and a scope of work from the Chamber of Commerce that addresses City Code provisions. Finance Director Brooks and City Attorney Henningsgaard drafted the agreement in order to meet City Code requirements. Staff believes the draft addresses all of the necessary provisions for implementing City Code. Staff recommended City Council approve the execution of the agreement between the Astoria-Warrenton Chamber of Commerce and the City of Astoria to commence payments.

Councilor Herzig said he had requested this item be removed from the Consent Calendar for discussion because it had been years since the City had a formal contract with the Chamber of Commerce. Many people worked very hard on the contract and he wanted the public to know a formal contract was now in place. In the scope of work, the Chamber has committed to encouraging repeat visitors while minimizing negative tourist impacts to the local community. He believed this would be a huge benefit to the community and he was glad the Chamber added this to the scope of work.

Councilor Price said she appreciated the contract. During Budget Committee meetings, there were suggestions for refining the contract. She believed the draft was great, but was concerned that the City's contract requirements were a burden to other entities that received less Promote Astoria Funds than the Chamber. Smaller organizations, like the Astoria Downtown Historic District Association (ADHDA), do not have as many resources as the Chamber for reporting requirements.

Staff recommended all entities be required to sign the same contract. City Manager Estes clarified the same reporting requirements would not apply to those receiving funding for specific project-based items, such as noted

in Item 6(g) of the Consent Calendar. In that case, Staff wanted to allow alternative reporting options that were more streamlined. However, since the ADHDA receives tens of thousands of Promote Astoria Funds to offer many services, Staff believed a similar contract would be most appropriate. The City works with organizations, like the Chamber and the ADHDA, to help facilitate and make things work with regard to meeting the reporting requirements. Staff is working with the ADHDA to get their contract on the agenda for the next City Council meeting.

Councilor Nemlowill believed the Chamber did a great job of promoting Astoria with Promote Astoria Funds.

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

REGULAR AGENDA ITEMS

Item 7(a): Ordinance to Vacate Nile Street (2nd Reading & Adoption) (Public Works)

The City has been working with Verizon to facilitate the relocation of the wireless communication facility currently located on Coxcomb Hill. The proposed relocation area is located in the forested area in Shively Park. Staff will be bringing a draft Lease for the Shively Park location to the City Council for consideration separately. The site proposed for the new facility is located on property owned by the City; however, a portion of the facility would need to be located within an unimproved portion of the Nile Street right-of-way in order to accommodate the structure. This process will result in the ability of the City to potentially lease the proposed site to Verizon for a wireless communication within the Shively Park. At their August 3, 2015 meeting, Council held a public hearing and conducted the first reading of the ordinance to vacate. It is recommended that the Astoria City Council conduct the second reading and adopt the ordinance to vacate the south 30 feet of Nile Street within Shively Park area.

Director Cook conducted the second reading of the ordinance to vacate the south 30 feet of Nile Street within the Shively Park area.

City Council Action: Action carried without a motion by a vote of 4 to 1 to conduct the second reading and adopt the ordinance to vacate the south 30 feet of Nile Street within the Shively Park area. Ayes: Councilors Price, Warr, Nemlowill, and Mayor LaMear; Nays: Councilor Herzig.

Item 7(b): FEMA Flood Insurance Maps – Update and Phase 2 Authorization (Public Works)

The City entered into an Intergovernmental Agreement (IGA) with the City of Warrenton and Clatsop County in December of 2014 to hire a third-party engineering firm to analyze the data provided by the Federal Emergency Management Agency (FEMA) regarding D-FIRM maps for the Clatsop County region. The City of Warrenton, acting as lead agency, solicited proposals and entered into an agreement with Coast & Harbor Engineering to complete the initial analysis. The cost of Phase 2 is \$27,700, which will be divided between the parties. The City of Astoria's estimated share is \$7,000. Collin Stelzig, the lead consultant on the project, will be available to give an update and answer any questions Council may have. It is recommended that Council authorize the Mayor to sign Amendment 1 of the IGA between the City of Astoria and the City of Warrenton resulting in an expenditure of an amount not-to-exceed \$7,000 for additional flood map analysis.

City Manager Estes said the City of Warrenton drafted the IGA because they hired the consultant.

Collin Stelzig, 657 North Main, Warrenton, believed the collective efforts of the County, Astoria, and Warrenton have made quite an impact on FEMA. Since he first got involved with this effort in 2007, Warrenton has gone in circles with FEMA. He believed Coast & Harbor was the premier coastal engineer firm for the area. Coast & Harbor studied FEMA's data and models and determined that many of the issues found by Warrenton were legitimate. After presenting these findings to FEMA and their consultants, FEMA has agreed. Coast & Harbor has developed a way to show FEMA how to resolve the issues in a more scientific, more accurate and economical way.

Mayor LaMear asked Mr. Stelzig to explain why the maps were being contested. Mr. Stelzig said the old maps indicated the City of Astoria was in an AE zone, which is a standard flood zone where fields flood and homes must be built at a 12-foot elevation. The new maps require elevations up to 19 feet and puts Astoria in a velocity zone, which indicates waves. The velocity zone imposes criteria for building and locating structures. City Manager Estes said the new maps made significant changes to the Alderbrook neighborhood, which does not have a sea wall. The velocity zone would affect the port piers and could affect the ability of existing development to retain flood insurance.

Councilor Herzig confirmed that this discussion was not about the tsunami inundation zone, just normal expected flooding based on seasons and tides. City Engineer Harrington added that partnering with the other entities gave Astoria a bigger voice. Addressing FEMA as a group has made a big difference.

Councilor Price said she was glad the City was advocating for current residents and businesses. These map changes could result in extraordinary hikes in flood insurance. However, she was concerned about future development along the riverfront and believed these maps should be considered as the City discusses what would be allowed in new development.

Mr. Stelzig reiterated that Coast & Harbor is one of the most premier consultants available. Coast & Harbor modeled events that matched actual events on the Tongue Point tide gauge and they were only off by feet. Therefore, he believed the science is on the City's side, which is why FEMA has agreed. He confirmed for Staff that some of FEMA's models used a flood event from 1981 as their highest flood event and stated it was a 200-year event. However, the tide gauge and the National Oceanic and Atmospheric Administration (NOAA) stated it was only a 20-year event. The river is so complex that the models must be top notch, which is very expensive. FEMA tried to complete the models economically, but they were not accurate. While the East Coast is experiencing some of the predicted events, the West Coast is not.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Price to authorize the Mayor to sign Amendment 1 of the IGA between the City of Astoria and the City of Warrenton resulting in an expenditure of an amount not-to-exceed \$7,000 for additional flood map analysis. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

Item 7(c): Geologic Hazards Mapping Update (Public Works)

The City's existing Past Landslides Map is outdated and does not clearly show all recent slides and changes to the boundaries of existing known landslides. The landslides shown were mapped over the past 75 +/- years. It also does not include the Department of Geology and Mineral Industries (DOGAMI) landslide inventory presented to the City in 2013. The current mapping does not include fill areas, which are susceptible to subsidence (ground sinking) during an earthquake.

Based on the variety of data available it was determined that it would be beneficial to combine all information into one new map titled "City of Astoria Geologic Hazards Map."

In July of 2014 staff was offered an opportunity to apply for a \$5,000 Oregon Division of Land Conservation and Development (DLCD) Oregon Coastal Management program Technical Assistance Grant. The Public Works Department had already budgeted \$5,000 to begin the update and with the additional \$5,000 in grant funds was able to complete the work. The project is now complete. One of the grant requirements was that the City Council accepts the new mapping once complete. It is recommended that City Council accept the new mapping for use in the City GIS system for planning, permitting and engineering purposes.

Staff made hard copies of the map available at the dais and to the audience. Engineer Harrington gave a PowerPoint presentation that explained the map. High water was removed from the map because it is now indicated on FEMA's map. The 1974 map was created from newspaper articles about landslides, but the updated map reflects City records of all slides that occurred in the last 75 years. He explained what the various colors on the map indicated, which included DOGAMI's inventories of prehistoric landslides, reactivations of ancient slides, and fill areas. Staff is working with DOGAMI and DLCD to incorporate the updated map data into the City's new geological hazard ordinance. Staff believes the fill occurred in the late 1940s, possibly post World War II or the dredging of Tongue Point. The fill areas prevent the river from eroding the toe of a landslide. The

City is removing water from the storm water system by installing perforated pipes in deep trenches during the CSO project and paving prevents water from seeping through gutter and pavement cracks.

Mayor LaMear was glad the map was being updated with as much information as possible. She understood that LIDAR created images below ground. Engineer Harrington explained that there were two types of LIDAR and Mayor LaMear was likely referring to the type that penetrates brush and trees. This allows the images to create a map showing the ground, not the treetops.

Councilor Nemlowill asked if Staff encountered any big surprises or found changes that would impact development in Astoria. Engineer Harrington said Astoria was fortunate to have a local geologist who has lived in the community his entire life and had an immense amount of records, Tom Horning of Horning Geosciences. Mr. Horning shared all of his knowledge with the City and walked all of the slide areas. Small marks on the map indicate every crack in the ground that Mr. Horning could find. He was surprised to find that one area, which he indicated on the map, had a lot of surface ground movement but was not marked as a slide area. The ground movement could be from old pavement or an old water system. The City will forward the information to DOGAMI. The 8th Street slide, which almost filled the entire historic footprint of Astoria, is the most active. He hoped the dewatering system installed during the 11th Street CSO project would help slow the ground movement in this area. 8th Street has just been paved, so Staff will pay attention to what happens to the street over the next 20 years and compare that to how the street deformed over the last 20 years.

Councilor Herzig noted this map was based on the best science and surveying technology available. He asked when and how the map would need to be updated. Engineer Harrington said the new map would be continuously updated as new slide events occur. The map is just an inventory of information, but each update may need to be reviewed and accepted by City Council. The City needs the best available information all the time and this map will tie into the new geological hazard ordinance.

Councilor Herzig added that even though the fill by the river is preventing erosion, an earthquake would likely liquefy the fill. Therefore, the City should be very cautious about development in the fill zone because it is one of the most vulnerable areas in the city. Engineer Harrington noted that currently, new essential facilities like libraries and hospitals cannot be built without the involvement of professionals and the City's building permit already requires developers to get a geotechnical report. Therefore, the City should concentrate on things like strategies for large dewatering projects.

Mayor LaMear confirmed there were no public comments on the updates to the geologic hazards map.

City Council Action: Motion made by Councilor Herzig, seconded by Councilor Warr to accept the new mapping for use in the City GIS system for planning, permitting and engineering purposes. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

Item 7(d): Astoria Forest Carbon Consultant Services – Public Hearing to Exempt Contract from Competitive Solicitation Requirements (Public Works)

At their June 4, 2015 meeting, the City Council approved a contract with The Climate Trust to sell carbon credits generated from the City of Astoria Watershed Forest Carbon Project. The contract requires that the initial forest carbon credits must be delivered to The Climate Trust (TCT) between March 15 and May 15, 2016. In order to meet TCT's initial forest carbon credit delivery date, a development phase, third-party verification, and registration with the American Carbon Registry (ACR) must be completed. The forest carbon project development process is complex and time intensive. The development process requires unique knowledge and skills to meet the technical requirements of the ACR forest carbon methodology used for the project.

City staff seeks to contract with L&C Carbon to lead the remaining forest project development activities, including coordination of the third-party verification process with ESI, and managing the ACR registration process. L&C Carbon, a nationally recognized Oregon-based consulting firm, has a knowledgeable and skilled team of forestry professionals exceptionally well suited to compete the City's forest carbon project on time and within budget. The L&C Carbon team is highly experienced in developing forest carbon projects nationally and internationally. L&C authored the ACR methodology that will be used by the City for the project. It is recommended that Council conduct a public hearing for the purpose of taking public comment on the findings for exemption from the competitive solicitation requirements, and adopt findings that authorize the direct

appointment process to contract with L&C Carbon LLC to provide forest carbon project development services for the not-to-exceed amount of \$31,750.

Mayor LaMear opened the public hearing at 8:10 pm and invited the public to speak about the findings for exemption from the competitive solicitation requirements for a contract with L&C Carbon. Hearing none, she closed the public hearing at 8:11 pm.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Nemlowill to adopt findings that authorize the direct appointment process to contract with L&C Carbon LLC to provide forest carbon project development services for the not-to-exceed amount of \$31,750. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

Item 7(e): Public Hearing for Exemption to the Standard Solicitation Method regarding Pump Station 1 Upgrades (Public Works)

The City of Astoria's wastewater treatment facility, interceptor and the main pump and lift stations were constructed in the mid-1970s. Pump Station No. 1 (PS#1) is the largest pump station in Astoria and is located in the Alderbrook neighborhood. This pump station receives approximately 95% of the City's combined sewage flows and, depending on the weather and the season, pumps between one and 18 million gallons per day to the City's wastewater treatment plant (WWTP). On June 1, 2015, Council authorized Richwine Environmental to prepare a Concept Design Report for this project, which was recently completed. The report recommends a project scope that includes replacement of the pump's variable frequency drives (VFDs) and installation of a new control system at PS#1. Estimated project cost with engineering services, installation, and project management services is \$225,000. The report also includes an evaluation of alternative project delivery in lieu of the traditional design-bid-build process. A hybrid contract is allowed by City Code and was determined to be the most advantageous type of contract for this specialized project. It is recommended that the City bid this project using a Progressive Design Build approach to expedite construction.

At their August 3, 2015 meeting, Council scheduled a public hearing for August 17, 2015 to take public comment on the findings for exemption to the standard solicitation method. The City Attorney has approved of the City using this exemption to the competitive solicitation process and is finalizing the contract language. It is recommended that Council conduct a public hearing for the purpose of taking public comments on the findings for exemption to the standard solicitation method and adopt findings that authorize use of a Progressive Design Build Contract for design and construction of the Pump Station No. 1 Project.

Councilor Warr said he was amazed the Public Works Staff had been able to keep the pumps going for 40 years. He believed it is time to do some upgrades.

Councilor Herzig asked Staff to explain the Progressive Design Build approach. Engineer Moore said the traditional approach is to design, bid, and then build the project, which prevents the designers and contractors from having much interaction with one another to avoid an unfair advantage, and the City to award the project on a low-bid basis. With the Progressive Design Build approach, the designer is hired by the contractor and the City becomes part of the team that makes decisions about the equipment, timing, strategies, etc. Additionally, the City negotiates a profit with the contractor, enabling the City to work with the contractor's team through the process.

Mayor LaMear asked why City Council has to approve the exemption if alternative solutions are already allowed by City Code. City Manager Estes explained that alternative procurement solutions are permitted as long as there is a public hearing and Council adopts the findings.

Mayor LaMear said the Progressive Design Build approach made sense and the project would still be open to all qualified contractors. She opened the public hearing at 8:16 pm and invited the public to speak about the exemption to the standard solicitations method and authorization of the Progressive Design Build approach. Hearing none, she closed the public hearing at 8:17 pm.

City Council Action: Motion made by Councilor Nemlowill, seconded by Councilor Warr, to adopt findings that authorize use of a Progressive Design Build Contract for design and construction of the Pump Station No. 1

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

Item 7(f): Public Hearing and Ordinance Amending the City Code to Prohibit Smoking and Tobacco Use in City of Astoria Parks (1st Reading) (Parks)

The mission of the Astoria Parks and Recreation Department is to provide life-long learning, wellness, and well-being through recreational opportunities and is dedicated to the preservation of natural resources, open spaces and facilities that inspire and bring neighbors together. To support and reinforce this mission, the Astoria City Code provides rules and regulations of Astoria's Parks. Currently these regulations do not limit tobacco use or prevent users of City of Astoria Parks from second hand smoke exposure.

At the request of citizens and Parks and Recreation Advisory Board members, Mr. Stephen Blakesley, with the Clatsop County Public Health Department, gave a presentation on smoke and tobacco free parks /recreation areas during the May 27, 2015 Board meeting. His presentation included an overview of tobacco control and enforcement, agencies throughout the State that have implemented tobacco and smoke free policies, statistics on tobacco use, information about the tobacco industry, and how to make an informed decision about such a policy. Mr. Blakesley's presentation is attached. Upon conclusion of the discussion, the Astoria Parks and Recreation Board unanimously voted to develop a smoke and tobacco free policy to be recommended for City Council adoption. The City Attorney has reviewed and approved as to form the proposed ordinance that would implement this policy. If the Council is in agreement with the Parks and Recreation Advisory Board's recommendation, it would be in order for Council to conduct a public hearing and hold a first reading of the proposed Ordinance. It is recommended that the Astoria City Council conduct the scheduled public hearing and if deemed appropriate, hold a first reading of the ordinance to prohibit smoking and tobacco use in City of Astoria Parks.

Director Cosby noted the estimates for signage include a wide range of prices because the smaller signs cost less than the larger signs. The Parks Board began discussing this ordinance about a year ago. She gave a brief overview of the draft ordinance, which was included in the agenda packet.

Councilor Herzig said the County will provide \$750 for signage. He had previously suggested the County provide 50 percent of the signage costs, but this would have to be approved by the County Commission. It could be problematic if every city in the county asked the Commission to pay for 50 percent of the signage costs. Astoria has many parks. He suggested the City begin by spending up to \$750 on the installation of signage in the City's prime locations, allow the County to match this with \$750, and then negotiate with the County for more funds for additional signage as matching grants are received. Columbia Memorial Hospital might be willing to provide a grant for the signs. He wanted the City to consider other funding sources because the Parks Department is always trying to stretch its dollars.

Councilor Nemlowill preferred the smaller signs because they would be more subtle. The Riverwalk is such a large and important public park and she did not want a lot of sign clutter in the area. However, City Council is not currently being asked to give their opinion on signage. The ordinance sounds like a good idea.

Councilor Price asked why the ordinance would make parks tobacco free instead of smoke free and wanted to why marijuana was not included. Director Cosby explained that it is not legal to consume marijuana in public and this law is already being enforced by law enforcement agencies.

Councilor Price wanted marijuana included in this ordinance. Almost all of the ordinances in other municipalities that she reviewed say smoke and tobacco free. Astoria is really looking to be smoke free, not just tobacco free. Councilor Herzig said the ordinance did say smoke and tobacco free. He believed smoke covered any burning materials that one could put into their body. Councilor Price referred to Definition A, which only mentioned devices containing tobacco or a tobacco product, and marijuana was specifically excluded. Chief Johnston confirmed that adding the word marijuana to the Code language would not cause him any concerns. State statutes already prohibit marijuana smoking in public places, including parks. If marijuana smoking was added to this ordinance, it would simply be added to the list of parks violations in addition to being a violation of State law.

Councilor Herzig asked if this would affect the signage or Astoria's compliance with County laws. City Manager Estes said the County could respond during the public hearing. Councilor Herzig understood it was always

problematic to implement an ordinance that the City is not prepared to enforce. However, this ordinance will benefit people who are trying to quit and provide cleaner air for people that do not smoke. Once this ordinance becomes part of the culture, the community will enforce itself. This is a good step in the right direction.

Councilor Warr believed the ordinance would pass regardless of how he voted. He did not agree with banning things that are legal just because some people do not like them. There is a lot of hype about how second-hand smoke causes cancer. However, in a recent study by Stanford University, 93,676 women were tracked for over 10 years. The only women who had any measurable instances of cancer from second-hand smoke were those who lived with an active smoker in the home for more than 30 years. He hates smoking, but it is legal. He believed it was dangerous for society to bar a person's legal right to do something. Therefore, he planned to vote against the ordinance, but hoped the rest of the Council would vote in favor of it.

Councilor Nemlowill asked Chief Johnston to speak about enforcement. Chief Johnston said he had been asking Director Cosby to get this ordinance on the agenda for quite some time. As a park user, he was in favor of the ordinance. The Police Department will not aggressively seek out people smoking on the Riverwalk. However, the ordinance will be another tool that helps the Department make Astoria's parks more enjoyable. Mayor LaMear opened the public hearing at 8:28 pm and called for public comments on the ordinance prohibiting smoking and tobacco use in City parks.

Norma Hernandez, 92335 Youngs River Road, Astoria, addressed to questions asked during the presentation on services provided by the Clatsop County Health Department. She said about 65 percent of Astorians go to the County Health Department for services. The County does not give referrals for abortions, but they do provide information. The Parks Board supports the ordinance prohibiting smoking in parks. Sixteen percent of Clatsop County residents are tobacco users, which costs \$15 million in tobacco related medical expenses. Tobacco use is legal, but so are sex and alcohol and those are not allowed in parks. City Council should decide what is appropriate and what is good for the community. This is one of City Council's goals. The community, City, private businesses and non-profits can work together to have a healthy community. This is not about imposing upon people's personal beliefs or rights. The rights of smokers are respected, but the rights of non-smokers should also be respected. One person's rights begin where another person's rights end and she wanted everybody's rights to be respected. The ordinance does not tell people not to smoke; it just says do not smoke in a public area that is funded by citizen's tax dollars. During CHIP-In events, many cigarette butts are cleaned up in Astoria's parks. She wanted a healthier and wealthier community and the community can save \$15 million in tobacco-related medical expenses.

Stephen Blakesley, 31928 Ocean View Lane, Arch Cape, Clatsop County Tobacco Prevention Education Program Coordinator, said marijuana and e-cigarettes have caused a lot of changes in the last five years. Five years ago, the gold standard was smoke-free signs. Eventually, other forms of tobacco were included. The County signs for tobacco-free properties were approved in 2012 and 2013. The newly approved signs for County parks include smoke and tobacco-free. The County wants their signs to be clear so that enforcement is easier. There are currently over 1,000 smoke and/or tobacco-free parks in the State of Oregon. He was part of a State task force that reviewed evaluation data used to create smoke and tobacco-free policies. Enforcement was the number one concern 84 percent of the time. As Councilor Herzig said, the ordinances become self enforced. In 2010, the County tested a voluntary signage program around some of the play structures in Astoria. The signs asked people to voluntarily refrain from smoking near the children and the County received many positive comments about the signs. Most people want to be law-abiding citizens and respect the signs. This ordinance is for the health of the community. Tobacco remains the number one leading cause of premature death in the United States, in the State of Oregon, and in Clatsop County.

Mayor LaMear confirmed there was no further public comment and closed the public hearing at 8:34 pm.

After some discussion about how to word a motion, City Manager Estes explained that Staff was only asking for a vote to conduct the first reading of the ordinance at this time. Staff could present updated Code language that included marijuana at the next City Council meeting when a second reading and adoption would be requested.

City Council Action: Motion made by Councilor Herzig, seconded by Councilor Price, to hold the first reading of the ordinance to prohibit smoking and tobacco use in City of Astoria Parks. Motion carried 4 to 1. Ayes: Councilors Price, Herzig, Nemlowill, and Mayor LaMear; Nays: Councilor Warr.

Director Cosby conducted the first reading of the ordinance.

City Manager Estes confirmed Staff would present a revised draft of the ordinance to Council at their next meeting.

Item 7(g): Authorization to Establish a Scholarship Program for Parks and Recreation Department Services (Parks)

The City of Astoria Parks and Recreation Department plays a central role in defining the City's quality of life and is committed to offering low cost recreation programs, facilities, special events, and making its programs accessible to all segments of the population, as possible. Since 2009, the Parks and Recreation Department has hosted an unofficial scholarship program that waived over \$35,000 in program fees last year. Although this program is well utilized, it has many shortcomings. To correct this without eliminating the scholarship program, the Parks and Recreation Department is proposing a formalized scholarship program. Parks Director Cosby has drafted policies and practices for this program, which may be found in her memo that is included in the agenda packet. Additionally, a scholarship fund has been established with the Astoria Parks, Recreation and Community Foundation, to provide partial and full subsidies to eligible applicants for selected Recreation programs. The Astoria Parks, Recreation, and Community Foundation have fundraised over \$8,600 in scholarship funds since beginning a fundraising campaign in late May. During the May 27, 2015 Parks and Recreation Advisory Board meeting, the Board discussed the policy and practices noted above. Upon conclusion of the discussion, the Astoria Parks and Recreation Advisory Board unanimously voted to recommend the policy and practices to City Council. It is recommended that the Astoria City Council adopt the Scholarship Policies and Practices, which were recommended by the Parks and Recreation Advisory Board.

Director Cosby said the new policy allows any Astoria resident to apply for a scholarship and receive a decision within two weeks. The guidelines and household income qualifications are equal to what the school district uses for free and reduced lunches. Someone who qualifies for reduced lunch with the school district would qualify for 50 percent off of Parks program fees. A person who qualifies for free lunch with the school district would qualify for a free program. The Parks Board requested that scholarships not be provided for childcare programs because the State provides funding to help families with childcare options. The Parks Board also requested that scholarships not be provided for plots and services at Ocean View Cemetery. The Foundation will be able to provide scholarships as long as funds are available.

Councilor Herzig said a recent story in *The Oregonian* stated 40 percent of schoolchildren qualify for federal assistance with their breakfast and lunch program. Astoria needs this scholarship program. He understood the Parks Department struggled with the scholarships because a formal program was not in place, so this is a great step forward for all citizens of Astoria.

Councilor Nemlowill believed the recommendations made by the Parks Board were great and she was glad the policy had already been vetted by the Parks Board. The Foundation's community events for fundraising have been great. The Run on the River and movies in the parks are great ways to bring the community together to help the community. As stated in the Health Department presentation, obesity is one of the biggest problems in Astoria and this scholarship program helps address obesity.

City Council Action: Motion made by Councilor Herzig, seconded by Councilor Price, to adopt the Scholarship Policies and Practices recommended by the Parks and Recreation Advisory Board. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Item 7(h): Authorization to Hire RARE Participant for Parks Masterplan Development (Parks)

The City of Astoria last completed a Parks Master Plan in 1978 and the Parks and Recreation Department has found inefficiencies in operating without the guidance and policy direction of such a plan. On May 18, 2015, the Astoria City Council adopted "develop a city parks master plan" as a City Council goal for the 2015- 2016 fiscal year. The City Council then allocated \$35,000 of funding in the 2015- 2016 Fiscal Year budget to complete a system-wide Parks and Recreation Master Plan to provide guidance and policy direction for Astoria's Parks, Aquatic Center, Recreation Center, and Recreational Programs. In an effort to produce a quality Master Plan with limited financial resources, the Parks and Recreation Department has coordinated with the University of

Oregon's AmeriCorps RARE program. The mission of the Resource Assistance for Rural Environments (RARE) Program is to increase the capacity of rural communities to improve their economic, social, and environmental conditions, through the assistance of trained graduate-level participants who live and work in communities for 11 months. Participants assist communities and agencies in the development and implementation of plans for achieving a sustainable natural resource base and improving rural economic conditions while gaining community building and leadership skills.

The planning process must include substantial citizen involvement, inventory of existing conditions and facilities, analysis of issues and community needs, and specific recommendations that include specific actions, priorities, and costs.

Additionally, to complete the planning process the Parks and Recreation Master Plan will be an adopted planning document through the local land use approval process. A service agreement with the University of Oregon is required to finalize the RARE participant's placement in Astoria. A template of the service agreement has been approved by the City Attorney and is attached for your review. It is recommended that Council authorize the City Manager to enter into a Service Agreement with the University of Oregon for an AmeriCorps RARE participant.

City Manager Estes explained that Alana Garner, Astoria Downtown Historic District Association (ADHDA), began working with the ADHDA as a RARE participant and is now their Executive Director. Parks and Community Development Staff interviewed five participants and chose Ian Sisson to lead the Parks Master Plan development. Hiring a RARE participant will cost the City \$22,000.

Mayor LaMear believed the RARE program was great and Astoria has had wonderful participants in the past. She was looking forward to having another RARE participant work with the City and Astoria's parks need a master plan. Director Cosby noted that Community Development Director Cronin also served as a RARE participant.

City Council Action: Motion made by Councilor Nemlowill, seconded by Councilor Herzig, to authorize the City Manager to enter into a Service Agreement with the University of Oregon for an AmeriCorps RARE participant. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Item 7(i): 16th Street CSO Project Update (Public Works)

This item was added to the Agenda during Item 5: Changes to the Agenda.

City Manager Estes said City Council had requested a status update on the 16th Street CSO project at their special meeting on Friday, August 14, 2015.

Engineer Moore said the contractor is on schedule, and perhaps, a bit ahead of schedule. She explained that during the design process, Staff knew this project would need to coordinate with the Irving Bridge project, the Goonies event, and the college's redevelopment of Patriot Hall. Staff and the college began working on a timeline before the bond passed for their project because CSO construction would be done adjacent to their project on 16th Street between Jerome and Lexington. The college entered into a very aggressive schedule to get their project done. The City would like to begin work on 16th Street, but the college is in the demolition stage, which requires a lot of the right-of-way. During the planning stage, the college did not realize they would need the right-of-way. Currently, the college is using half of 16th Street adjacent to their redevelopment project for staging and they anticipate one truck every 10 minutes will leave their site as they haul away demolition materials. This is problematic for the City's CSO project. Staff discussed many alternatives with the college and the college would like the City to consider delaying CSO work until next summer when their work would be on the interior of the building. Staff has confirmed that the City's contractor would be willing and able to return next summer; however, this would incur a remobilization fee of about \$49,000, which the college has committed in writing to pay. The City could try to reduce the fee by purchasing and storing materials. It would cost the college hundreds of thousands of dollars to delay their project to accommodate the City. Therefore, the college would incur less cost if the City is willing to postpone the CSO work. The contractor suggested all of the work on 16th Street be postponed instead of just one block. This would allow the contractor to be more efficient when work resumes. Irving Bridge will be open next summer, so the City will be able to control traffic better. The regulatory deadline for Department of Environmental Quality (DEQ) to control the 16th Street outfall is the end of 2016. The

contractor needs to know by Wednesday, August 19th if the work will be postponed. Since the City is not financially obligated, Staff plans to notify the contractor on Wednesday.

City Manager Estes said Staff would present an agreement between the college and the City that addresses payment of the remobilization fee. However, Staff needed feedback from Council about postponing the CSO work until next summer.

Councilor Price said she had spoken to several residents along 16th Street. She noted one resident was in the audience, and asked if she wanted to speak to the matter.

Loretta Maxwell, 1574 Grand Avenue, Astoria, said she was glad work on 16th Street would not be done right away. She asked for an update on paving near a water main. That morning, she saw a man cutting the top of the asphalt and rocks from the trench have rolled down the hill. She needed to know where she should tell her bed and breakfast guests to park and sometimes, she does not know how to get home.

Engineer Moore said the paving would be done on Tuesday, August 18th. Preparing for a paving operation is messy, but the rocks would not be a problem after Tuesday. She noted she has been in contact with Ms. Maxwell several times and has tried to keep her updated.

Mayor LaMear said it seems like the street closures change every day. She asked if any part of 16th Street had already been torn up. Engineer Moore said nothing had been torn up on 16th Street. The original schedule was for work to begin on 14th Street and go in numerical order to 18th Street. The City required the contractor to pave 14th Street before starting on 16th Street for better traffic control. Paving is currently being done on 14th Street, but since the contractor is a bit ahead of schedule, they began working on 17th and 18th Streets. This is the perfect opportunity to stop work for the year because the contractor was just getting ready to start surveying and getting equipment for 16th Street.

Mayor LaMear confirmed there were no more public comments. Council confirmed for Staff that they had no concerns with postponing the 16th Street CSO Project.

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

Item 8(a): Fluoride in the Drinking Water (Councilor Nemlowill)

This item was added to the Agenda during Item 5: Changes to the Agenda.

Councilor Nemlowill said citizens have expressed concern about fluoride in Astoria's drinking water. She discussed the issue with as many people as she could and received a mix of responses. People who are concerned about safety do not want fluoride in the water and others believe fluoride is good for teeth. In 1952, voters in Astoria voted to add fluoride to the drinking water. Since 1952, studies indicate fluoride is linked to cancer and question the effectiveness of ingesting or applying fluoride to teeth. About 25 percent of public water in Oregon has added fluoride. Many communities, including Portland and Hood River, have voted against adding fluoride to their water. Citizens should be able to decide for themselves whether fluoride is effective and safe and have the choice to use it in their own homes. She believed the City used to purchase fluoride from the United States and Japan. However, the City recently ordered fluoride from China for the first time. The City uses monitoring equipment to test fluoride levels in the water because high levels of fluoride in water can be toxic. The City spends about \$10,000 each year on fluoride. She wanted City Council to discuss the possibility of holding a public hearing to determine if the addition of fluoride to drinking water should be put on the ballot.

Councilor Herzig said he shared Councilor Nemlowill's concern and thanked her for bringing up the issue. He believed science has moved forward since the 1950s and people now have many opportunities to introduce fluoride to their oral hygiene. He was concerned about the toxicity and sources of fluoride and suggested Staff present Council with a report on ending the addition of fluoride to the City's drinking water.

Council directed Staff to add this issue to a future City Council meeting agenda.

Councilor Nemlowill believed it was already too late to get this on the November ballot, but wanted the community to have the opportunity to talk to the City about the fluoride in the water.

Councilor Herzig asked if Council could simply direct Staff to stop adding the fluoride.

City Manager Estes noted that in 1952 and 1956, Astoria voted in favor of adding fluoride to the water. He said City Attorney Henningsgaard had reviewed this issue and believed a ballot vote would be necessary. However, further analysis should be done before City Attorney Henningsgaard officially makes a recommendation.

Councilor Herzig said he did not recall City Council voting to approve the 3-minute time limit on public comments that has already been implemented. The discussion on Council rules and policies seems to have stalled. Mayor LaMear confirmed she decided to impose the time limit.

Mary Eng, 8th and Harrison, Astoria, thanked Councilor Nemlowill for bringing up the fluoride issue and said she had been doing some research on the subject. She said a recent ruling by the Department of Justice (DOJ) would impact how homeless people are treated. The DOJ has declared camping bans unconstitutional and has advised a court in Iowa that any attempts to ticket a homeless person for sleeping is cruel and inhumane. She heard DOJ attorney Venita Gupta speak about this on National Public Radio (NPR). This is groundbreaking and shows the DOJ has a lot of courage to reach out to a hurting population. Four days ago, the *Washington Post* published an article about the ruling that included a link to the court case in Iowa. When she moved to Astoria, she attended a Meet the Mayor event and brought up the issue of fluoride in the drinking water. She believed the issue would be discussed, but she was shut down when someone said fluoride was good for teeth and therefore should not be discussed. She had wanted to discuss fluoride as it related to biomedical ethics, forced drugging, and diverse medical conditions. A more democratic process about how the community votes on forced medication can be problematic because if 52 percent of the population wants to force Thorazine, for example, into the water, the majority has decided the rights of others medical autonomy. Reviewing medical privacy laws and medical rights would help the community understand what their rights are. After she moved from Astoria to Portland, she felt a mental fog. She did not know if this was from fluoride, but she is filtering her water. She added that drunk driving is not cool, and she was offended by the accolades for the drunken Mayor. There is a way to respect people without condoning their behavior or whitewashing their reputation.

Mayor LaMear interjected, noting that Ms. Ange's three-minute time limit had expired. She asked if the Council wanted to extend the time limit.

Councilor Warr did not wish to extend the time limit.

Councilor Herzig reiterated that Council had previously discussed a five-minute time limit. He was upset that a time limit had suddenly been imposed while Council was still in the middle of discussing it. He preferred a four or five minute time limit and requested the discussion be continued at future meeting.

Karin Temple, 1032 Grand, Astoria, understood from the Health Department presentation that a free pass was needed to hike at Fort Clatsop. She said a free pass was necessary at State parks, but parking and hiking at Fort Clatsop was always free of charge. The entry fee is only charged for going through the facility and into the fort. This does not affect her because she is elderly and has a gold card, but she wanted the public to know about the entry fee. At the last City Council meeting, there was a discussion about water shortages. She recommended the City Council spread the word that Astoria's water supply is a bit low and would likely get lower if no rain comes, as predicted. She has mentioned the water shortage to many people in the community who were not aware and questioned why the situation was not publicized. She could not believe people waste water at the price they pay for it. She suggested water saving recommendations be published in the newspaper or on an insert sent out with the water bills. She also recommended the City enforce a ban on watering lawns and washing cars.

Councilor Herzig said the Fire Department made water conservation tips available at their open house on Saturday, August 15th. It is too bad storm water drained from the city cannot be used to water lawns.

Councilor Nemlowill said most of the people she has spoken with are not aware of the voluntary water restrictions. However, she did see an article in the *Daily Astorian*. She asked if a message could be included with the water bills without incurring too much of an additional expense. City Manager Estes confirmed that Staff had already begun working with the Finance Department to include a message with the water bills.

Councilor Price confirmed that the water saving tips would also be made available at the Library.

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:09 pm to convene the Astoria Development Commission meeting.

ATTEST:

APPROVED:

Finance Director

City Manager

DRAFT

HISTORIC LANDMARKS COMMISSION MEETING

City Council Chambers
July 21, 2015

CALL TO ORDER – ITEM 1:

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

INTRODUCTIONS – ITEM 2:

President Gunderson introduced the new Community Development Director Kevin Cronin. Director Cronin thanked the Commissioners for their service, noting that Astoria has a wealth of volunteers. He described his role as Community Development Director, noting his first task would be to hire a Planner. He looked forward to working with the HLC.

ROLL CALL – ITEM 3:

Commissioners Present: President LJ Gunderson, Commissioners Jack Osterberg, Paul Caruana, and Mac Burns.

Commissioners Excused: Michelle Dieffenbach, Kevin McHone

Staff Present: City Manager Brett Estes, Interim Planner Mike Morgan and Community Development Director Kevin Cronin.

APPROVAL OF MINUTES – ITEM 4:

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

Commissioner Burns moved to approve the minutes of June 16, 2015 as presented; seconded by Commissioner Caruana. Ayes: President Gunderson, Commissioners Caruana, Osterberg, and Burns. Nays: None.

PUBLIC HEARINGS:

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

ITEM 5(a):

HD15-02 Historic Designation HD15-02 by Pier 11, LLC to designate a property as a local landmark at 77 11th Street in the A-2, Aquatic Two Development Zone. This item was continued from the June 16, 2015 meeting.

President Gunderson asked if anyone objected to the jurisdiction of the HLC to hear this matter at this time. There were no objections. President Gunderson asked if any member of the HLC had a conflict of interest, or any ex parte contacts to declare.

President Gunderson declared that Steve Allen was the accountant for her company, but she did not believe this would affect her decision. She requested a presentation of the Staff report.

Interim Planner Morgan said no formal Staff report was available, as additional information had not yet been submitted by the Applicant. He recommended the HLC decide if there was sufficient information for this application. The National Register of Historic Places Continuation Sheet was completed and the HLC had all information available. This hearing could be continued until August or the HLC could make a decision based on the Applicant's testimony. He showed photographs of the building via PowerPoint, noting that the building dated back to the early part of the 20th Century, like many buildings on the waterfront. Over the years, the building has

been altered significantly. However, other buildings with significant alterations have also been designated as historic, such as Buoy Beer.

President Gunderson explained that the HLC considers future plans for a building when deciding on a historic designation. She would be willing to vote on this application if Mr. Allen and his architect could give the Commission enough information to make a decision.

Commissioner Osterberg said he had not received a Staff report or an analysis of the criteria for approval for this application. He asked Staff if any written information had been provided to the Commission that lists the criteria for approval. Interim Planner Morgan said Staff did not have enough information on which to base the Staff report. The evaluation form is the only written information that has been given to the Commission. He confirmed that the Development Code contained additional criteria that must be addressed. However, the six factors on the evaluation form follow the criteria in the Development Code. Staff has received four of the seven evaluation forms that were sent out.

President Gunderson asked if the evaluation forms satisfied the State Historic Preservation Offices (SHPO) criteria for approving the historic designation. She noted that four forms provided a quorum and asked for the average score of the forms that were received. Interim Planner Morgan noted that any score above 35 is considered noteworthy and he would calculate the average.

Commissioner Burns asked if Staff had received more information about the application since the last meeting or if Staff was expecting to receive more information after this meeting. Interim Planner Morgan said he had been in contact with the Applicant and believed he could provide additional information at this meeting. However, he had not received any additional information.

Commissioner Osterberg asked what information Staff was waiting for. Interim Planner Morgan explained that typically, the Applicant provides a written statement describing the history of the building, the building's historical significance to the existing inventory of historic properties, and any plans for restoration or improvements to the building. Architectural drawings could also be included.

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

Steve Allen, 90850 Kennedy Road, Warrenton, said he believed he had filled out the application completely. Mr. Jensen had collected the background information on the building, including photographs, from the Heritage Museum. However, not much information was available. After the hearing in June was continued, Staff asked if he wanted to submit more information and suggested he pay someone to prepare some photographs. It was his fault the information was not available, but he was not sure how much more information he needed to submit. He did not have any plans to change the building significantly. The most significant change would be installing a deck that connects the road to the building. He planned to put stores in each of the retail spaces along the improved boardwalk with tables and umbrellas to brighten up the area and give the tenants more access to the public. He was confident that this application would be approved. However, if the Commission was reluctant to approve the historic designation, he would be happy to provide more information.

David Jensen, P.O. Box 6, Long Beach, WA, said he tried to find out what the building was originally used for, but could not find any information on the south elevation. Most of the photographs he found were blurry aerial photographs. However, he was certain the building provided a link between the port and the railroad. The building is in the perfect location for such a link and there is very little access out of the south side of the building. Two of the stores do have doors on the south side, but they do not fully access the Riverwalk. He would really like to make the south side a more unusual and vibrant spot. The area on the south side is a dead spot along the Riverwalk and he would like to create a veranda or terrace at floor level, which is about 30 inches up, from the Riverwalk to the face of the building. This would allow access to the storefronts. A remodel done in 1974 created access in to the building from the ends. He wanted to do a historically accurate renovation, particularly on the inside. The interior is currently covered with rough-cut cedar, which was popular in the 1970s, but has nothing to do with any historical character. He wanted to restore the building to what he imagined it once had been. Without any information on the building, he had no idea what the building once was. The structure is complete and exposed, which he planned to accentuate and use as divisions between the stores. Five stores and the wine bar would face the Riverwalk, so the general configuration of the building would remain the same. Accessibility to the tower is difficult because the stairs are narrow and he was sure they did not meet code. Therefore, he would

create another interior stairway, which would require removal of the bump out right below the tower. He did not believe the bump out was part of the original structure. He would have submitted drawings if he had realized they were necessary to establish the historic designation. The work will be a modification, not a restoration. He had drawings available.

Mr. Allen said he and Mr. Jensen were happy to provide any information the Commission wanted.

Commissioner Osterberg noted the Applicant was not obligated to propose changes to the structure in order to request historic landmark status. The request could be made for the building as is, and then changes to the building could be proposed in a separate application. However, the City does provide a process for combining a project with a historic designation. It is up to the Applicant to choose which approach to use. Since no plans for this application have been submitted to Staff, the Commission cannot take any action on proposals for building modifications. The only request currently being considered by the Commission is the historic designation. The Applicant can submit a separate application for changes to the building or request this application be continued so that plans can be submitted.

Mr. Allen confirmed he would like the historic designation on the structure as is because he did not plan to make many changes to the building. The building would look the same with a new deck that connects the river to the building.

Mr. Jensen added that Code requirements for work on a historic landmark are different from the requirements for modifying an existing building not designated as historic. Therefore, he would like the historic designation to be approved first, so that he knew which set of Code requirements to use as design criteria.

Interim Planner Morgan noted the Applicant was encouraged by Jack Applegate to apply for the historic designation in order to have more flexibility with the remodel. Once the building is designated historic, the Applicant will have to apply for an exterior alteration permit.

Commissioner Caruana believed the historic designation was contingent upon certain renovations. This building has been severely altered and one of the criteria for approval of the historic designation is that the building must be returned to its original historic condition.

Commissioner Osterberg noted this was one of the benefits of seeking approval for both the historic designation and the renovation work at the same time.

Mr. Jensen stated he was just seeking the local landmark designation at this time.

Commissioner Caruana asked how much of the building was still original.

Mr. Jensen said the west end, including the wine bar and dance studio, was an addition. The lower pitched roof that extended to 11th Street was original, but the tower was not. He found historic photographs with and without the tower and believed it was just laid on the roof. The rest of the structure, including the roof rafters and beams, are original and still in good shape. The addition, built in 1974, reflected what the structure had been. However, he was unable to determine what material was used for the original siding. He showed Commissioners historic photographs of the building.

Mr. Allen explained that Mr. Applegate had suggested he apply for the designation because the first project would include a change of use and change of occupancy when the dance studio is converted to a wine bar.

Mr. Jensen added that he would be happy to reflect any of the details shown in the historic photographs of the building. However, getting any details out of the photographs would be difficult. He was unable to determine what the building looked like in the 1930s or 1940s.

Mr. Allen said if metal siding is historic, he would use it. The building had some rot on the outside of wood that could be covered with metal siding if that contributed to its historic significance.

Mr. Jensen said as he made changes to each area of the building, he would return it to a historic look. However, he had no model to go on. He wanted to reflect the simple utilitarian look of the building.

Commissioner Caruana said if the tower was added in the 1940s it was historic to the building. Commissioner Burns agreed that the tower had become part of the character of the building. Commissioner Caruana said he filled out his evaluation form with anticipation that the building would be restored to its original look because restoration work was mentioned in the paperwork. However, since this is not the case, he felt as if he had cheated on the evaluation form. He wanted the building to be designated historic because it is significant as a pier building and elements of the building are still original. But, he did not like the fact that the historic designation would make alterations easier to complete. Even so, these buildings need to be fixed up. If the City required all of these buildings to comply with the current Code, they would just be torn down.

President Gunderson said in the three years she has served on the HLC, the Commission has never been presented with an application for which there was no information to consider. Designating this building as historic would protect it from being torn down. Commissioner Caruana agreed this particular building should not be torn down, even though it had metal siding. President Gunderson noted that the Applicant also has other buildings in town that respect their historic significance. All of his work has been done well and she believed he would try to use appropriate siding and remove what is not appropriate on this building.

Commissioner Caruana liked the proposed walkway and storefronts. Unfortunately, the buildings were designed to be working buildings from the water side, not along the Riverwalk. These properties are being used from the Riverwalk now, so some concessions and alterations should be allowed to make these buildings useable for the way people live today.

Mr. Jensen said he had a track record of historic restoration on several buildings and was familiar with historic links to Astoria.

Director Cronin asked what information the Applicant received from the previous owners or if he consulted with family members of previous owners.

Mr. Allen said he never discussed the historic aspect of the property at the time he purchased it. The previous owner gave him no information at all about the property. At the time, he was most concerned with the structural integrity of the pilings.

President Gunderson noted the audience consisted of the applicants, a representative of the *Daily Astorian*, and a Commissioner's spouse; therefore, she would refrain from calling for public testimony. She called for closing remarks of Staff.

Interim Planner Morgan said the average score of the four evaluation forms was 38.5, which puts the building in the Fair to Noteworthy category. He believed this information could be used as a basis for designating the building as historic. Staff had an order ready to sign, should the Commission approve the designation.

Director Cronin reminded that the hearing could be continued. He recommended the Applicant submit a site plan, more information on existing additions to the building, and a two-page narrative about historic attributes and proposed changes to the building. The HLC would have to consider these things anyway as part of a development plan. The Applicant would just need to submit a general concept plan of what the building would look like so that Staff and the Commission would know how the retail spaces would interact with the Riverwalk.

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

Commissioner Caruana said the evaluation forms indicated the designation would be approved. He did not like the windows and preferred many changes to the building, but hoped any changes done would be tasteful. The building already meets the criteria, so future alterations would have to be reviewed by the HLC. Therefore, he felt comfortable designating the property as historic. He would like much of the existing structure to be preserved and appreciated the opportunity to consider future alterations.

Commissioner Burns agreed. However, he was caught off guard because this was the first request for historic designation that did not include proposed changes to the building. He agreed the building met the criteria for approval and looked forward to seeing the alterations.

Commissioner Osterberg supported Staff's recommendation for a continuance. He believed the Commission did not have enough information to make a decision. He had not received a Staff report, Staff's evaluation of the criteria, or Staff's recommendation. Criteria in addition to the historic evaluation form must be considered even though the form includes the majority of the criteria for approval. Staff has stated more information was required and expected, but this information has not been submitted. The Applicant team has some great ideas for the building and he was looking forward to receiving a plot plan, elevation drawings showing changes or the structure, or the information that Staff described earlier in the meeting. He did not believe he could, in good conscience, recommend approval of the local landmark until he received this additional information. He did not believe adequate information had been submitted yet.

Commissioner Caruana confirmed with Staff that all exterior alterations would be reviewed by the HLC if the historic designation is approved. The Applicant would benefit from the historic designation because some of the building codes for historic structures are more lenient. However, the Applicant would also give up some control of the future of the building. Currently, the Applicant could get permits to do anything they want and the HLC would have no say. He believed Commissioner Osterberg's concerns about future changes to the building would be addressed at the time the alterations are submitted to the HLC for review.

Commissioner Osterberg agreed.

Commissioner Caruana added that even though the building is not 100 percent original, enough of the building is still original that it should be preserved. Alterations could be voted on later.

Commissioner Osterberg appreciated Commissioner Caruana's perspective and agreed it was reasonable. However, he was troubled by the lack of a Staff report that evaluates the criteria and makes a recommendation.

President Gunderson respected Staff's recommendation. Usually, the evaluation forms are submitted with more information. However, the decisions are primarily based off of the evaluation forms and some of the information about proposed changes to the building. While she appreciated Commissioner Osterberg's concerns, she agreed that approving this request would preserve the building. The Commission has seen what the Applicant has done with other buildings in town, which is an indication of what he might do with this building.

Commissioner Caruana moved that the Historic Landmarks Commission (HLC) adopt the Findings and Conclusions based upon the information provided and the Applicant's testimony and approve Historic Designation HD15-02 by Pier 11, LLC without a Staff report; seconded by Commissioner Burns. Motion passed 3 to 1. Ayes: President Gunderson, Commissioners Caruana and Burns. Nays: Commissioner Osterberg.

President Gunderson read the rules of appeal into the record.

REPORTS OF OFFICERS/COMMISSIONERS – ITEM 6:

Director Cronin updated the Commission on his efforts to recruit a new City Planner. He planned to propose changes to the job description to City Council at their August 3rd meeting. Once the job description is approved, he would advertise the position and begin the interview process. He hoped to have the position filled in September or October.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 6:10 p.m.

ATTEST:

APPROVED:

Secretary

Interim Planner

HISTORIC LANDMARKS COMMISSION MEETING

City Council Chambers
August 18, 2015

CALL TO ORDER – ITEM 1:

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

ROLL CALL – ITEM 2:

Commissioners Present: President LJ Gunderson, Commissioners Jack Osterberg, Michelle Dieffenbach, and Mac Burns.

Commissioners Excused: Kevin McHone, Paul Caruana

Staff Present: Interim Planner Mike Morgan and Community Development Director Kevin Cronin.

APPROVAL OF MINUTES – ITEM 3:

President Gunderson asked if there were any changes to the minutes of June 16.. There were no minutes for the meeting of July 21st.

Commissioner Burns moved to approve the minutes of June 16, 2015 as presented; seconded by Commissioner Stanley. Unanimously approved.

PUBLIC HEARINGS:

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

ITEM 4(a):

EX15-09 Exterior Alteration 15-09, by Jay Raskin, Architect, to change the third floor of a building at 1210 Marine Drive by adding windows and to restore the original entry on the first floor. The building is secondary in the Downtown NRHD.

President Gunderson explained that the application has been withdrawn. Planner Morgan stated that the deal between the prospective buyer and the owner, Wells Fargo, has fallen through.

ITEM 4(b):

Exterior alteration EX15-10 by Jay Raskin, Architect, for Leanne Sahagian to construct a one story addition with an exterior deck; to enlarge the existing dormer on the rear elevation of an existing singlefamily dwelling at 112 W. Exchange in the R-1 zone.

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

Interim Planner Morgan reviewed the staff report which recommended approval of the request.

Jay Raskin, architect, on behalf of the owner, explained the alterations planned. The purpose is to provide a bedroom, bath, and laundry on the main floor so the owners can 'age in place". It would include an outdoor deck facing the Columbia River in a sunny location. An existing shed dormer on the north side of the buildings would

Historic Landmarks Commission

Minutes 7-21-15

Page 1 of 2

be enlarged so that there would be more light into the upstairs as well as improved views. The addition would have vinyl, double hung windows. The east windows would remain.

President Gunderson closed the hearing.

Commissioner Osterberg spoke in favor of the design, especially the windows and roof design. Commissioner Burns stated that he was excited about the project. Dieffenbach moved to approve the project. Osterberg seconded. Motion passed unanimously.

REPORTS OF OFFICERS/COMMISSIONERS – ITEM 6:

Director Cronin reported on the upcoming CLG conference at the Gresham City Hall on September 16. He offered to provide mileage to Commissioners who chose to go.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 5:45 p.m.

ATTEST:

APPROVED:

Secretary

Interim Planner

DRAFT

Astoria Library Board Meeting

Astoria Public Library

July 28, 2015

5:30 pm.

Present: Library Board members Kate Summers, David Oser, Susan Stein, and Kimberley Chaput (via telephone). Staff Library Director Jane Tucker, Library Assistant Megan Lynch, and Community Development Director Kevin Cronin. ALFA Representative Nick Benas arrived at 5:56 pm.

Excused: Chris Womack

Absent: None

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

Approval of Agenda: The agenda was approved with the addition of the following discussions:

- Introduction of new Staff
- Fundraising goal for the Foundation

Approval of Minutes: The minutes of June 23, 2015 were approved as presented.

Introduction of new Staff

Director Tucker introduced Kevin Cronin, Astoria's new Community Development Director. Director Cronin explained his training and work history, noting he and his family were huge supporters of libraries and planned to use the Astoria library regularly. He looked forward to working with Director Tucker, noting that getting the new library built would be one of the highest profile projects in the City and very rewarding professionally.

Staff and Board members updated Director Cronin on past, current, and future library projects, including the need for a new Strategic Plan and the 2013 Renovation Study. Director Cronin shared his ideas for using the study to move forward with the renovation and explore options for Heritage Square, including a grant funded redevelopment strategy.

Renovation Update:

Item 4(a): Foundation Update

David Oser reported the Foundation's Facebook page now has more than 100 likes and that the Foundation Board still needs another member.

Item 4(b): Renovation Committee Update

The Committee's next meeting is scheduled for September 1st. Director Tucker explained that the structure of the Committee is modeled on that for the Garden of Surging Waves. However, there have been many changes since the Committee was developed. The Revitalization Committee was originally tasked with implementing the published renovation study.

Item 4(c): Staff Reports

Director Tucker said she had been working with Director Cronin, who has a draft of the request for proposals (RFP) for Heritage Square. She believed the project would begin to move forward now that Director Cronin is on Staff.

Board Reports:

Item 5(a): Reports of Community Presentations

Ms. Summers spoke to staff at the Naselle Timberland Library about Astoria's library renovation project.

Library Director's Report:

Director Tucker attended the Community Conversation on Poverty on June 17th which had been sponsored by Clatsop Community Action (CCA). She explained how and why the library was involved with this community effort to respond collaboratively to poverty issues in the county. The event addressed the whole of Clatsop County.

She gave a brief overview of the presentations given during the event, noting that the event created an awareness of how large and complex the problem of homelessness is in the county. Library staff has completed mental health first aid training and regularly participate in Connect the Dots meetings. The Board, Staff, and guests discussed mental health services and projects in Astoria, Clatsop County and surrounding counties, as well as the aspects of poverty that make it such a complex issue.

Director Tucker also attended the League of Oregon Cities presentation on Community Visioning and Strategic Planning. The library needs a new strategic plan, for interim services and for services following completion of the library building project. Presenter Erik Jensen, of Jensen Strategies clearly explained visioning and strategic planning at the citywide level. He discussed the importance of process, the collaborative nature of a good plan, and timelines. For maximum effectiveness, it is important for the library's plan to feed into the City's plan.

The Board and Staff discussed methods of and resources for strategic plan development and creating a plan that coordinated with the City's plans. Director Tucker described the model that was used to create the existing plan, which was implemented in 2007. Should the City use a different model, the library would follow the city's model.

The *Astoria Public Library Strategic Plan 2007-2011* outlined how the library could fulfill the community's needs. All of those needs have been met except the need for a new building. The Board will be responsible for strategic planning and Staff hopes the City will create a Strategic Plan that includes departmental plans. The Board requested an executive summary of the Planning for Results model be prepared. In August, the Board will review the Executive Summary of library's Strategic Plan and discuss a timeline for the new plan.

Update on ALFA Activities:

There was nothing to report.

Nick Benas said he is now certified to teach the mental health first aid training, which library staff has completed in the past. He loves teaching librarians because they encounter many people who are in a mental health crisis.

New Business:

Item 8(a): Libraries ROCC Report

Director Tucker reported the ROCC program needs \$18,500 for an outreach specialist and \$25,000 to start the endowment. She and the other directors are confident that raising the necessary funds will go well. The *Libraries ROCC: Reading Outreach in Clatsop County* report included a map showing the geographic areas served by libraries and thanks several individuals and entities that contribute to the program. The report will be used in local fundraising and grant applications.

Item 8(b): Quarterly Status Report

Director Tucker distributed the Astoria Library quarterly report to City Council, delivered to Council in July. She reviewed the list of programs and how many attended each program.

Item 8(c): Report on Support Staff Conference

Megan Lynch reported on the Support Staff Conference, noting that this year's theme was community. She briefly reviewed the keynote speech and breakout sessions. She learned the importance of cultivating a healthy workplace environment and balancing personalities while working on the renovation. She also learned about some new equipment that could be beneficial in the new library, like adjustable shelving and carpet squares.

Item 8(d): OLA PLD Fundraising Workshop

Director Tucker said the Oregon Library Association Public Library Division board will be offering a fundraising workshop specifically geared to libraries on Saturday, October 24th at the Tigard Library. She reviewed the description of the workshop, which will focus on best practices for several types of library funding. The workshop is being offered at no charge, but \$15.00 will be charged for lunch. Library directors, boards, foundations, and friends groups throughout Oregon and Washington have been invited to attend. Registration is due August 31st.

Old Business:

Item 9(a): Social Gathering for City Staff, Boards, and Foundation

The Library Board and Staff agreed to schedule the gathering in November, after the fundraising workshop and before the holiday season. At the August meeting, they would discuss forming a planning committee to plan the event.

Item 9(b): Fundraising Goal for the Foundation

David Oser believed a fundraising goal could be established in conjunction with the fundraising workshop.

Public Comments: There were none.

Items for Next Meeting's Agenda:

- Strategic Planning - review the executive summary of the existing plan and discuss a possible timeline for the new plan.
- Social Gathering Event - discuss establishing a planning committee for the social gathering.

Adjournment: There being no further business, the meeting was adjourned at 7:00 pm.

Respectfully submitted,

Jane Tucker, Director, Astoria Public Library

Parks Advisory Board Meeting Minutes
June 24, 2015

Chairperson Norma Hernandez called meeting to order at 6:48 am.

Present- Norma Hernandez, Jessica Schleif, Howard Rub, Tammy Loughran, Eric Halverson, Peter O'Farrell, Drew Herzig, and Jim Holen

Absent- Joe Miltengerger, Grace Laman and Andrew Fick

Guests- Marie Laibinis

Staff- Angela Cosby and Janice O'Malley-Galizio

Approval of Minutes

A. May minutes were unanimously approved.

Public comments

1. Pamela Metz Macdonald, 801 Alameda Avenue, Astoria, said the Maritime Park was in total disarray before Memorial Day weekend. As a former Merchant Marine, she has a personal interest in the park. Astoria has a huge maritime community that depends on the memorial for recognition of those who have died and have plaques on the memorial. She cleaned for five hours and barely made a dent in the mess. A huge pile was left in the parking lot at the end of the red building. She called Parks and Recreation but the pile was never picked up. She went to City Hall and asked City Manager Brett Estes to have the pile picked up and have the memorial taken care of before Memorial Day. Many people in Astoria make their money from the maritime industry and she would appreciate if the City could do something about the Maritime Park. She confirmed for Director Cosby that she was most concerned with the vegetation on the side of the park. She weeded along the pathway and trimmed the rhododendrons. The lawn and trees also needed care.

President Hernandez

- A. What do you hear- President Hernandez heard that the OK was a great event. Peter O'Farrell heard that people thought the OK was a great idea once they understood the concept. Janice O'Malley-Galizio said the event required only a limited effort by Staff and she believed it would be a successful annual fundraiser. However, Staff could use some help getting the word out about the event. President Hernandez suggested the event be scheduled for a different weekend next year because many parents had scheduling conflicts with all of the dance recitals that were held the same weekend.

Drew Herzig said people are starting to realize that the communications tower will be built in Shively Park and they would like more details. Director Cosby explained this was presented to the Parks Board in January. The tower will be a monopole located on the southwest slope of the park. City Council will review the request in July or August. The Board and Staff briefly discussed the need for the tower and possible opposition from the community.

Jessica Schleif heard from someone that the Board was much more active with the last Column restoration in 1995. Director Cosby believed the entire City was less involved with this restoration, partly because the project was just presented to the City in mid-winter, so, the City is trying to catch up.

Employee Recognition

- A. Director Cosby recognized Janice O'Malley-Galizio as the employee of the month, noting that she would only be working for the City for another week and a half. President Hernandez thanked Ms. O'Malley-Galizio for her service. Ms. O'Malley-Galizio said she would miss her co-workers.

Old Business

- A. Tammy Loughran gave an update on the Parks Foundation. The OK made about \$2,000. Upcoming events include Capture the Flag and another movie night.
- B. Director Cosby and Marie Laibinis gave a PowerPoint presentation on the Astoria Column restoration, which included a history of the Column's previous restoration projects, results of structural research, conservation efforts on the artistic elements, details of the current restoration project, and recommended future maintenance. Progress reports will be given to the City as the project continues and restoration work should be complete by September. The Board and Staff briefly discussed how the necessary work would affect the timeline and possible closure of the Column.

New Business

- A. Director Cosby announced that the City had been selected to receive an AmeriCorps Rare position starting in September, which will allow the City to complete the full Parks Master Plan. She updated on the process involved for filling the position.
- B. Director Cosby gave an update of the Herbicide Use Policy and Practices. Amendments to the current draft are being made as Staff and the task force consider how the policy will affect other community groups that help maintain the parks.
- C. The Board and Staff discussed the possible addition of a Coast Guard representative on the Board, the Coast Guard's involvement in the community, their use of parks amenities and involvement in park events, and how the community and City would benefit from a more official relationship between the Parks Department and the Coast Guard. The Board directed Staff to work with the Coast Guard and the Mayor on the appointment of a Coast Guard member to the Parks Board.
- D. The Board discussed the possibility of changing meeting times. Drew Herzig said some members of the community believed the meetings were deliberately scheduled at an inconvenient time to discourage public attendance. The Board discussed how to communicate to the public that this was not the case and agreed no changes should be made.
- E. Director Cosby discussed vending in parks, noting that Staff received a request from a food vendor to sell at a specific park. Past requests for vending along the Riverwalk were denied. The Board discussed the pros of cons of allowing vendors and agreed the topic should be explored as part of the Parks Master Plan.
- F. Director Cosby gave an overview of the annual department budget, noting that in subsequent months, more specific details of the budget would be reviewed.
- G. Director Cosby presented the Board with the maintenance projects report.
- H. Director Cosby presented the Board with the CHIP-In program report.
- I. Director Cosby presented the Board with the special projects report.
- J. Director Cosby presented the Lil Sprouts/Port of Play report, noting that they hosted an art show fundraiser for scholarship funds.
- K. Director Cosby gave the Recreation Center, Programs, Fitness, and Athletics report. She discussed the lack of complaints and the increased number of compliments Staff has received from the community this year.

- L. Director Cosby presented the Board with the Aquatic Center report, noting Staff excelled during their most recent audit.

Upcoming Events

1. Director Cosby presented the Board with a list of upcoming events.
2. President Hernandez invited the Board members to participate in Capture the Flag. Board participation in Parks events would demonstrate to the community that the Board is committed to the Parks Department. Director Cosby listed the various ways Board members could participate in the event.
3. Drew Herzig asked if the Cathedral Trail clean up would be hazardous. Director Cosby said able-bodied people would work on the steep portion of the trail. Improvements will also be made at the top and bottom of the trail. Maintenance and Trail Staff will be assisting with the clean up, but more volunteers are needed.

Non-Agenda/Miscellaneous Business

1. Jessica Schleif said Matt Baum, Jonah Dart-McLean, and Director Cosby supported the community garden by doing special projects. She listed some of the donations made by various members of the community and described some of the projects at the garden.
2. President Hernandez reminded Board members to send notices of planned absences via email.

Next meeting will be held Wednesday, July 22, 2015 at 6:45am at the Astoria Recreation Center.

ASTORIA PLANNING COMMISSION MEETING

Astoria City Hall
July 28, 2015

CALL TO ORDER:

Acting President Innes called the meeting to order at 7:00 pm.

INTRODUCTIONS

Interim Planner Morgan introduced Community Development Director Kevin Cronin. Director Cronin shared with the Commission his work background, stating he was happy to be working with the City of Astoria.

ROLL CALL:

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

Staff Present: Community Development Director Kevin Cronin, Interim Planner Mike Morgan, City Attorney Blair Henningsgaard.

APPROVAL OF MINUTES:

a. April 7, 2015

Acting President Innes asked for approval of the minutes of the April 7th meeting. Commissioner Mitchell noted the following corrections:

Second paragraph, Page 2 should read: "He also wanted to **show** how the final revisions...."

Fourth paragraph, Page 2 should read: "**Del** Corbett, 701 NW Warrenton Drive..."

Commissioner Easom moved that the Astoria Planning Commission approve the minutes as corrected; seconded by Commissioner Mitchell. Motion passed 6 to 0.

b. April 28, 2015

Motion made and seconded to approve the April 28, 2015 minutes as presented. Motion approved.

PUBLIC HEARINGS:

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

ITEM 4(a):

Amendment A15-02 by Clatsop Community College to amend the land use and zoning map from R-3, High Density Residential to C-3, General Commercial zone at 550 - 16th Street, 164 Franklin, and 1642 Franklin in the R-3, High Density Residential zone.

Interim President Innes asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. She asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare. Commissioner Fitzpatrick stated that he had a conflict of interest and recused himself. Interim President Innes asked Staff to present the Staff report.

Interim Planner Morgan reviewed the written staff report. Correspondence in opposition had been received from Karen Sheridan, an adjacent property owner, address 1674 Franklin Avenue. Interim Planner Morgan informed the commission that a lot line adjustment was being prepared by Planner Johnson, who is working with the

college, which would separate the Josie Peper property from the rest of the property, and still allow access for the parking lot area on the east side. Director Cronin reiterated that the building in question has operated as an office and day care for years and the properties in the adjacent area are zoned the same as the proposed zone. Based on the findings of fact contained in the report, Staff recommended approval of the request.

Interim President Innes opened the public hearing. She called for any testimony in favor of, impartial to, or opposed to the application.

Greg Dorcheus, Clatsop Community College, 1653 Jerome, Astoria explained that the College had declared the property, referred to as the Josie Peper building, surplus and had an offer from a private party. The property has been on the market for some time. The new buyer has requested commercial zoning to support a vacation rental business.

Drew Herzig, 628 Klaskanine, Astoria asked to speak impartially. He suggested that perhaps a variance or conditional use would be a better approach to a zone change. Attorney Henningsgaard said this was not possible.

Donna Quinn, 1684 Franklin, Astoria presented testimony in opposition to the request. She submitted a petition signed by several neighborhood property owners in opposition of the amendment request, and an article from the *New York Times* regarding the downside of tourism for the commission's review. She acknowledged her own employment in tourism-related job, but asked if Astoria's planning and development ought not to be focused on making this the best place for the residents. Visitors will then come, as the place will remain authentic. She stressed the need to protect historic residential neighborhoods from the incursion of "vacation" homes.

Len Myers, 544 17th Street, testified in opposition to the request, stating he agreed with Donna Quinn's testimony and wanted to make his opposition known.

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

Director Cronin responded to concerns raised during the public testimony: 1) limiting certain allowable uses in the proposed zone through conditions of approval or through legal means such as a deed restriction. City Attorney agreed with staff that limiting the uses through a land use action is problematic, and 2) "neighborhood character" is a subjective term not included in the applicable criteria whereas staff must render a recommendation based on clear and objective standards.

Commissioner Mitchell stated that she was concerned with some of the uses which would be allowed by right. She asked Counsel if approval could be given limiting the uses to those compatible with the residential character of the eastern part of the block. Counsel Henningsgaard advised that it was not possible. Director Cronin said that there could be deed restrictions on the sale that could limit uses. Commissioner Mitchell asked if this could become a precedent-setting decision. Staff responded that the particular nature of the institution uses surrounding the site would make it less able to be used as a precedent.

Commissioner Spence stated that he had reservations about the proposal because of the parking situation.

Planner Morgan explained that the private property would be a 50' x 100' lot with five parking spaces on the north side of the brick building.

Commissioner Easom said that it was unlikely that the property would sell as a home, since it sits in the middle of an asphalt parking lot next to the PAC. He stated that he supports the zone change.

Commissioner Moore declared he felt the change was justified given the character of the area.

Commissioner Mitchell said she was conflicted about the change but she felt that on balance it made sense to include it in a commercial zone. She stated that it would be difficult to make the findings necessary to deny the request. Although she continues to be concerned about this becoming a precedent-setting decision, the surrounding properties and the configuration of the parking lots make it unlikely that it could be sold as a single-family residence. Interim President Innes also said she was torn, but felt that it was a reasonable request.

Interim President reopened the hearing to allow rebuttal testimony from the applicant. Ann Gyde, representing the applicant, acknowledged that a law office that was leasing the space was operating illegally in a residential zone. The College initiated the zone change to address this issue as well as respond to the request of a prospective buyer, who was not available to attend the hearing.

Commissioner Easom moved that the Astoria Planning Commission finds the proposed amendment to be necessary and recommend to the Astoria City Council that the proposed amendment be approved; seconded by Commissioner Moore. Motion passed with a vote of 4-1, Commissioner Spence against; Commissioner Fitzpatrick abstained.

REPORTS OF OFFICERS/COMMISSIONERS:

Community Development Director Cronin provided a summary of the projects the department is involved in, including: Parklets, the Affordable Housing Study, Riverfront Vision Plan Phase 3, administrative reorganization, development services review, as well as economic development issues.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:55 pm.

ATTEST:

APPROVED:

Secretary

Director



CITY OF ASTORIA

SERVICE FAIR

Thursday, September 10, 2015

4:00 p.m. to 6:30 p.m.

at the

**Columbia River Maritime Museum's
Barbey Center**

20th and Marine Drive

- ★ **Meet City officials, employees, and volunteers**
- ★ **Find out what's happening in City departments through displays and demonstrations**
- ★ **See big construction equipment, police cars, and fire trucks up close**
- ★ **Enjoy free hot dogs!!**



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

August 20, 2015

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: PROMOTE ASTORIA FUNDS - AGREEMENT FOR PROFESSIONAL SERVICES WITH ASTORIA DOWNTOWN HISTORIC DISTRICT ASSOCIATION (ADHDA)

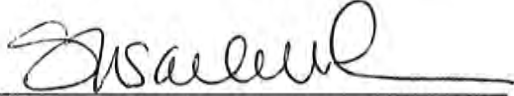
DISCUSSION/ANALYSIS

City Code Section 8.045.18 states "Organizations receiving funds from the Promote Astoria Fund shall enter into a contract with the City that will include a scope of work and budget to be approved annually by the Astoria City Council. The contract will designate how the funds will be expended by contracting organizations." Council directed staff to draft an updated agreement prior to making disbursements from the Promote Astoria Funds for the Astoria Downtown Historic District Association (ADHDA) services. No disbursements have been made for Fiscal Year 2015-2016 to ADHDA pending final execution of an agreement.

A boiler plate agreement for professional services was developed, reviewed by the City Attorney and approved by Council on August 10, 2015 for the Astoria-Warrenton Chamber of Commerce. Attached is same agreement with a scope of work developed with Alana Garner, Executive Director of the Astoria Downtown Historic District Association (ADHDA).

RECOMMENDATION

It is recommended the City Council approve execution of the Agreement for Professional Service with Astoria Downtown Historic District Association (ADHDA) in order to make the first payment as provided for in the agreement.

By: 
Susan E Brooks, Director of Finance and
Administrative Services

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this 1st day of July, 2015, between **City of Astoria**, hereinafter "**CITY**" and **Astoria Downtown Historic District Association**, an Oregon Not-for-Profit Corporation and independent contractor in good standing, hereinafter called "**ADHDA**".

WITNESSETH

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

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

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

1. Term. The term of this agreement shall commence on July 2, 2015 and terminate on June 30, 2016. Agreement may be terminated with a 60 day written notice by either party.
2. Services. ADHDA agrees to provide services to CITY in accordance with the Scope of Work incorporated by reference as Exhibit "A".
3. Compensation. The amount the CITY shall pay the ADHDA is not to exceed \$35,000. These amounts are dependent upon motel tax collections.
 - a. ADHDA shall furnish the CITY with updated W-9 information, as designated by the Internal Revenue Service.
 - b. CITY shall make payments to ADHDA on a semi-annual basis, after full execution of agreement.
4. CITY Contacts. For purposes hereof, the CITY contacts are the City Manager and Director of Finance and Administrative Services, 1095 Duane Street, Astoria, OR 97103.
5. ADHDA Contacts. For purposes hereof, the ADHDA contact is the Executive Director, PO Box 261, Astoria, OR 97103.
6. CITY's Business License. Before permitting a sub consultant to begin work, ADHDA shall verify a current business license is on file for the sub consultant.
7. Insurance. Prior to provision of services under this contract, ADHDA shall procure professional and comprehensive general liability insurance with limits that, at a minimum, comply with the limits of local public body liability described in ORS 30.272-273 and shall provide original certificates of insurance to the City Director of Finance and Administrative Services, evidencing proof of ADHDA insurance policies in effect for the type of coverage set forth below and within the stated limits.

At all times during the term of this agreement, ADHDA shall keep such insurance policies in full force and effect and shall provide the CITY with original certificates of insurance. The CITY shall be named as an additional insured and no cancellation, material change, exhaustion

of aggregate limits or intent not to renew insurance coverage shall occur without 30-days written notice to City of Astoria Finance Department. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30-day notice of cancellation provision shall be physically endorsed on to the policy.

9. Worker's Compensation. ADHDA, its subcontractors, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, or are employers that are exempt under ORS 656.126.
10. Laborers and Materialmen, Contributions to Industrial Accident Fund, Liens and Withholding Taxes. ADHDA shall make payment promptly, as due, to all persons supplying contractor labor or material necessary to execute the work provided for in this Agreement. ADHDA shall pay all contributions or amounts due the Industrial Accident Fund from ADHDA or any sub consultant incurred in the performance of the Agreement. ADHDA shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, Municipal Corporation or subdivision thereof, on account of any labor or material furnished. ADHDA shall pay to the Department of Revenue all sums withheld from Employees pursuant to ORS 316.167.
11. Books and Records. ADHDA shall keep all invoices, vouchers and other documentation for review by CITY's Finance Department, as needed, for the purposes of audit, examination, excerpts and transcripts.
12. Assignment. The responsibility for performing ADHDA services under the terms of this agreement shall not be assigned, transferred, delegated or otherwise referred by ADHDA to a third person without prior consent of City agent.
13. Indemnity. With regard to Comprehensive General Liability, ADHDA agrees to indemnify and hold harmless the City of Astoria, its Officers and Employees against and from any and all loss, claims, actions, suits, reasonable defense costs, attorney fees and expenses for or on account of injury, bodily or otherwise to, or death of persons, damage to or destruction of property belonging to CITY, ADHDA, or others resulting from or arising out of ADHDA'S negligent acts, errors or omission in service pursuant to this Agreement. This agreement to indemnify applies whether such claims are meritorious or not; provided, however, that if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of ADHDA and CITY this indemnification and agreement to assume defense costs applies only to the extent of the negligence or alleged negligence of the ADHDA.

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

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

14. Accounting and Reporting. Per city Code 8.045.18 Non-Profit shall provide City, semi-annual financial reports by August 1 and February 1, covering the six months ended June 30 and December 31, respectively, of each year. These reports shall provide a verified listing of the

expenditures with adequate narrative, so the City can be satisfied as to the appropriateness of the expenditures. In addition a report of services performed shall be presented in a format acceptable to City, and will, at City's discretion, include a presentation at a meeting of the Budget Committee of the City. The Budget committee of the City shall review reports during the budget process and recommend to the City Council the continuance, discontinuance, or changes to a contract each year.

15. Complete Agreement. This Agreement and its referenced attachments constitute the complete agreement between CITY and ADHDA and supersedes all prior written or oral discussions or agreements. ADHDA's services are defined solely by this Agreement and its attachments and not by any other contract or agreement that may be associated with this Agreement.
16. No Religious Activities: No City funds may be used to promote institutions of religion or religious activities, symbols or presentations.
17. Equal Opportunity and Non Discrimination. It is the policy of the City of Astoria that no person shall be denied the benefits of or be subjected to discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity I expression. The City of Astoria also requires its contractors and grantees to comply with this policy.
18. Applicable Law. The law of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance and any other claims related to it.

City:

**Astoria Downtown Historic District
Association (ADHDA):**

Arline LaMear,
Mayor

Date

Alana Garner,
Executive Director

Date

Brett Estes,
City Manager

Date

Dulcye Taylor,
ADHDA President

Date

Exhibit A

Scope of Work

Tourism Information, Marketing and Promotional Efforts

The Astoria Downtown Historic District Association "ADHDA" shall at a minimum provide the following efforts to proactively market the City of Astoria to promote tourism and local businesses by leveraging existing marketing and promotional resources and strategies to accomplish the following objectives:

- Represent the interest of Astoria through participation in the Oregon Main Street Program and the National Main Street Network while incorporate the following benefits of the Main Street Program:
 - Improved image and community pride
 - Increased occupancy rates
 - Business retention, recruitment, expansion, and jobs
 - Technical assistance, funding opportunities, finance assistance, and training
 - New business and job opportunities
 - Better relations between local government and private sector
 - Promotion and marketing of community
 - Increased variety of service
- Encourage community involvement and investment in preserving the character of downtown Astoria while promoting its health and future.
- Maintain, update and expand an exciting and informational website with a link to the City website.
- Build and strengthen visitor relationships to encourage repeat trips while working within the community to minimize negative impacts on the local population.
- Reinforce Astoria's image as an inviting tourist destination and business opportunity location with a rich heritage, historical significance, unique festivals/events and a variety of interesting experiences.
- Reinforce existing media relationships.
- Promote downtown Astoria through programs and coordinated events.
- Provide reporting and accounting as required in Agreement under section 13.
- ADHDA shall acknowledge City of Astoria, Promote Astoria Fund participation in all documents or publications prepared (not inclusive of print advertising) or equipment and software purchased in the performance of this agreement



September 3, 2015

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: BRETT ESTES, CITY MANAGER

SUBJECT: AUTHORIZATION TO LIGHT THE ASTORIA COLUMN A PINK HUE FOR THE MONTH OF OCTOBER IN RECOGNITION OF BREAST CANCER AWARENESS MONTH

DISCUSSION/ANALYSIS

On February 18th, 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 Harbor, 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. Under City Council's authorization the October pink and April teal lighting events repeated for the 2nd year in 2014-2015.

In partnership with Columbia Memorial Hospital and the Friends of the Astoria Column, the Parks and Recreation Department is requesting permission to change the lighting color on the Astoria Column for the 3rd time to a pink hue for the month of October 2015 in recognition of Breast Cancer Awareness Month.

RECOMMENDATION

It is recommended that City Council authorize the change in lighting at the Astoria Column to a pink hue for the month of October 2015 in recognition of Breast Cancer Awareness Month.

By: Angela Cosby
Angela Cosby
Director of Parks & Recreation



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

MEMORANDUM

TO: ASTORIA CITY COUNCIL

FROM: BRETT ESTES, CITY MANAGER

RE: CLATSOP COMMUNITY COLLEGE ZONE CHANGE –
16TH AND FRANKLIN

DATE: AUGUST 24, 2015

BACKGROUND

Clatsop Community College has decided to sell the building known as the “Josie Peper” building to a private individual, who has stated that she would be using it as a residence (a second home) as well as a short term rental. Because the CCC properties are located in the R-3, High Density Residential zone, staff advised the College and the prospective owner that the only way a short term rental could be allowed would be if there was a zone change to a zone that allowed lodging, such as the C-3, General Commercial zone. On June 1, 2015, the College applied for an amendment to change the designation of the Performing Arts Center (the PAC), the Josie Peper building and the surrounding parking areas from R-3 to C-3.

On July 28, 2015, the Planning Commission held a public hearing and heard testimony from College officials, as well as three property owners in the vicinity who objected to the amendment. The basis of their objection was that the use of the Josie Peper building as a vacation rental would change the nature of the use, creating more traffic and late night noise and disruption.

The Planning Commission voted 4-1 to recommend approval of the amendment, based on their findings that:

1. The building was initially a day care center, and has been used for offices for several decades by the College and, more recently, a private law firm.

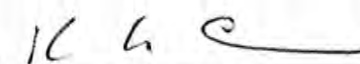
2. The building is surrounded by the parking lot and driveways for the Performing Arts Center, and will remain as such providing ample off street parking.
3. The surrounding uses, except for the dwellings to the east, are institutional or commercial, e.g. Clatsop Care, the Masonic Temple, and the former Lum's auto repair and dealership.
4. The prospective owner's intention is to utilize it as a second home, but rent it as a short term rental to cover taxes and other expenses. This use is not more intensive than the previous uses.
5. The building is a historic resource built as a single family home in 1923 and has been deteriorating and inappropriately remodeled. A commercial zoning designation may facilitate future reinvestment and restoration.
6. The building and associated parking will occupy all of the property being sold by the college. No future expansion of the privately owned building is likely.

At its July 28, 2015 meeting, the Astoria Planning Commission held a public hearing and recommended that the City Council adopt the proposed amendment. A copy of the Staff Report and Findings of Fact as adopted by the Planning Commission is attached. Also attached to this memo is the proposed ordinance. A public hearing on the Amendment has been advertised and is scheduled for the September 8, 2015 City Council meeting. It should be noted that the public notice contains a typographical error: 164 Franklin should be 1658 Franklin. The property proposed for rezoning is otherwise identified correctly in the public notice as Map TN8R9W Section 8DC, Tax Lots 17100, 17200, 17300, and 17400; Lots 7,8,9,10 and portions of lots 5 & 6, Block 113, Shively.

RECOMMENDATION

It is recommended that the Council hold a public hearing and adopt the ordinance as recommended by the Planning Commission. If the Council is in agreement with the recommendation of the Planning Commission, it would be in order for Council to hold a first reading of the Ordinance.

By: 
Mike Morgan, Interim Planner

Through: 
Kevin A. Cronin
Community Development Director

STAFF REPORT & FINDINGS OF FACT

July 22, 2015

TO: PLANNING COMMISSION

FROM: MIKE MORGAN, INTERIM PLANNER

SUBJECT: AMENDMENT REQUEST (A15-01) BY CLATSOP COMMUNITY COLLEGE TO THE LAND USE AND ZONING MAP TO REZONE AN AREA AT 16TH AND FRANKLIN STREETS FROM R-3 (HIGH DENSITY RESIDENTIAL) TO C-3 (GENERAL COMMERCIAL)

I. BACKGROUND SUMMARY

- A. Applicant: Clatsop Community College
JoAnn Zahn, Vice President of Operations & Finance
1653 Jerome St.
Astoria OR 97103
- B. Owner: Same
- C. Request: Amend the Astoria Land Use and Zoning Map by rezoning Tax Lot 17200, 17300, 17400 and 17500 at 588 16th Street, 1642 and 1658 Franklin Streets from R-3 (High Density Residential) to C-3 (General Commercial).
- D. Location: 588 16th Street (Performing Arts Center), 1642 Franklin Street (Josie Peper Center), and 1658 Franklin (Vacant Parking Lot); Map T8N-R9W Section 8DC, Tax Lot 17200,17300,17400,17500; Portions of Lots 5 and 6, lots 7, 8, 9 and 10, Block 113, Shively's.
- E. Size: 32,500 SF / .74 Acres
- F. Zone: Current: R-3 (High Density Residential)
Proposed: C-3 (General Commercial)

BACKGROUND

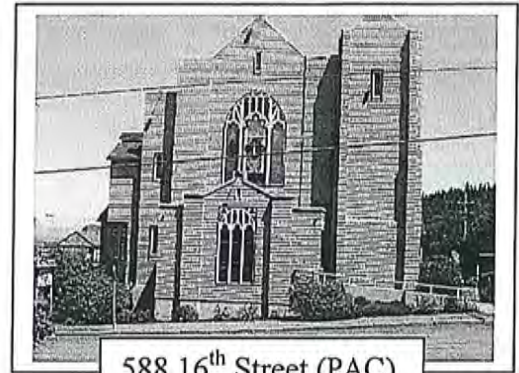
The property proposed for rezoning is located at the corner of 16th and Franklin Streets, and consists of the CCC Performing Arts Center on the corner, the brick building to the east that was formerly the Josie Peper day care center and college offices. It is currently used as an office for a law firm. The property slopes from Franklin down to the former Lum's Auto dealership property on the north. There is a sizeable parking lot behind



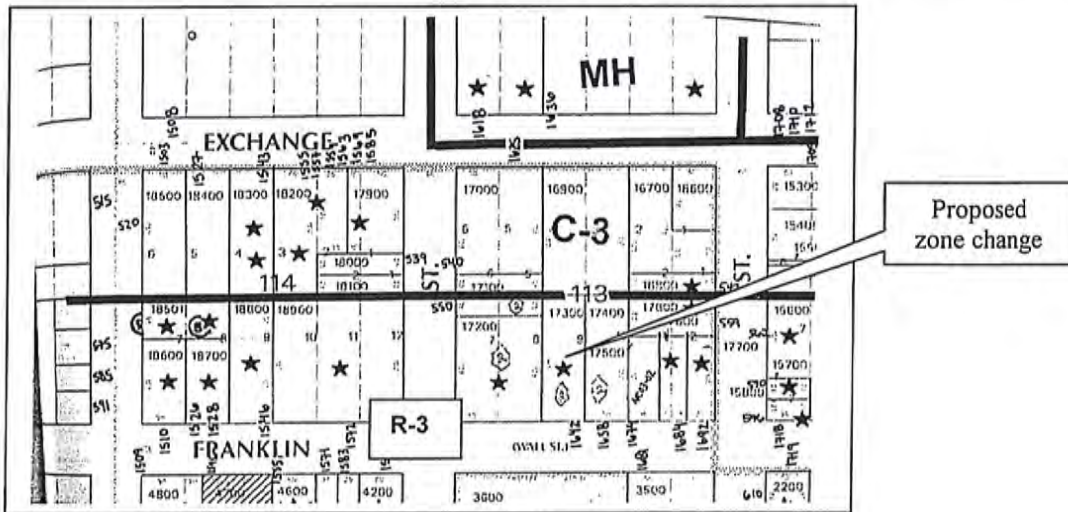
1642 Franklin Street

the PAC and to the rear of both buildings. Both buildings are designated as historic within the Shively-McClure National Register Historic District (NRHD) and any new construction or exterior alterations would require historic design review by the Historic Landmarks Commission.

The site is adjacent to the C-3 zone along the entire northern boundary, and east across 16th from the Masonic Temple. South across Franklin Street is the Clatsop Care facility. A recent zone change (A13-01) was approved for the property at the southwest corner of 16th and Exchange Streets.



588 16th Street (PAC)



The site is situated in a transition area between the residentially and commercially developed areas and could be a part of either development area. Since it's a corner lot, access to the site is off of 16th Street or Franklin Street.

The Performing Arts Center building at 588 16th Street was constructed between 1932 and 1936 as Trinity Lutheran Church. It is classified as a "secondary" structure in the historic district. The building was sold to Clatsop Community College in 1977 when Trinity Lutheran merged with Peace Lutheran at 12th and Exchange. Because of budget issues, the college has been working with a nonprofit group, Friends of the PAC, to take over operation of the building. The building at 1642 Franklin is also secondary in the historic district. It was originally the James and Martha Lovell home, built in 1923, and was acquired by the college in the 1970s. **The college has deemed the building surplus to their needs and is in the process of selling to a private individual who wants use it for short term lodging. In order to allow this type of land use, it must be rezoned to a commercial zone.** The applicant has requested C-3. The college intends to sell tax lot 17300 where the law office is located, but retain the other portions of the property including the parking area to the east. Because of the historic designation of each building there will be essentially no change in the layout of the properties.

The Planning Commission is responsible for making a recommendation to the City Council for consideration at a future meeting.

III. PUBLIC REVIEW AND COMMENT

A. Planning Commission

A public notice was mailed to Neighborhood Associations and property owners within 100' of the proposed zone boundary change area on July 2, 2015. In accordance with Section 9.020, a notice of public hearing was published in the Daily Astorian on July 21, 2015. The proposed amendment is quasi-judicial as it applies to only three parcels of land. Any comments received will be made available at the Planning Commission meeting.

B. City Council

A public notice will be mailed to Neighborhood Associations and property owners within 100' of the proposed zone boundary area. In accordance with Section 9.020, a notice of public hearing will be published in the Daily Astorian. Any comments received will be made available at the City Council meeting.

IV. FINDINGS OF FACT

- A. Development Code Section 10.020(B) states that *"an amendment to a zone boundary may only be initiated by the City Council, Planning Commission, the Community Development Director, or the owner or owners of the property for which the change is proposed."*

Finding: The proposed amendment to the zoning map boundary is being initiated by the owner of the property (Clatsop Community College). Standard is met.

B. Section 10.050(B) states that *"The following amendment actions are considered quasi-judicial under this Code:*

1. *A zone change that affects a limited area or a limited number of property owners."*

Finding: The proposed amendment is to amend the Astoria Land Use and Zoning Map to rezone an area that is less than an acre with only one owner. It is a quasi-judicial action. Standard is met.

C. Section 10.070(B.1) requires that *"The amendment is consistent with the Comprehensive Plan."*

CP.025(2) concerning Policies Pertaining to Land Use Categories and Density Requirements states that *"Changes in the land use and zoning map may be made by boundary amendment so long as such change is consistent with the goals and policies of the Comprehensive Plan."*

1. CP.005(5) concerning General Plan Philosophy and Policy Statement states that local comprehensive plans *"Shall be regularly reviewed, and, if necessary, revised to keep them consistent with the changing needs and desires of the public they are designed to serve."*

CP.040, Central Residential Area description, states that *"The Central Residential Area is the City's oldest neighborhood, and extends generally from Second Street to 18th Street and from Bond Street to Niagara Street excluding the central business district."*

Finding: The Comprehensive Plan and Development Code establish designated land use areas and zones. The general development of the downtown area has been consistent since the 1920's. The Central area is the oldest neighborhood and the two buildings located in the area proposed to be rezoned were built in 1923 (the home) and the 1930s (the church/PAC). The PAC building has been continuously used as an assembly space since it was constructed. The brick building has been used as a day care center and office space for several decades. The site has commercial uses or institutions on three sides, and residences to the east. The nature of the existing uses would indicate that the C-3 zone is more appropriate than the R-3 zone. Standard is met.

2. CP.015(1) concerning General Land and Water Use Goals states that *"It is the primary goal of the Comprehensive Plan to maintain Astoria's existing character by encouraging a compact urban form, by strengthening the downtown core and waterfront areas, and by*

protecting the residential and historic character of the City's neighborhoods. It is the intent of the plan to promote Astoria as the commercial, industrial, tourist, and cultural center of the area."

CP. 015(2) concerning General Land and Water Use Goals states that *"It is a goal of the plan to encourage the development of public and private lands within the City limits, particularly areas that are presently serviced with sewer and water, prior to the extension of public facilities to areas outside the City."*

CP.220 concerning Housing Policies states that the City should *"6. Protect neighborhoods from incompatible uses, including large scale commercial, industrial, and public uses or activities."*

Finding: The proposed amendment would allow for continued compact urban form development of an area close to the urban core and currently serviced by City utilities. Astoria is becoming the cultural center of the region with its numerous historic properties and districts. This property is within a historic district and adjacent to other historic properties. New construction is not proposed, but would require historic design review. No additional impacts are expected with the proposed zone change. If and when the property owner makes alterations or submits a request to change the occupancy, the City will have an opportunity to review any impacts. Standard is met.

3. CP.020(6) concerning Community Growth, Plan Strategy states that *"The City encourages historic preservation generally, the restoration or reuse of existing buildings. However, these structures must be improved in a timely manner."*

CP.200(6) concerning Economic Development Goals states that *"Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry."*

CP.250(1) concerning Historic Preservation Goals states that *"The City will promote and encourage, by voluntary means whenever possible, the preservation, restoration and adaptive use of sites, areas, buildings, structures, appurtenances, places and elements that are indicative of Astoria's historical heritage."*

Finding: Both buildings have been altered, but are both subject to historic preservation requirements. Any alteration of either building would have to be submitted to the HLC for review. By changing the underlying zone to commercial, the current use will be consistent with the proposed use and the new property owner will have a market driven incentive to invest and preserve the building.

Shively-McClure NRHD neighborhood



The City conducted a Buildable Lands Inventory (BLI) which was adopted in 2011. The report states that “A comparison of need and supply of industrial and other employment lands indicates an overall surplus of approximately 6.7 acres of employment land. While there is sufficient land for industrial uses, there is a deficit of land zoned for commercial and particularly retail use. However, a portion of the land identified as “Other” can accommodate specific commercial, industrial, and high-density residential development and help meet the need for additional commercial land.” There is an overall deficit of residentially zoned land. There appears to be sufficient R-3 zoning.

Estimated Net Land Surplus/(Deficit) by Zoning Designation, Astoria UGB, 2027

Source: Wingard Planning & Development Services

Type of Use	R1	R2	R3	AH-MP	Total
Land Need	115.4	51.2	67.0	2.7	236.4
Land Supply	25.20	74.99	119.18	1.49	220.86
Surplus/(Deficit)	(90.20)	23.79	52.18	(1.21)	(15.54)

Growth Scenario	Type of Use	Commercial (Office/Retail)	Industrial/Other	Total
Medium	Land Need	38.2	11.5	49.7
	Land Supply	17.1	39.3	56.4
Surplus/(Deficit)	Surplus/(Deficit)	(21.1)	27.8	6.7

Source: Cogan Owens Cogan

The rezone would remove approximately 0.8 acres (40,000 square feet) from the residential zone and transfer it to the commercial zone. The change would not significantly impact the supply of either commercial or residential land. However, the City needs to address the overall deficiencies in available residential and commercial land.

Type of Use	Commercial (Office/Retail)	Industrial/ Other	Employment Total	R1	R2	R3	AH-MP	Residential Total
Land Need	38.2	11.5	49.7	115.4	51.2	67.0	2.7	236.4
Land Supply	17.1	39.3	56.4	25.20	74.99	119.18	1.49	220.86
A11-05	-0.3					+0.3		
A12-02				-0.8	+0.8			
A12-03	+0.46				-0.46	-.8		
A15-02	+8							
Surplus/(Deficit)	(21.9)	27.8	6.7	(90.20)	23.79	51.38	(1.21)	(15.54)

Finding: Given the small size and the ability to do mixed use in a C-3 zone, the request is consistent with the Comprehensive Plan as a result of the findings stated above. Standard is met.

- D. Section 10.070(A)(2) requires that *“The amendment will:*
- a. *Satisfy land and water use needs; or*
 - b. *Meet the transportation demands; or*
 - c. *Provide community facilities and services.”*

Finding: The proposed amendment would change the previous residential use of the building at 1642 Franklin by to allowing other commercial uses in the future. The stated use of the Josie Peper building is for a short term lodging facility. It is unlikely that the use of the PAC will change in the foreseeable future. Existing utilities and services are available for the allowable uses. The proposed amendment will satisfy land and water use needs and encourages economic development of a house that is underutilized and deteriorated. Standard is met.

- E. Section 10.070(B.3) states that *“The land is physically suitable for the uses to be allowed, in terms of slope, geologic stability, flood hazard and other relevant considerations.”*

Finding: The site is sloped up to the south from Exchange toward Franklin Avenue. There is no known geologic hazard within 100’ of the site. The site is within the Flood Zone X, Other Areas determined to be outside the 0.2% annual change floodplain, Flood Insurance Rate Map 410028-0229-E, dated 9-17-10. Standard is met.

- F. Section 10.070(B.4) states that *“Resource lands, such as wetlands are preserved.”*

Finding: There are no known wetlands on the site, or other resource lands. Standard does not apply.

- G. Section 10.070(B.5) states that *"The amendment is compatible with the land use development pattern in the vicinity of the request."*

Finding: The site is situated in a transition area between the residentially and commercially developed areas and could be a cohesive part of either development area. Due to its close proximity to other dwellings and separation from the main portion of the downtown commercial district, the commercial zone would be more consistent with the development pattern. Future development proposals will analyze potential impacts to the adjacent residential properties and require mitigation to offset any impacts.

- H. Statewide Planning Goal 12 concerning Transportation requires that cities review transportation related issues when considering land use amendments. Oregon Administrative Rules (OAR) Section 660-012-0060(1) concerning Transportation Planning Rule (TPR) - Plan and Land Use Regulation Amendments stated that *"Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in Section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. . ."* The OAR text continues to identify the requirements for compliance with the TPR and specific review that must be made to show compliance. The full text is not copied in this staff report but is available upon request.

Finding: The proposed amendment would not change the character of the area to a more automotive intensive area since it has contained higher intensity uses for several decades. The amendment is subject to review under the TPR. Most of the residential uses would be eliminated as allowable uses. The following is a comparison of some of the uses within the zones. Not all of the commercial uses are listed, but it is clear that the traffic impact would be more with the uses allowed in the C-3 Zone. However, the Josie Peper building has been utilized as an office building for many years both by the college and private companies. The potential conversion to a vacation rental or short term lodging would not increase the traffic significantly. According to the ITE Trip Generation Manual (9th Edition), the amount of trips generated by a day care center (12.46) or single tenant office building (1.74) is more than a motel (.47) A motel is the closest approximation to a small boutique lodging facility.

USE	R-3 Zone	C-3 Zone
Bed & Breakfast or Inn	Conditional Use	Outright
Day care center	Conditional Use	Conditional Use
Home Occupation	Outright	Outright
Family day care center	Outright	Outright
Multi-family dwelling	Outright	Outright
Motel/hotel		Outright
Transportation service		Outright
Automotive sales, service, & gas station		Conditional Use
Indoor family entertainment		Outright
Business & education service		Outright
Eating & drinking establishment		Outright
Personal & Professional services		Outright
Repair services		Outright
Retail sales		Outright
Light manufacturing		Conditional Use



The site is accessed from City streets including Franklin and 16th and is located three blocks from Marine Drive and Commercial Street which are State highways and serviced by public transit. 16th Streets is classified as a collector street, Commercial Street and Marine Drive are arterial streets. Any new development at this site would be subject to review by the City to assure that the existing transportation facilities (roads, transit, bike and pedestrian facilities, intersections, etc.) are sufficient to accommodate the proposed development.

The Astoria Transportation System Plan, dated July 1999, did not identify potential transportation system improvements for this general area as it is not a major transportation route. Based on these findings of fact, this standard is met.

V. CONCLUSION AND RECOMMENDATION

The request is consistent with the Comprehensive Plan and Development Code.

Staff recommends that the Planning Commission recommend approval of the proposed amendment to the City Council for adoption at their meeting tentatively scheduled for September 8, 2015. Alternatively, the Planning Commission can continue the hearing and request more information, or deny the application if sufficient evidence is not found.

ORDINANCE NO. 15-____

AN ORDINANCE AMENDING THE ASTORIA LAND USE AND ZONING MAP BY REZONING PARCELS AT 550 16th Street, 558 16th Street, 1658 and 1642 FRANKLIN AVENUE FROM R-3 (HIGH DENSITY RESIDENTIAL) TO C-3 (GENERAL COMMERCIAL)

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. The 1992 Astoria Land Use and Zoning Map is amended to rezone the following area from R-3 (High Density Residential) to C-3 (General Commercial) as indicated on the map:

Map T8N-R9W Section 8DC, Tax Lots 17100, 17200, 17300, & 17400, & portions of lots 5,6, and lots 7,8,9,&10, Block 113, Shively



Section 2. Effective Date. This ordinance and its amendment will be effective 30 days following its adoption and enactment by the City Council.

ADOPTED BY THE COMMON COUNCIL THIS ____ DAY OF _____, 2015.

APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2015.

ATTEST:

Mayor

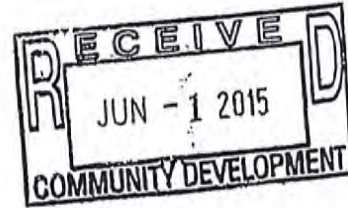
Brett Estes, City Manager

ROLL CALL ON ADOPTION: YEA NAY ABSENT

Commissioner Herzig
 Nemlowill
 Price
 Warr
Mayor LaMear



CITY OF ASTORIA
 1095 Duane Street
 Astoria OR 97103
 503-338-5183



A 15-02

Fee: \$400.00

AMENDMENT

Property Address: OK 588 16th St
550-16th St, 164 Franklin (568-16th Street) & 1642 Franklin, 1658 FRANKLIN
 Lot ^(Portions) 5,6,7,8,9,10 Block 113 Subdivision Shively
 Map T8N-R9W 8DC (80908DC) Tax Lot 17100,17200,17300,17400 Zone R-3

Code or Map to be Amended: Zoning Map

Applicant Name: Clatsop Community College

Mailing Address: 1651 Lexington Avenue, Astoria, OR 97103

Phone: 503-338-2421 Business Phone: Same

Property Owner's Name: Clatsop Community College

Mailing Address: Same

Business Name (if applicable):

Signature of Applicant: [Signature] JoAnn Zahn, Vice President
 Signature of Property Owner: [Signature] JoAnn Zahn Finance & Operations
jzahn@clatsopcc.edu

Proposed Amendment Change to Commercial Zoning. AMEND ZONING MAP TO
CHANGE FROM R-3, HIGH DENSITY RESIDENTIAL, TO C-3,
GENERAL COMMERCIAL.

For office use only:

Application Complete:		Permit Info Into D-Base:	<u>6/1/15</u>
Labels Prepared:	<u>6-9-15</u>	Tentative APC Meeting Date:	<u>7/28/15</u>
120 Days:			<u>C</u>

FILING INFORMATION: Astoria Planning Commission meets at 7:00 pm on the fourth Tuesday of each month. Applications must be received by the 20th of the month to be on the next month's agenda.. A pre-application meeting with the Planner is required prior to the acceptance of the application as complete. Only complete applications will be scheduled on the agenda. Your attendance at the Planning Commission is recommended.

Briefly address each of the Amendment Criteria and state why this request should be approved. (Use additional sheets if necessary.)

A. Text Amendment *(Please provide draft language of proposed text amendment)*

Before an amendment to the text of the Code is approved, findings will be made that the following criteria are satisfied.

1. The amendment is consistent with the Comprehensive Plan.

2. The amendment will not adversely affect the ability of the City to satisfy land and water use needs.

B. Map Amendment *(Please provide a map showing the proposed area to be amended.*

Before an amendment to a zone boundary is approved, findings will be made that the following criteria are satisfied:

1. The amendment is consistent with the Comprehensive Plan:

2. The amendment will:

- a. Satisfy land and water use needs; or

- b. Meet transportation demands; or

c. Provide community facilities and services:

3. The land is physically suitable for the uses to be allowed, in terms of slope, geologic stability, flood hazard and other relevant considerations.

4. Resource lands, such as wetlands are protected.

5. The amendment is compatible with the land use development pattern in the vicinity of the request.

PLANS: A site plan indicating location of any proposed zone change is required.



Clatsop Community College

June 22, 2015

Mike Morgan, Interim City Planner

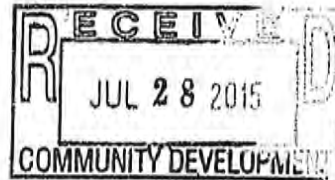
Narrative Statement - Change from residential to commercial zoning for the Performing Arts Center and Josie Peper properties.

The College Board designated the "Josie Peper" building located at 1642 Franklin, Astoria, OR as surplus property on July 8, 2014. The property was listed for sale after the surplus designation action taken by the Board. A lot line adjustment to create a 50 foot by 100 foot lot application is in process in addition to the rezoning process.

The College accepted a buyer offer for purchase on June 6, 2015 with the sale contingent on commercial zoning.

The College plans to retain ownership of the Performing Arts Center property as defined by the lot line adjustment in progress and the rezoning change from residential to commercial.

JoAnn Zahn
Vice President, Finance & Operations
1651 Lexington Ave
Astoria, OR 97103
503-338-2421
jjahn@clatsopcc.edu



Letter to City of Astoria Planning Commission
July 28, 2015

RE: Amendment Request (A15-01) by Clatsop Community College to the Land Use and Zoning Map to rezone an area at 16th and Franklin Streets from R-3 (High Density Residential) to C-3 (General Commercial)

Dear Planning Commission,

I own the house next door to the Josie Peper property. My address is 1674 Franklin. I am writing this memorandum to express my dismay that you are considering rezoning the Josie Peper house to C-3 so that it can be used as a vacation rental.

I do not believe that a vacation rental is a good use of this property for the following reasons:

1. It has been used as an office for the 11 years that I have owned my property. This means that it is generally in use during business hours five days a week. A vacation rental will involve short-term renters on the property 24/7 during their stay. As I understand it, the owners will not be on the premises while the renters are there. So there will be no incentive on the part of the renters to maintain the property in a proper manner or to maintain the quiet neighborhood as it currently exists. . As a next door neighbor, this would have a very negative impact on my quality of life.
2. A vacation rental next door to the PAC is not a good idea at all. It is possible the renters could interfere with the rehearsals and programs at the PAC. Parking at the PAC is problematic sometimes and taking away five parking spaces could have a negative impact on the people who attend the performances.
3. This rezoning seems like a slippery slope for the City of Astoria. My neighborhood, which I love, is part of the oldest district in town. One of the reasons I purchased my house in Astoria rather than Manzanita or another vacation rental haven is because Astoria is a town where people live, work, and play. They love their town and do not want it to change into just another beach town with more transients than residents. I cannot even imagine the unintended consequences of this zone change. Does this mean that I can come before the Planning Commission sometime in the future and request a zone change because my property is next door to a commercial property? Where does it end?
4. I live in Astoria half time and Portland the other half. I dearly love Astoria and do not want to see it change. I have never rented out my house when I am not there. It would not even occur to me. When I purchased my property, it was pretty much a wreck. I put more than \$500,000 into redoing the house – in the same footprint – just made it look like a little house build in 1942 looks like. And I have a splendid garden where I spend most of my time. I love the sounds from the PAC and even enjoy hearing the people as they go to and from the PAC. I can't even imagine how intrusive and annoying it would be to live next door to a vacation rental.
5. As I review your Findings, I do not see a Finding that addresses the impacts this zone change would have on the area to show that this zone change would not be detrimental to the general plan or code, the local residents and the City of Astoria.

I do not believe the Findings of Fact support this rezone – I believe it is incompatible with the area and with the intention of the citizens of Astoria to remain a community of engaged residents and not become a shell of a town populated by vacation rentals wherever they may be feasible. **I respectfully ask you to reject this application.**

Thank you.

Karen Sheridan
1674 Franklin Avenue
Astoria, OR 97103
503-318-5525

Submitted by:

Donna Gainer

Date:

7-28-15

July 28, 2015

PETITION SUBMITTED TO THE CITY OF ASTORIA PLANNING COMMISSION REGARDING THE AMENDMENT REQUEST (A15-01) BY CLATSOP COMMUNITY COLLEGE TO THE LAND USE AND ZONING MAP TO REZONE AN AREA AT 16TH AND FRANKLIN STREETS FROM R-3 (HIGH DENSITY RESIDENTIAL) to C-3 (GENERAL COMMERCIAL).

Attached are signatures of concerned neighborhood residents and local Astoria citizens who ask that you deny this request to re-zone the Performing Arts Center and the Josie Peper Center for the following reasons:

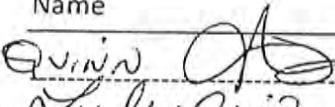
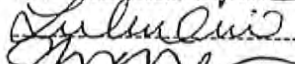
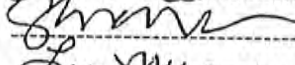
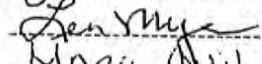
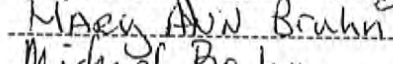
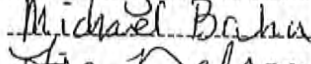
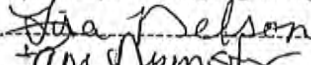
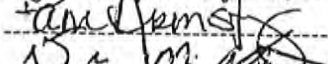
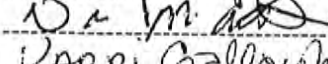
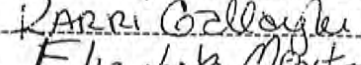
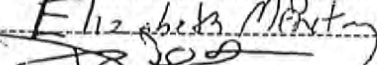
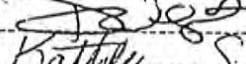
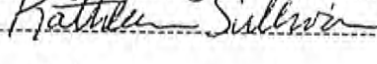
1. The Findings of Fact are inadequate and do not show the impacts this zone change would have on the character of the neighborhood or the potential harmful impacts of allowing short term vacation rentals in a historic downtown Astoria location, especially when there is a serious shortage of housing for residents and employees. There are many hotels, motels and B & B's for out-of-town visitors and tourists, but Astoria needs places for Astorians to live. For the Administrative Record, I am providing a recent New York Times article "The Revolt Against Tourism" which addresses the need for noise and zoning laws to keep tourism from getting out of control and from "loving a place to death".
2. The Findings do not address the fact that although the Josie Peper Building has been used as an office building, the proposed use is not a similar use because a Vacation Rental Use would be used 24 hours a day 7 days a week with no onsite management or oversight. There is no remedy or feasible mitigation for citizens with regard to noise, nuisance and disturbance of peace and security issues. There is no remedy for concert goers or lecturers performing at the PAC being impacted by disturbing party noise. One cannot compare a day care center or office with a Party House or Nightclub. No impacts were addressed in the Findings except traffic. In particular the issues of Noise, Public Safety, and impact to Public Resources are not addressed. If this rezone is approved the City is likely siting a public nuisance. There will be impacts which cannot be mitigated from this use -- which is distinctly different from a quiet office building. We believe the City of Astoria has a mandate to protect its residents quiet enjoyment of their homes and that public health, safety and welfare should not be disregarded.
3. There is no Finding to show that this approval would not be detrimental to the general plan, and the welfare of the local residents and the City of Astoria. This rezone does not further the general plan goals and only serves one single property owner and not the community at

large. Accordingly, were you to approve this project, this would be a clear case of "spot zoning." The nature of this use is essentially different from what the commercial property nearby is being used for and is incompatible. Astoria needs housing for its residents and the Buildable Lands Inventory shows an overall deficit of residentially zoned land. Approval of this project is contrary to fact and law.

4. This request for a Rezone is inconsistent and incompatible with the Comprehensive Plan and Development Code. We do not believe the Findings of Fact support this rezone. We believe it is the intention of the City of Astoria and the Citizens of Astoria to remain a town where people live and work first -- and to protect its character as a thriving town of engaged residents with legitimate tourism. We respect and support Clatsop Community College and we trust that there will be other potential buyers in the near future who will envision a positive use for the Josie Peper Home which is compatible and consistent with this historic Astoria neighborhood -- and will move the City of Astoria forward in a healthy way for the entire town and all Astorians.

We respectfully request that you deny this rezone. Thank you.

Donna Quinn, Lulu Quinn, Shannon Meeker, Len Myers, Mary Ann Bruhn, Michael Bruhn, Lisa Nelson, Pam Armstrong, Dave Armstrong, Karri Gallagher, Elizabeth Menetry, Don West, Kathleen Sullivan and more signatures coming!!!

Name	Address	Contact Information
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non Meeker 	1483 Duane St.	meecker@fortgeorgebrewery.com
eeber 	544 17th St	
	562 17th St Astoria	berrymoon64@yahoo.com
	562 17th St Astoria	fivestring98682@yahoo.com
	596 17th St Ast	lisa.nelson@charter.net
	1510 Franklin Ave	info@rosenriverinn.com
	" "	" "
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The New York Times | <http://nyti.ms/1e5qsD5>

SundayReview | OPINION

The Revolt Against Tourism

By ELIZABETH BECKER JULY 17, 2015

COPENHAGEN — AS we glide under a bridge on the city canal tour, our guide announces that we have entered a quiet zone. “This is a residential area,” she says, nodding toward balconies where Danes are enjoying coffee — or maybe wine. “I’ll resume talking in five minutes.”

Denmark is one of the world’s top destinations for conferences and a mainstay of trans-Atlantic cruise ships. Attracted by noir detective series and fashionable cuisine, nine million tourists last year visited this city, a record for Denmark, which has fewer than six million people.

The “quiet zones” are emblematic of the Danish philosophy toward tourists: They should blend in with the Danish way of life, not the other way around. The Danes have prohibited foreigners from buying vacation cottages on their seacoasts; devised their famous bicycle-friendly transportation system to include tourists; and strictly limited bars and restaurants from taking over Copenhagen.

The question, says Henrik Thierlein, a spokesman for the city’s tourism office, is: “How do you take advantage of the growth in tourism and not be taken over by mass tourism?”

Outraged by tourists’ boorish and disrespectful behavior, and responding to the complaints of their constituents, local officials around the world have

begun to crack down on tourism, and the tourism industry, even in the face of opposition from their national governments, which want the tax revenue from tourists.

Barcelona, a city of 1.6 million that receives over seven million people a year, represents the turn toward regulation. Taxis and tour buses have taken over entire neighborhoods, while souvenir shops and bars have displaced pharmacies and greengrocers.

The city's mayor, Ada Colau, 41, who was elected in May, announced a one-year ban on new tourist accommodation citing the swarms of students who have all but taken over the Ciutat Vella, or Old City, of Barcelona. Last August, hundreds of residents erupted in spontaneous protest after images of three Italian tourists wandering naked in the neighborhood of La Barceloneta were circulated online. Her greatest worry, Ms. Colau says, is Barcelona's turning into Venice.

In Asia, alarm has centered on Chinese tourists; there are more of them than from any other nation. China began loosening severe travel restrictions only about 25 years ago, and the rapid rise of the middle class has sent curious — but often naïve, rude or even destructive — visitors throughout Southeast Asia.

In Thailand a Chinese tourist was recently caught on video ringing and kicking sacred bells at a Buddhist temple as if he was in a game arcade.

There have been reports of Chinese tourists littering beaches and even defecating in public. One tourist even opened the door of an airplane, as it prepared for takeoff, reportedly to get fresh air. The Chinese government responded by promising to set up a tourist black list to ban notorious known offenders from traveling overseas for up to two years.

Of course, the Chinese aren't the only culprits. In Cambodia, half a dozen foreigners, including three Frenchmen and two American sisters, were

deported in February for posing nude in the temples at Angkor. I was in Cambodia when the scandal broke, leading a discussion near the temples about protecting cultural sites visited by tourists. The authorities are now considering a code of conduct that would ban not only nudity, but also the touching of ruins.

Bhutan, wary of uncontrolled tourism, is going further — it has restricted the number of tourism visas, curbed hotel construction and imposed a high tariff on tourism, all part of a strategy of “low-volume and high-value tourism.”

Battles like these have even reached the tourism-friendly United States.

A decade after Hurricane Katrina ravaged New Orleans, city officials have eyed tourism as the best path for a revival. But homeowners in the French Quarter complain that the city fails to properly enforce zoning and noise regulations, inviting the party crowd into their streets. Last year, residents of Charleston unsuccessfully sued to block the South Carolina ports authority from opening up the port to more and larger cruise ships.

Tensions are bound to get worse. Notwithstanding worry about carbon emissions, more of the world’s peoples are crossing borders for leisure than ever before. Now tourism accounts for one in 11 jobs worldwide.

In 2012 the global tourism industry counted a record one billion trips abroad, and many more tourists travel within their home countries. Travel contributes \$7.6 trillion to the global economy, nearly half the entire economic output of the United States.

One reason tourism is hard to regulate is its positive associations, not only with pastime and leisure but also with cultural prestige. People are proud of the vistas, landmarks and monuments that their homelands are best known for. So efforts to regulate tourism aren’t always popular.

France is an exception, which is remarkable given that it is also the most-

visited country in the world. In the 1950s, with American aid from the Marshall Plan, the French government used tourism to help rebuild the country. They discovered that tourism, when done properly, could underwrite the protection and nurturing of France's culture, landscape and way of life.

In practical terms, that means tourism is promoted and subsidized, but also regulated, at all levels of government, in all matters of policy.

Tourism is considered, for example, in plans for preserving and protecting the countryside, the vineyards, forests, small villages and small farms, the coastline, the bicycling routes and the ski slopes. (France is the world's top skiing destination.) French officials debate whether Bordeaux needs another five-star hotel; which ski resort in the French Alps needs another lift; whether Provence needs more vacation rental homes.

The rules are enforced with impartiality. The special favors and corruption that mar tourism in other countries are mostly absent in France.

Patrimony and tourism feed each other. France invented the first Ministry of Culture and then spread festivals around the country to send visitors far from Paris: music in Aix-en-Provence, film and advertising in Cannes; photography in Perpignan and dance in Montpellier. Bordeaux undertook a mammoth 15-year restoration of its 18th-century historic center — a project as complicated as Boston's Big Dig — with tourism in mind, as Alain Juppé, the mayor (and a former prime minister of France), told me.

Like Copenhagen, Paris uses noise and zoning laws to keep tourism from getting out of control. And it handles the flow of tourists with the seriousness of a military operation.

The Eiffel Tower, with seven million visitors each year, is the world's most heavily visited paid attraction. Tickets are limited and timed to the half-hour. Visitors move up and down under the watch of discreet guards. The gardens surrounding the tower are kept manicured by a full-time crew of 38 workers.

Loitering is forbidden; street vendors are strictly regulated. Similar restrictions apply for other tourist spots, like the gardens of Claude Monet in nearby Giverny. Paris is, first of all, for Parisians.

That was illustrated last month in a rare standoff between tourists and locals. For several years, tourists had disfigured the Pont des Arts by hanging padlocks on the pedestrian span as a sign of love. Parisians despised these “love locks.” After several compromises failed, the city government removed them.

The United Nations World Tourism Organization projects that by 2030, global tourism will reach 1.8 billion trips a year. It is now so big that it will inevitably be part of conversations about climate change, pollution and migration. Without serious government attention, many beloved places will be at risk of being trampled and damaged — what those in the tourism industry call being loved to death.

A former New York Times reporter and the author of “Overbooked: The Exploding Business of Travel and Tourism.”


A version of this op-ed appears in print on July 19, 2015, on page SR2 of the National edition with the headline: The Revolt Against Tourism.



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

August 28, 2015

MEMORANDUM

TO: MAYOR AND CITY COUNCIL
FROM:  BRETT ESTES, CITY MANAGER
SUBJECT: AUTHORIZATION TO APPROVE IGA WITH ODOT FOR 33RD ST. & HIGHWAY 30 STREET LIGHTS

DISCUSSION/ANALYSIS

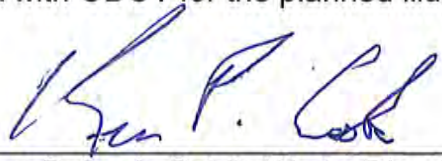
The area around the intersection of 33rd Street and Highway 30 (Safeway) is in need of illumination enhancements. This intersection currently accommodates State highway traffic, Safeway grocery store access, pedestrian users, and links the area to a well-used bus stop. City Staff worked with the Oregon Department of Transportation (ODOT) to secure funding for street light improvements, through ODOT's Quick Fix Grant program.

City Staff and ODOT prepared a plan for cost effective illumination enhancements at the intersection. A cost estimate for the improvements was completed with input from Pacific Power. The total project cost is estimated at \$34,512. The Quick Fix Grant will provide funding for the total estimated project cost. Upon completion, the project will provide better illumination in the area with the goal of improving pedestrian and vehicular safety.

To move forward with the project, Council will need to approve the attached intergovernmental agreement (IGA). The City Attorney reviewed the agreement and has approved it as to form.

RECOMMENDATION

It is recommended that City Council approve the IGA with ODOT for the planned illumination improvements.

Submitted By 
Ken P. Cook, Public Works Director

Prepared By 
Nathan Crater, Assistant City Engineer

WALKWAY/BIKEWAY PROJECT AGREEMENT
US 30 at 33rd Street (Astoria) Illumination
City of Astoria

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CITY OF ASTORIA, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party," or "Parties."

RECITALS

1. US 30 (Lower Columbia River Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). 33rd Street is a part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the public right of way.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties.
4. State established a Bicycle and Pedestrian Program fund in the Statewide Transportation Improvement Program (STIP) to meet the minimum requirement of one (1) percent of State Highway funds to be spent on Pedestrian and Bicycle facilities. The 2015-2018 STIP programs \$29 million for the Bicycle and Pedestrian Program, allocated to three (3) programs: Grants, Sidewalk Improvement Programs and Quick Fixes.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to design and install street illumination on US 30 at 33rd Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map marked "Exhibit A," attached hereto and by this reference made a part hereof.

2. Agency has determined that the total cost of the Project is estimated to be \$34,512. State shall fund the Project in an amount not to exceed \$34,512. Agency shall be responsible for any portion of the Project which is not covered by state funding.
3. The work is to begin upon execution of this Agreement by all Parties and shall be completed no later than December 31, 2016. This Agreement will terminate six (6) months after that date unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall notify State when it is prepared to proceed with the development of Project to initiate State's initial fifty (50) percent advanced deposit, as listed under State Obligations, paragraph 4.
2. Agency shall conduct the necessary field surveys, prepare plans and contract documents, advertise for bid proposals, award all contracts, and supervise construction of the Project.
3. Agency shall obtain a miscellaneous permit to occupy State right of way through the State District 1 Office prior to the commencement of construction.
4. Agency shall submit a copy of the plans and specifications to State through the State District 1 Office and the State's Pedestrian and Bicycle Program Manager for review and concurrence prior to advertising for a construction contract or, if Agency forces will perform the construction work, prior to construction. Concurrence must be received from both State offices prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Design Guide and shall comply with the most current Americans with Disabilities Act (ADA) guidelines.
5. Agency shall not award a construction contract until State's District 1 representative has reviewed and approved the low bidder's proposal and costs.
6. Agency shall, upon completion of Project, submit to State's Project Manager an itemized statement of the final actual total cost of the Project.
7. Agency shall 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 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (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.

8. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
9. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
 - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

10. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
11. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
12. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$34,512.
13. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, workers' compensation, unemployment taxes, and state and federal withholdings.
14. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
15. Agency shall, upon completion of Project, maintain the Project at its own cost and expense, and in a manner satisfactory to State.
16. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent

10. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
11. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
12. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$34,512.
13. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, workers' compensation, unemployment taxes, and state and federal withholdings.
14. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
15. Agency shall, upon completion of Project, maintain the Project at its own cost and expense, and in a manner satisfactory to State.
16. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, 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 six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

17. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
18. Agency's Project Manager for this Project is Nathan Crater, P.E., Assistant City Engineer, City of Astoria, 1095 Duane Street, Astoria, Oregon 97103; telephone (503) 338-5173; email: ncrater@astoria.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State grants authority to Agency to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 1 Office.
2. State's local District Office and Pedestrian and Bicycle Program shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract or before construction begins if Agency forces shall perform the work. State's Pedestrian and Bicycle Program office shall process all invoices submitted by Agency.
3. Upon notification from Agency, State shall conduct or assist Agency with final technical inspection of the completed Project.
4. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall deposit with Agency the sum of \$17,256, such amount being equal to fifty (50) percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, the sum of \$17,256, such amount being equal to fifty (50) percent of the State's share of the estimated Project costs. When added to the initial deposit, the final deposit will equal the State's share of the originally estimated Project cost of \$34,512. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$34,512. If final Project costs are less than original estimate, State shall deposit with Agency a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using State share and local match.

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5. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of current biennial budget.
6. State's Project Manager for this Project is Michael Schroeder, Senior Project Coordinator, 350 West Marine Drive, Astoria, Oregon 97103; telephone (503) 325-8274; email: Michael.k.schroeder@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination. If any funds are remaining from the advance deposit, they shall be refunded to State.
4. 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 State or Agency with respect to which the 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. Each 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 a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), 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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 State on the one hand and of Agency 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of 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 Agency on the one hand and of 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. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this 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.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

9. 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 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 a Party to enforce any provision of this Agreement shall not constitute a waiver by a Party of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Signature Page Follows

City of Astoria/ODOT
Agreement No. 30854

CITY OF ASTORIA, by and through its
elected officials

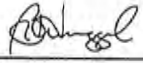
By _____
Mayor

Date _____

By _____
City Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By  _____
Agency Counsel

Date _____

Agency Contact:

Nathan Crater, P.E, Assistant City Engineer
City of Astoria Public Works Dept.
1095 Duane Street
Astoria, Oregon 97103
(503) 338-5173
email: ncrater@astoria.or.us

State Contact:

Michael Schroeder
Senior Project Coordinator
350 West Marine Drive
Astoria, Oregon 97103
(503) 325-8274
email: Michael.k.schroeder@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Active Transportation Section Manager

Date _____

APPROVAL RECOMMENDED

By _____
Pedestrian and Bicycle Program Manager

Date _____

By _____
Region 2 Manager

Date _____

By _____
Region 2 Maintenance and Operations
Manager

Date _____

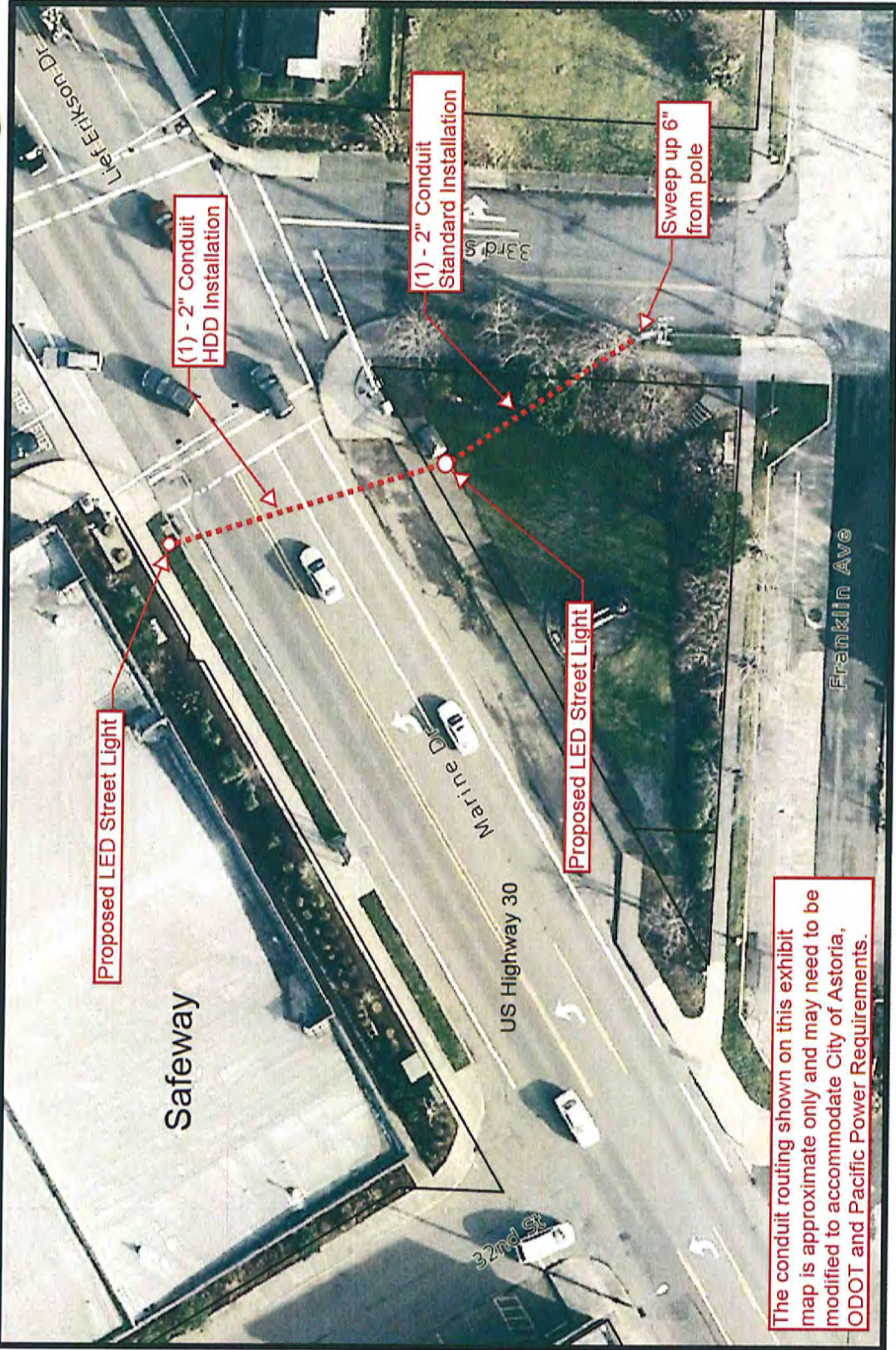
By _____
District 1 Manager

Date _____

EXHIBIT A
US30 @ 33rd St. - Street Light Exhibit Map



Map





August 27, 2015

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: BRETT ESTES, CITY MANAGER

SUBJECT: **PUMP STATION NO. 1 UPGRADES – AWARD PROGRESSIVE DESIGN BUILD CONTRACT**

DISCUSSION/ANALYSIS

The City of Astoria's wastewater treatment facility, interceptor and the main pump and lift stations were constructed in the mid-1970s. Pump Station No. 1 (PS#1) is the largest pump station in Astoria and is located in the Alderbrook neighborhood. This pump station receives approximately 95% of the City's combined sewage flows and, depending on the weather and the season, pumps between one and eighteen million gallons per day to the City's wastewater treatment plant (WWTP).

PS#1 contains three wastewater pumps with two variable speed 125 horsepower (hp) pumps and one fixed speed 75 hp pump. The system has provided reliable service for the past 40 years, but lacks peak efficiency. Replacement parts are no longer readily available and parts of the system have reached the end of their useful life. It is a credit to our wastewater treatment plant operators that this pump station has functioned for such an extended number of years.

On June 1st, Council authorized Richwine Environmental to prepare a Concept Design Report for this project, which was completed in July. The report recommended a project scope that includes replacement of the pump's variable frequency drives (VFDs) and installation of a new control system at PS#1.

In August, Council authorized soliciting proposals and utilizing a Progressive Design Build contract for this project. On August 25th, the City received two proposals for PS#1 Upgrades from Portland Engineering, Inc. and Industrial System, Inc. The selection committee used the following criteria to evaluate the proposals from both qualified firms:

- Experience and capabilities
 - Design-builder/other projects 30%
 - Key Personnel 20%
- Organization, management and safety 15%
- Project approach 15%
- Fee and rate proposal 20%

Based on the scores, Portland Engineering was chosen to negotiate a Progressive Design Build Contract in two phases. Phase 1 includes design and development of a Guaranteed Maximum Price for installation of the equipment. Portland Engineering will perform this task for a total not-to-exceed fee of \$30,000. This work will proceed on an accelerated schedule with the goal of installing upgrades prior to the winter rainy season. During Phase 1, collaboration between City staff, construction project manager and the design-builder team may recommend early procurement of long-lead time parts. This strategy will be presented to Council for authorization should it be deemed necessary. Phase 2 will consist of equipment purchase, installation, programming and training. A contract amendment for Phase 2 is anticipated to be presented to Council for authorization by the end of October. The planning level budget for Phase 2 is \$175,000; however, addition funds may be needed if bypass pumping becomes essential for the installation strategy.

Included in the Council packet is authorization of a contract amendment with Richwine Environmental for Construction Project Management. This expense was included in the project budget:

PROJECT BUDGET

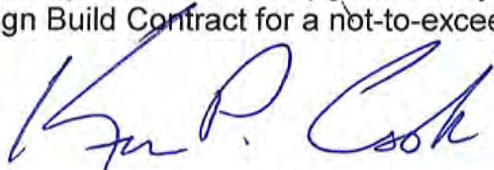
Phase 1 Progressive Design Build	\$30,000
Phase 2 Progressive Design Build	\$175,000
Construction Project Management	\$19,500
Electrical Permit	\$500
TOTAL	\$225,000

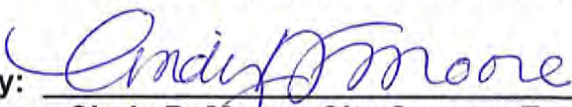
A reevaluation of the 2013 Energy Trust of Oregon Technical Analysis Study for PS#1 was requested by staff. This study evaluated the energy consumption and economics related to upgrading the pump station in order to improve energy efficiency. The grant incentive for replacing the VFDs and installing a new control system was increased from the original \$65,083 amount to \$72,940. The incentive increase is due to the change in eligible costs between then and now, especially due to the use of the alternative procurement method. Keep in mind that the final incentive will be recalculated based on measured energy savings and final delivered costs. An incentive offer has been executed with Energy Trust so eligible expenses can be incurred within the funding guidelines. Preparation of the official Energy Trust Agreement is underway and is anticipated to be presented to Council for authorization within a month.

Funding is available in the Public Works Improvement Fund and Energy Trust of Oregon incentives. The Progressive Design-Build Contract has been reviewed and approved as to form by the City Attorney.

RECOMMENDATION

It is recommended that Council award Phase 1 of the Pump Station No. 1 Upgrades Project to Portland Engineering, Inc. through a Progressive Design Build Contract for a not-to-exceed amount of \$30,000.

Submitted By: 
Ken P. Cook, Public Works Director

Prepared By: 
Cindy D. Moore, City Support Engineer

**PROGRESSIVE DESIGN/BUILD AGREEMENT
FOR
CITY OF ASTORIA PUMP STATION NO. 1 UPGRADE PROJECT**

This **AGREEMENT** is made effective as of September 9, 2015, by and between the following parties, for services in connection with the Project identified below:

OWNER:

*City of Astoria
1095 Duane Street
Astoria, OR 97103*

DESIGN-BUILDER:

*Portland Engineering, Inc.
2020 SE 7th Ave., Suite 20
Portland, OR 97214*

PROJECT:

Pump Station No. 1 Upgrades

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder now agree as follows:

Article 1.0 Scope of Work

- 1.1. **Phased Delivery.** Owner and Design-Builder will implement the Project on a phased basis.
- 1.2. **Phase 1 Services.** Owner has selected Design-Builder on the basis of Design-Builder's proposal for the performance of design, pricing, and other services for the Project during Phase 1. Design-Builder shall perform such services to the level of completion required for Design-Builder to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 1, *Phase 1*, of Attachment B, *Compensation*. The level of completion required for Phase 1 Services is defined in Attachment A, *Scope of Work* (either as a percentage of design completion or by defined deliverables).
- 1.3. **Phase 2 Services.** Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Facility, and the provision of warranty

services, all as further described in Attachment A, *Scope of Work*. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may (a) accept the Contract Price and issue a Notice to Proceed with Phase 2 services, or (b) enter into a negotiation with Design-Builder on the scope and Contract Price, and, if required, on the schedule, for Phase 2 services to achieve a mutually acceptable basis on which to proceed, or (c) reject Design-Builder's proposal for Phase 2 and either (i) cancel the Project, (ii) proceed with another Design-Builder, or (iii) exercise the "off-ramp" final design provisions of Section 1.4, *Off-Ramp*. The Contract Price for Phase 2 Services will be set forth in Section 2, *Phase 2*, of Attachment B, *Compensation*, when mutually agreed between the parties. Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 services, all as further described in Attachment A, *Scope of Work*, as it may be revised.

1.4. **Off-Ramp.**

1.4.1. The parties acknowledge that Owner's ability to successfully complete the Project may be significantly impacted if Owner elects to terminate Design-Builder's services at the end of Phase 1, rather than proceeding to Phase 2 under Section 1.3 ("Phase 2 Services") and certain design subconsultants are not available to continue working on the Project. Consequently, Design-Builder hereby agrees that if Owner terminates Design-Builder for any reason, Owner shall have the right to contract directly with such design subconsultants for design-related services on this Project, and Design-Builder shall take such steps as are reasonably necessary to enable Owner to implement such relationship. Design-Builder shall provide in any design subconsultancy agreements that Owner shall have the right to negotiate directly with such design subconsultants for the continuation of their services with respect to the Project, and that any provisions with respect to copyright or the ownership of instruments of service confirm such right of Owner.

1.4.2. If the parties are unable to reach an agreement on Design-Builder's proposed Contract Price for Phase 2 under Section 1.3 within the time limit for acceptance specified in the Proposal, as may be extended by the mutual agreement of the parties, then the proposed Contract Price shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

.1 Owner may declare Phase 1 Services completed and authorize Design-Builder to continue to advance the final design of the Project as an extension of Phase 1 or as an Additional Service, as applicable; or

.2 Owner may terminate the relationship with Design-Builder and proceed to exercise its available options to perform the final design and construction with parties other than Design-Builder.

1.4.3. If Owner fails to exercise either of its options under Section 1.4.2 in a reasonable period of time, Design-Builder may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise either of the options under Section 1.4.2 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed.

1.4.4. If Owner terminates the relationship with Design-Builder under Section 1.4.2.2, or if this Agreement is deemed completed under Section 1.4.3, then Design-Builder shall have no further liability or obligations to Owner under this Agreement

1.5. **Completion.** Once Design-Builder has received a Notice to Proceed with Phase 2, Design-Builder shall perform all design and construction services, and provide all material, equipment,

tools, labor, manuals, and start-up and commissioning services for the Project necessary to complete the Work described in and reasonably inferable from the Contract Documents. Following Substantial Completion of the Work, Design-Builder shall conduct performance tests to demonstrate that the Facility Performance Criteria have been met, as a condition for Final Acceptance

Article 2.0 Contract Documents

2.1. **Contract Documents.** The Contract Documents are comprised of the following:

.1 All written modifications, amendments and change orders to this Agreement issued in accordance with Attachment D, *General Conditions*;

.2 Written Supplementary Conditions, if any, to the General Conditions;

.3 This Agreement, including all exhibits and the following attachments:

Attachment A *Scope of Work*

Section 1 Phase 1 Scope of Work

Section 2 Phase 2 Scope of Work

Attachment B *Compensation*

Section 1 Phase 1 Services Compensation

Section 2 Contract Price for Phase 2 Services

Attachment C *Schedule*

Attachment D *General Conditions*

Attachment E *Indemnity, Insurance & Bonding*

Attachment F *Owner's Project Criteria*, including Design Criteria, Facility Performance Criteria, performance test, wage rate requirements, and MBE/WBE requirements

Attachment G *Owner's Permit List*

.4 Construction Documents prepared and reviewed in accordance with GC 2.4;

.5 The following other documents, if any, attached hereto:

Article 3.0 Interpretation and Intent

3.1. **Contract Documents.** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Phase 1 Compensation and the agreed Contract Price for Phase 2 Services. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

- 3.2. **Meanings.** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in GC 1.2.
- 3.3. **Entire Agreement.** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein in their entirety. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4.0 Ownership of Work Product

- 4.1. **Work Product.** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto.
- 4.2. **Owner’s Limited License upon Payment in Full.** Upon Owner’s payment in full for the Work performed in each Phase under the Contract Documents, Design-Builder shall be deemed to have granted Owner a limited license to use the Work Product solely in connection with Owner’s ownership, use, and occupancy of the Project. Owner shall not use the Work Product on any other project or facility without Design-Builder’s express written consent.
- 4.3. **Owner’s Limited License upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate.** If Owner terminates the Project for its convenience as set forth in Article 8.0 (“Termination for Convenience”), or if Design-Builder elects to terminate this Agreement in accordance with GC 9.5 (“Design-Builder’s Right to Terminate for Cause”), Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, be deemed to have granted Owner a limited license to use the Work Product to complete the Project and subsequently use and occupy the Project, conditioned on the following:
- .1 Use of the Work Product is at Owner’s sole risk without liability or legal exposure to Design-Builder or anyone working for or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”).
- 4.4. **Owner’s Limited License upon Design-Builder’s Default.** If this Agreement is terminated due to Design-Builder’s default pursuant to GC 9.3 (“Owner’s Right to Perform and Terminate for Cause”) and (i) it is determined that Design-Builder was in default, and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, then Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s completion, use and occupancy of the Project. This limited license is conditioned on Owner’s express understanding that its use of the Work Product is at Owner’s sole risk and without liability or legal exposure to any Indemnified Party.
- 4.5. **Owner’s Indemnification for Use of Work Product.** Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause,

Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product under Sections 4.3 or 4.4 in whole or in part, Owner agrees to defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from Owner's use of the Work Product, to the fullest extent permitted by applicable law.

Article 5.0 Contract Time

5.1. Dates of Commencement.

- 5.1.1. Design-Builder's Phase 1 Services shall commence **immediately upon receipt** of Design-Builder's receipt of Owner's Phase 1 Notice to Proceed unless the parties mutually agree otherwise in writing. The parties shall use their best efforts to complete the Phase 1 Services within **30 days** following Owner's Phase 1 Notice to Proceed.
- 5.1.2. The Phase 2 Services shall commence on the date within five (5) days of Design-Builder's receipt of Owner's Phase 2 Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2. Substantial Completion and Final Completion

- 5.2.1. Substantial Completion of the entire Work shall be achieved no later than **150 calendar days** after the Date of Commencement ("Scheduled Substantial Completion Date").
- 5.2.2. Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved in accordance with Attachment C, *Schedule*.
- 5.2.3. Final Completion of the Work or identified portions of the Work shall be achieved within **180 days** after Substantial Completion.
- 5.2.4. All of the dates set forth in this Article 5.0 shall be subject to adjustment in accordance with the General Conditions.
- 5.3. **Time is of Great Importance.** Owner and Design-Builder mutually agree that time is of great importance with respect to the dates and times set forth in the Contract Documents. Owner agrees to provide all site access, materials, information, data, and approvals required under the Contract Documents in a timely manner, as required for Design-Builder to achieve the interim milestones of the Schedule and the Scheduled Substantial Completion Date.
- 5.4. **Liquidated Damages.** Design-Builder understands that if Substantial Completion is not achieved by the Scheduled Substantial Completion Date (as it may be extended hereunder), Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not achieved by **30 days** after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner \$1,000 Dollars (\$1000) as liquidated damages for each day that Substantial Completion extends beyond the LD Date, up to a maximum of five percent (5%) of the Contract Price.

The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion.

No Liquidated Damages shall be assessed in the event that Owner takes early beneficial occupancy of the Facility or makes partial use thereof for operating or commercial purposes before Substantial Completion is achieved.

Article 6.0 Compensation and Contract Price

- 6.1. **Phase 1 Compensation.** For the Phase 1 Services, Owner shall pay Design-Builder compensation in accordance with Section 1, *Phase 1*, of Attachment B, *Compensation*.
- 6.2. **Phase 2 Contract Price.** For the Phase 2 Services, Owner shall pay Design-Builder in accordance with Section 2, *Phase 2*, of Attachment B, *Compensation*, an agreed Contract Price equal to Design-Builder's Fee (as defined in Attachment B) plus the Cost of the Work (as defined in Attachment B), subject to adjustments made in accordance with the General Conditions.

Article 7.0 Procedure for Payment

7.1. Payment for Phase 1 Services

- 7.1.1. Owner shall compensate Design-Builder monthly for Phase 1 Services performed under the Agreement.
- 7.1.2. Owner shall pay Design-Builder for Phase 1 Services within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with the provisions of GC 5.1 ("Payment for Phase 1 Services") and 5.4 ("Withholding of Payments").

7.2. 7.2 Progress Payments for Phase 2 Services

- 7.2.1. An initial payment of zero dollars (\$ 0.00) shall be made upon execution of this Agreement and credited to Owner's account at final payment.
- 7.2.2. Design-Builder shall submit to Owner on or before the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with GC 5.3 ("Monthly Progress Payments for Phase 2 Services").
- 7.2.3. Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with GC 5.3, but in each case less the total of payments previously made, and less any amounts properly withheld under GC 5.4 ("Withholding of Payments") and Section 7.3 below ("Retainage on Progress Payments").
- 7.2.4. If Design-Builder's Fee is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.3. Retainage on Progress Payments

- 7.3.1. Owner will retain **five percent (5%)** of each Application for Payment *provided, however*, that when fifty percent (50%) of the Work has been completed by Design-Builder, and if the Work is proceeding satisfactorily, then Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.
- 7.3.2. Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to GC 5.7 ("Substantial Completion"), Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion or other withholdings pursuant to GC 5.4.
- 7.4. **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with GC 5.8 ("Final Payment"). Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in GC 5.8.2.
- 7.5. **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear daily interest commencing five (5) days after payment is due at the rate equivalent to twelve percent (12%) per annum, or the maximum rate permitted by applicable law, whichever is less, which Owner shall pay upon presentation of an invoice therefor.
- 7.6. **Record Keeping and Financial Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work, including the development and agreement upon the Contract Price for Phase 2 Services. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and in such accounts as may be necessary for Owner's utility accounting purposes. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment, *provided, however*, that such access, review, and audit rights shall not extend to any compensation amounts established on the basis of fixed rates for overhead or fee, or an agreed fixed sum, or unit rates for any element of cost.

Article 8.0 Representatives of the Parties

8.1. Owner's Representatives

- 8.1.1. Owner designates the individual listed below as its Senior Representative (“Owner’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under GC 8.2.3:

Ms. Cindy Moore, P.E.
City of Astoria
1095 Duane Street
Astoria, OR 97103
503.338.5173

- 8.1.2. Owner designates the individual listed below as its Owner’s Representative, which individual has the authority and responsibility set forth in GC 3.4 (“Owner’s Representative”):

Reynold D. “Dale” Richwine, P.E.
Project Manager
Richwine Environmental, Inc.
16360 NW Paisley Drive
Beaverton, OR 97006
503.858.5153

8.2. Design-Builder’s Representatives

- 8.2.1** Design-Builder designates the individual listed below as its Senior Representative (“Design-Builder’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under GC 8.2.3:

Greg Chase
Project Manager
Portland Engineering, Inc.
2020 SE 7th Ave., Suite 20
Portland, OR 97214
503.256-7718

- 8.2.2** Design-Builder designates the individual listed below as its Design-Builder’s Representative, which individual has the authority and responsibility set forth in GC 2.1.1: *(Identify individual’s name, title, address and telephone numbers)*

Greg Chase
Project Manager
Portland Engineering, Inc.
2020 SE 7th Ave., Suite 20
Portland, OR 97214
503.256-7718

Article 9.0 Indemnity, Insurance and Bonds

- 9.1. **Indemnity.** Indemnification obligations between the parties shall be as set forth in Article 4.0, above, and in Section 1.0, *Indemnity*, of Attachment E, *Indemnity, Insurance & Bonding*.
- 9.2. **Insurance.** The parties shall procure the insurance coverages set forth in Attachment E, *Indemnity, Insurance & Bonding*, in accordance with the General Conditions.
- 9.3. **Bonds and Other Performance Security.** If so required, Design-Builder shall provide a performance bond and labor and material payment bond or other performance security in accordance with Section 8.0, *Bonds*, of Attachment E, *Indemnity, Insurance & Bonding*.

Article 10.0 Other Provisions

- 10.1. Other provisions, if any, are as follows: (Insert any additional provisions)

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

DESIGN-BUILDER :

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

ATTACHMENT A SCOPE OF WORK

SECTION 1 PHASE 1

- 1.0 Design-Builder shall exercise reasonable skill and judgment in the furnishing of design services. Architectural and engineering services shall be furnished by licensed employees of Design-Builder, or by consultants or subcontractors as permitted by the law of the state where the Project is located. Design-Builder is responsible for the following Preliminary Design-Build Services:
- 1.1. **Preliminary Evaluation.** Design-Builder shall provide a preliminary evaluation of the Project's feasibility based on the Owner's Program and other relevant information.
 - 1.2. **Preliminary Schedule.** Design-Builder shall provide a preliminary schedule for Owner's written approval. The schedule shall show the activities of Owner and Design-Builder necessary to meet Owner's completion requirements.
 - 1.3. **Preliminary Estimate.** Design-Builder shall prepare for Owner's written approval a preliminary estimate utilizing area, volume, or similar conceptual estimating techniques. The level of detail for the estimate shall reflect the Owner's Program and any additional available information. If the preliminary estimate exceeds Owner's budget, Design-Builder shall make written recommendations to Owner.
 - 1.4. **Preliminary Design Documents.** Design-Builder shall submit for Owner's written approval Preliminary Design Documents, based on the Owner's Program and other relevant information. Preliminary Design Documents shall include drawings, outline specifications and other conceptual documents as further defined herein illustrating the Project's basic elements, scale and their relationship to the site. One set of these Documents shall be furnished to Owner. Design-Builder shall update the preliminary schedule and preliminary estimate based on the Preliminary Design Documents.
 - 1.5. **Division of Responsibility.** Design-Builder shall prepare for Owner's review a proposed Division of Responsibility with respect to the Project, showing (a) equipment, materials, labor, and services to be provided by Design-Builder, (b) access, equipment, materials, data, information, and approvals to be provided by Owner, and (c) any items necessary for the Project to be provided by third parties.
 - 1.6. **Contract Price Proposal.** Based on the Preliminary Design-Build Services, Design-Builder shall prepare for Owner's consideration a proposed Contract Price for the Phase 2 Services.
 - 1.7. **Additional Services.** Design-Builder shall provide the following additional services, if any:
 - 1.7.1.1. Phase One Deliverables: It is the intent of the PEI/TEC project approach to prepare a complete design package prior to the development

of the GMP for construction. PEI/TEC will provide a complete set of design documents that will include the following:

- Basic site plans for site location and site data.
- Plan view layout for location of instruments, conduit and MCC.
- Electrical one-line drawings.
- MCC elevation drawings and electrical schematics.
- Conduit and wire schedule.
- Control Panel design and wiring schematics.
- Control Narratives
- Pump motor model number and shaft connection materials list.
- VFD and electrical component Bill of Materials.
- Temporary MCC and control installation drawings and temp control narrative.
- Construction Schedule.
- GMP pricing.

SECTION 2 PHASE 2

2.1. Completion of Design

2.1.1. Drawings and Specifications

Design-Builder shall submit for Owner's review and written comment Drawings and Specifications based on the Contract Documents and the Preliminary Design Documents prepared under Phase 1 and any further development of Contract Documents that have been approved in writing by Owner. The Drawings and Specifications shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws or regulations enacted at the time of their preparation, *provided, however*, that if such codes, law, or regulations have changed between the date on which Design-Builder submitted its proposed Contract Price and the date of preparation, then Design-Builder shall be entitled to an equitable adjustment in the compensation and/or the Schedule. Construction shall be in accordance with these approved Drawings and Specifications. One set of these documents shall be furnished to Owner prior to commencement of construction.

2.1.2 Manuals

Design-Builder shall provide a Commissioning and Startup Manual and an Operations and Maintenance Manual for the Facility, each in such form and in such numbers as the parties may agree, and such other manuals as the parties may agree. All such manuals shall be provided no later than fourteen (14) days prior to the scheduled date for the commissioning and startup of the Facility.

2.2 Construction Services

2.2.1 Notice to Proceed

Following Owner's written acceptance of Drawings and Specifications under Paragraph 2.1.1 above, Design-Builder will commence the performance of Construction Services.

2.2.2 Completion

In order to complete the Work, Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

2.2.3 Compliance

Design-Builder shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

2.2.4 Schedule

Design-Builder shall prepare and submit a Schedule of Work in the form of a revised Attachment C, *Schedule*, for Owner's written approval. This Schedule shall indicate the dates for the start and completion of the various stages of the construction including the dates when information and approvals are required from Owner. It

shall be revised as required by the conditions of the Work. The Schedule of Work shall be the basis for Design-Builder's management and control of the project and its reporting of progress to Owner.

2.2.5 Permits

Design-Builder shall assist Owner in securing the building permits necessary for the construction of the Project.

2.2.6 Safety and Hazardous Conditions

Design-Builder shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Site. Design-Builder, directly or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. However, Design-Builder shall not be responsible for the elimination or abatement of any pre-existing Hazardous Materials at the site or any safety hazards created or otherwise resulting from work at the Site carried on by Owner or its employees, agents, separate contractors or tenants. Owner agrees to cause its employees, agents, separate contractors, and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

2.2.7 Reports

As provided in GC 2.1.2, Design-Builder shall provide monthly written reports to Owner on the progress of the Work including a system of cost reporting for the Work, and also including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work.

2.2.8 Site Maintenance

At all times Design-Builder shall maintain the Site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, Design-Builder shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

2.3 Hazardous Material

2.3.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. Design-Builder shall not be obligated to commence or continue Work until any known or suspected Hazardous Material discovered at the Site has been removed,

rendered or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

2.3.2 If after the commencement of the Work, known or suspected Hazardous Material or Hazardous Conditions are discovered at the Site, Owner and Design-Builder shall proceed in accordance with the requirements of GC 4.1 (“Hazardous Conditions & Differing Site Conditions”).

2.4 Patents & Copyright

2.4.1 Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Design-Builder and incorporated in the Work. Design-Builder agrees to defend, indemnify and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

2.4.2 Owner shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Owner or specified in the Performance Criteria or bridging documents to be incorporated in the Work. Owner agrees to defend, indemnify and hold Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any such patented or copyrighted materials, methods or systems specified by Owner.

2.5 Warranties and Completion

2.5.1 Design-Builder’s warranty to Owner with respect to construction, including all materials and equipment furnished as part of the construction, shall be as specified in GC 2.9 (“Design-Builder’s Warranty”).

2.5.2 Design-Builder’s warranty to Owner with respect to the performance of the Facility upon completion shall be as specified in GC 2.11 (“Performance Warranty”).

2.5.3 Those products, equipment, systems or materials incorporated in the Work at the direction of or upon the specific request of Owner shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof.

2.5.4 All other warranties, express or implied, including any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.

2.5.5 Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to Owner.

2.5.6 Design-Builder shall collect all written warranties and equipment manuals and deliver them to Owner.

2.5.7 With the assistance of Owner's maintenance personnel, Design-Builder shall direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their commissioning and initial start-up and testing, all in accordance with the Commissioning and Startup Manual to be provided by Design-Builder.

2.6 Limitations of Liability

2.6.1 Limitation of Liability. Design-Builder's liability for Owner's damages for any cause or combination of causes (including any liquidated damages), whether based upon contract, tort, breach of warranty, negligence, strict liability, or otherwise, shall be limited as set forth in General Condition GC 2.11 ("Limitations of Liability").

2.7 Additional Services

Design-Builder shall provide or procure the following Additional Services upon the request of Owner unless such services are specifically included in the Owner's Program or in an attachment to this Agreement. A written agreement between Owner and Design-Builder shall define the extent of such Additional Services and compensation therefor.

2.7.1 Making revisions to the Preliminary Design, Design Development, or Construction Documents after they have been reviewed by Owner, and which are due to causes beyond the control of Design-Builder.

2.7.2 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

2.7.3 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.

2.7.4 The premium portion of overtime work ordered by Owner including productivity impact costs.

2.7.5 Document reproduction exceeding the allowances provided for in this Agreement.

2.7.6 Services requested by Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design, construction and start-up and commissioning practice.

2.7.7 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

2.7.8 Preparing reproducible record drawings from marked-up prints, drawings or other documents that incorporate significant changes in the Work made during the Construction Phase.

2.8 Subcontractors. Work not performed by Design-Builder with its own forces shall be performed by Subcontractors. The provisions of this Agreement and the associated Contract Documents shall be incorporated into all major subcontracts for construction.

2.8.1 Retaining Subcontractors Design-Builder shall not retain any Subcontractor to whom Owner has a reasonable and timely objection, *provided* that Owner agrees to compensate Design-Builder for any additional costs incurred by Design-Builder as provided in GC 2.7.3. Design-Builder shall not be required to retain any Subcontractor to whom Design-Builder has a reasonable objection.

2.8.2 Management of Subcontractors Design-Builder shall be responsible for the management of Subcontractors in the performance of their work.

2.8.3 Assignment of Subcontract Agreements Design-Builder shall provide for assignment of subcontract agreements in the event that Owner terminates this Agreement for cause as provided in GC 11.2 ("Owner's Right to Perform and Terminate for Cause"). Following such termination, Owner shall notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

2.9 Deliverables: The construction phase will be led by PEI as the General Contractor. Team Electric will be the primary sub-contractor and account for the majority of the installation labor. TEC on site supervisor will coordinate the day-to-day on site construction and supervise TEC own sub-contractors as required. PEI will assign Jim Evans to manage the Phase Two of the project and would report to the City of Astoria on progress and prepare payment submittals. Construction meetings would take place on a regular basis to coordinate with the City of Astoria so that all risk is mitigated. Startup and testing would of both the PEI/TEC planned temporary MCC installation along with the full MCC will need to be coordinated and accepted by the City of Astoria. Billing will be monthly based upon labor, costs and fees as agreed within the GMP contract.

2.9.1 Safety: PEI and TEC always review Safety procedures during construction, and both companies have outstanding safety records. A weekly construction meeting will always include specific safety issues, but a key to project safety is the day-to-day safety awareness that comes from utilizing experienced and trained staff and sub-contractors that understand that safety is the top priority. Prior to construction commencement at the Pump Station, the PEI/TEC will work with the Owner to develop a project construction safety plan. This plan will include Owner's

commitment to safety and establish procedures for Owner's operation of the pump station during construction to maintain Owner's and Contractor's safety.

2.9.2 Installation: The motors will be selected and verified for the environment and duty they are utilized in. They will be *VFD* rated. Connection to the existing shaft will be planned and coordinated with the manufacture. Consultation and coordination with the Owner during installation will be key at this phase. The permanent MCC will be designed around an Allen Bradley *VFD*. PEI has personnel that are certified for Allen Bradley startup and the certifications allows the City of Astoria to benefit from an extended warranty period with a manufacture's certified startup. The installation will typically include a section of the MCC for the control panel backpan. Wiring will be per design and meet code compliance utilizing the best materials and installation by experienced personnel. Installation of the level sensors, floats and other instruments will be by TEC under the direction of PEL. A local operator interface panel (OIT) will be included such that testing and operation can be done locally. Prior review and approval of the OIT screens by the Owner will be necessary prior to startup. Telemetry I/O will be reconnected per the existing telemetry system.

2.9.3 System Startup and Commissioning: The key to success with Startup and Commissioning is both experience and the proper development of a site specific Startup and Commissioning Plan. PEI and TEC have successfully worked together on a number of projects that included Startup and Commissioning. PEI's experience and dedicated approach will lend to a smooth transition from temporary pump operation to Startup Testing to Commissioning period and on to Owner's operation. Testing documentation will be developed prior to Startup and Commissioning that will be reviewed and approved by Owner. Training will be completed both during the startup and commissioning phase along with dedicated training per an approved training agenda.

2.9.4 Phase Two Deliverables

- Quality construction that meets the design.
- Temporary controls and pumping that allows full operation during construction.
- Construction completed with Safety being the highest goal.
- Startup and commissioning that is planned and coordinated with the Owner to allow for Owner's acceptance.
- Billing that is clear and meets the contract needs of the City.
- Communication between the City and PEI/TEC during the course of construction through completion.

SECTION 3 OWNER'S RESPONSIBILITIES

3.1 Information and Services Provided by Owner

3.1.1 Owner shall provide full information regarding requirements for the Project, including the Owner's Program, Performance Criteria, bridging documents, and other relevant information, within the times specified in Attachment C, *Schedule*.

3.1.2 Owner shall provide:

1. all necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, utilities, reports and investigations;
2. inspection and testing services during construction as required by law or as mutually agreed; and
3. unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, necessary permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other require services.

3.1.3 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and services required by this Section 3.1.

3.2 Owner's Responsibilities during Phase 1

3.2.1 If not developed by Owner and Design-Builder under a prior agreement, Owner shall provide the Owner's Program at the inception of the Design Phase. Owner shall review and timely approve schedules, estimates, and design documents furnished during the Design Phase as set forth in Section 3.1.

3.2.2 Owner shall arrange for access to and make all provisions for Design-Builder to enter upon public and private property as required for Design-Builder to perform Phase 1 services hereunder.

3.2.3 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and documents to be provided by Owner under this Section 3.2.

3.3 Owner's Responsibilities during Phase 2 Design and Construction

3.3.1 Owner shall review and approve the Schedule as set forth in Attachment C, *Schedule*, as revised.

3.3.2 If Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give written notice to Design-Builder within five (5) days of so becoming aware.

3.3.3 Unless otherwise agreed by Design-Builder, Owner shall communicate with Design-Builder's Subcontractors, Suppliers, and Design Consultants only through Design-Builder. Owner shall have no contractual obligations to Subcontractors or Suppliers or Design Consultants.

3.3.4 Owner may provide insurance for the Project as provided in Attachment E, *Indemnity, Insurance & Bonding*.

3.3.5 Owner shall provide timely, clear and adequate access to the site and any laydown areas.

3.3.6 Owner shall provide all equipment, materials, information, data, and approvals required for Design-Builder's performance of the Work in a timely and complete manner.

3.3.7 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and documents to be provided by Owner under this Section 3.3.

3.4 Owner's Representative

Owner's representative, designated in writing and agreed to by Design-Builder:

- .1 shall be fully acquainted with the Project;
- .2 agrees to furnish the information and services required of Owner when required so as not to delay the performance of the Work; and
- .3 have authority to bind Owner in all matters requiring Owner's approval, authorization or written notice.

If Owner changes its representative or the representative's authority as listed above, Owner shall notify Design-Builder in advance in writing. Design-Builder shall have the right to approve any successor representative.

ATTACHMENT B COMPENSATION

SECTION 1 PHASE 1 SERVICES

Services will be billed at labor cost plus expenses with a maximum fee of \$30,000.

D. Phase I Table of Salary Costs

Employee Name	Firm	Employee Class	Hourly Rate (\$)
Gregory Chase	Portland Engineering, Inc.	Project Manager	\$140
Carl Serpa	Portland Engineering, Inc.	Lead Engineer	\$140
James Evans	Portland Engineering, Inc.	Controls Specialist	\$120
Chris Gardella	Portland Engineering, Inc.	Controls Specialist	\$120
Mike Trusheim	Team Electric	President	\$126
Garrett Kitchen	Team Electric	Project Manager	\$126
Doug Wolard	Team Electric	Project Manager	\$126
Kenny Calmer	Team Electric	Estimator	\$126

SECTION 2 CONTRACT PRICE FOR PHASE 2 SERVICES

1.0 Choice of Compensation Method for Phase 2 Services

1.1 The parties may elect to use the Guaranteed Maximum Price ("GMP") form of compensation for the Phase 2 Services, or a fixed Contract Price, or cost-reimbursable compensation with a Fixed Fee. If the GMP form of compensation is to be used, it may be agreed upon before the execution of this Agreement or will be developed and agreed upon for Phase 2 services. If the parties do not use a GMP, then the compensation to Design-Builder shall be a fixed Contract Price developed in accordance with Section 3.0, or shall be based on those fees and costs identified in Section 4.0.)

2.0 Guaranteed Maximum Price

2.1 Use of a GMP Agreed upon Execution of this Agreement

2.1.1 Design-Builder agrees that upon Owner's request it will submit its proposal for the Contract Price on the basis of a Guaranteed Maximum Price for the Phase 2 Services. Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as a basis for the GMP shall be identified in an agreed revision to this Attachment.

2.1.2 The GMP will include a Contingency which is available for Design-Builder's exclusive use for costs that are incurred in performing the Work that are not

included in a specific line item or the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, acceleration, costs in correcting defective, damaged or nonconforming Work, design errors or omissions, and Subcontractor defaults. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner with notice of all anticipated charges against the Contingency included in the Contract Price or which may impact Owner's Project budget contingency.

2.1.3 If the parties so agree, the Phase 2 Services may be divided into separate work packages or task orders, and Design-Builder shall propose and Owner shall consider for acceptance a separate GMP for each such work package or task order.

2.2 GMP Established at the Commencement Date of Phase 2

2.2.1 GMP Proposal. If requested by Owner, Design-Builder shall submit to Owner a GMP Proposal for the Contract Price as part of the Phase 1 Services which shall include the following, unless the parties mutually agree otherwise:

- .1 A proposed GMP, which shall be the sum of:
 - i. Design-Builder's Fee as defined in Section 2, *Phase 2*, of Attachment B, *Compensation*;
 - ii. the estimated Cost of the Work as defined in Section 2, *Phase 2*, of Attachment B, *Compensation*, inclusive of any Design-Builder's Contingency as defined in Section 1.1.2 above; and
 - iii. if applicable, any prices established under Section 2, *Phase 2*, of Attachment B, *Compensation*.
- .2 A list of the drawings and specifications, including all addenda, used as the basis for the GMP proposal;
- .3 A list of the assumptions, exceptions, and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;
- .4 The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Paragraph 5.2.1 of the Agreement, and a schedule upon which the Scheduled Substantial Completion Date is based;
- .5 If applicable, a list of allowances and a statement of their basis;
- .6 If applicable, a schedule of alternate prices;
- .7 If applicable, a schedule of unit prices;

.8 If applicable, a statement of Additional Services; and

.9 The time limit for acceptance of the GMP Proposal.

2.2.2 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

2.2.3 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may it be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

2.2.4 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.2.3 above;

.2 Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 2, *Phase 2*, of Attachment B, *Compensation*, without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

.3 Owner may terminate this Agreement for convenience in accordance with GC 9.2 ("Termination for Convenience").

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item .2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with GC 9.4 ("Design-Builder's Right to Stop Work").

2.2.5 Conversion. The parties may agree at any time to convert the agreed GMP to a Fixed Contract Price for the completion of the Phase 2 Services.

2.3 Basis. Documents used as a basis for the GMP shall be identified in a mutually agreed revision to this Attachment.

3.0 Fixed Contract Price

3.1 If the parties initially agree that the Phase 2 Services shall be performed on the basis of a Fixed Contract Price, then the Design-Builder shall develop the proposed Contract Price on an “open book” basis and present it to Owner for review and approval.

3.2 Once the Fixed Contract Price is agreed, then this Agreement shall be amended to establish the Fixed Contract Price as the basis for the performance of the Phase 2 Services.

4.0 Cost Reimbursable plus Design-Builder’s Fee

4.1 If the parties agree that the Phase 2 Services shall be performed on a Cost Reimbursable basis plus a Fixed Design-Builder’s Fee, then the Design-Builder shall develop an estimated Contract Price on an “open book” basis and present it to Owner for review and approval.

4.2 The cost-reimbursable elements of the Work shall be those set forth in Section 4.4 (“Cost of the Work”).

4.3 Design-Builder’s Fee shall be: five percent (5%) profit on the Cost of the Work, as adjusted in accordance with Section 4.3.1 below.

4.3.1 Design-Builder’s Fee will be adjusted as follows for any changes in the Work:
*Cost of Work * 1.15*

4.4 Cost of the Work.

The term “Cost of the Work” shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner’s agreement, at locations off the Site, *provided, however*, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

.2 Wages or salaries of Design-Builder’s supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices and performing design and Project administration functions. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall be at the scheduled billable rate to compensate Design-Builder for the Project-related overhead associated with such personnel.

.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Paragraphs 2.2.1 through 2.2.3 hereof.

.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work, *provided* that such defective, damaged or nonconforming Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, Design-Builder shall use its best efforts to obtain recovery from the appropriate source and credit Owner if recovery is obtained.

.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, vehicles, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

.10 Costs of removal of debris and waste from the Site.

.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

.14 All fuel and utility costs incurred in the performance of the Work.

.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

.16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, *provided* such costs do not arise from disputes between Owner and Design-Builder.

.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

.20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

.21 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

4.5 Non-Reimbursable Costs

The following shall be excluded from the Cost of the Work:

.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Paragraphs 4.4.1, 4.4.2 and 4.4.3 hereof.

.2 Overhead and general expenses, except as provided for in Section 4.4.2 hereof, or which may be recoverable for changes to the Work.

.3 The cost of Design-Builder's capital used in the performance of the Work.

4.6 Contract Price

The Contract Price shall be the sum of the Design-Builder's Fee under Section 4.3 plus the amount agreed between Owner and Design-Builder for the Cost of the Work under Section 4.4.

ATTACHMENT C SCHEDULE

Phase I Services

The goal of this project is to complete the Phase I services are to be completed by October 15, 2015 following a NTP on September 9, 2015.

Phase II Services

The goal of this project is to complete the Phase II services prior to December 1, 2015. The project must be finalized prior to 180-days following Notice-to-Proceed.

**ATTACHMENT D
GENERAL CONDITIONS**

ATTACHMENT D GENERAL CONDITIONS

GC 1.0 General

7.13 Mutual Obligations

- 7.13.5 Owner and Design-Builder agree to cooperate fully with each other at all time, to permit each party to realize the benefits afforded under the Contract Documents.
- 7.13.6 These General Conditions ("GC") may be supplemented, varied, or revised through Supplementary Conditions ("SC"), as attached.

7.14 Basic Definitions

- 7.14.5 *Agreement* refers to the executed contract between Owner and Design-Builder with respect to the Project.
- 7.14.6 *Bonus Date* has the meaning given in Section 5.5 of the Agreement.
- 7.14.7 *Change in Law* has the meaning given in GC 8.1.2.
- 7.14.8 *Changed Condition* has the meaning given in GC 8.1.
- 7.14.9 *Change Order* has the meaning given in GC 7.1.
- 7.14.10 *Construction Warranty* has the meaning given in GC 2.9.
- 7.14.11 *Construction Warranty Period* is that period specified in GC 2.10.1.
- 7.14.12 *Contract Documents* has the meaning given in Section 2.1 of the Agreement.
- 7.14.13 *Contract Price* has the meaning given in Section 6.2 of the Agreement and Section 2, Phase 2, of Attachment B, Compensation.
- 7.14.14 *Contract Time(s)* shall mean the times for performance of the Work by Design-Builder and the delivery of items and approvals by Owner set forth in Article 5 ("Contract Time") of the Agreement and Attachment C, Schedule.
- 7.14.15 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- 7.14.16 *Design Consultant*, if any, is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.
- 7.14.17 *Design Criteria* means those documents which define the Owner's criteria for the scope, quality, and function of the proposed facility, and which may be expanded to outline Owner's project cost limitations and schedule requirements.
- 7.14.18 *Differing Site Conditions* has the meaning given in GC 4.2.1.
- 7.14.19 *Early Completion Bonus* has the meaning given in Section 5.5 of the Agreement.
- 7.14.20 *Electronic Data* has the meaning given in GC 11.1.1.
- 7.14.21 *Extended Performance Warranty* is Design-Builder's warranty under GC 2.11.2 that the completed Facility shall be capable of meeting the Performance Standards in Attachment F throughout the

Performance Warranty Period.

- 7.14.22 *Facility* is the physical facility to be designed and constructed for Owner as part of the Project.
- 7.14.23 *Facility Performance Criteria* means the Owner's criteria for the performance of the Facility once constructed, and may be divided into two parts, (i) program requirements such as the physical, functional, and quantitative needs of the project, and (ii) performance requirements for the Facility and its component parts, including considerations of the specified quantitative and qualitative limits for inputs, the desired condition of Facility outputs, and the efficiency of the Facility in producing such outputs.
- 7.14.24 *Final Acceptance* of the Project shall be deemed to have occurred upon final payment pursuant to GC 5.8.
- 7.14.25 *General Conditions* refer to this Attachment D, *General Conditions*.
- 7.14.26 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or which handling, storage, remediation, or disposal are regulated by applicable Legal Requirements.
- 7.14.27 *Hazardous Materials* has the meaning given in Section 2.3 of Attachment A, Scope of Work.
- 7.14.28 *Indemnified Parties*, with respect to Work Product, has the meaning given in Section 4.3.1 of the Agreement.
- 7.14.29 *Legal Requirements* are all federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work which are applicable as of the date of Design-Builder's proposal to Owner, and, subject to the Change in Law provisions of GC 8.1.2, which become applicable during the Contract Time.
- 7.14.30 *Liquidated Damages* means such damages as may be assessed under Section 5.4 of the Agreement.
- 7.14.31 *Liquidated Damages Date* has the meaning given in Section 5.4 of the Agreement.
- 7.14.32 *Manuals* means the Commissioning and Startup Manual and the Operations and Maintenance Manual provided for in Section 2.1.2 of the Agreement, and such other manuals as the parties may agree to be provided.
- 7.14.33 *Owner's Program* means the overall definition of Owner's requirements for the Project, including Owner's Project Criteria, all materials, equipment and other items to be provided by Owner, and all items to be provided by third parties.
- 7.14.34 *Owner's Project Criteria* are developed by or for Owner to describe Owner's Program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, Design Criteria, Facility Performance Criteria, performance test, wage rate requirements, MBE/WBE requirements, and other Project-specific technical materials and requirements.
- 7.14.35 *Owner's Representative* means the individual selected and authorized by Owner to act upon Owner's behalf with respect to Design-Builder and the performance of this Agreement, in accordance with GC 3.4, and identified by Owner in writing within ten (10) days of execution of this Agreement.
- 7.14.36 *Performance Warranty* has the meaning given in GC 2.11.

- 7.14.37 *Performance Warranty Period* means the period ending ___ months following successful completion of the performance tests.
- 7.14.38 *Project* is the design and construction of the Owner's Facility, including start-up and the provision of manuals, warranties, as-built drawings and specifications, spare parts, and all other items required to be provided under this Agreement.
- 7.14.39 *Schedule* means that Schedule for the performance of the Work in accordance with the Contract Time(s) set forth in Attachment C, *Schedule*, as revised from time to time.
- 7.14.40 *Site* is the land or premises on which the Facility is located, including any separate laydown or storage areas.
- 7.14.41 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.
- 7.14.42 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.
- 7.14.43 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- 7.14.44 *Certificate of Substantial Completion* is that Certificate issued by Owner to Design-Builder pursuant to GC 5.7.1.
- 7.14.45 *Uncontrollable Circumstances* are those acts, omissions, conditions, events, or circumstances beyond the control of Design-Builder and due to no fault of its own or those for whom Design-Builder is responsible. By way of example (and not limitation), Uncontrollable Circumstances include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other circumstances beyond the reasonable control of the party affected.
- 7.14.46 *Work* is comprised of all Design-Builder's design, construction, start-up, warranty, and other services required to by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents, plus manuals and documentation required by the Contract Documents.

8 GC 2.0 Design-Builder's Services and Responsibilities

8.13 General Services

- 8.13.5 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.
- 8.13.6 Design-Builder shall provide Owner on a monthly basis a status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, (iv) other items require resolution so as not to

jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s), and (v) such other items as Owner may reasonably require.

- 8.13.7 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by GC 2.1.4, a preliminary schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). When agreed between the parties, such schedule shall be attached hereto as Attachment C, Schedule. The Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- 8.13.8 The parties will meet, within seven (7) days after execution of the Agreement, to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals, review and approval turn-around times contained in the Schedule, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.
- 8.13.9 At the completion of Phase 1 Services, the parties may agree upon a revised Schedule to reflect the intended scope of Phase 2 Services and as the basis for the Contract Price to be agreed for the Phase 2 services.

8.14 Design Professional Services

- 8.14.5 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from a qualified, independent licensed Design Consultant, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any independent Design Consultant.

8.15 Standard of Care for Design Professional Services

- 8.15.5 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Design-Builder, its Design Consultants, and its Subcontractors may reasonably rely on the accuracy and completeness of Owner's Project Criteria.

8.16 Design Development Services

- 8.16.5 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Such agreement may specify the percentage completion of the design documents to be submitted for such review and comment. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner

shall review and comment on the interim design submissions in a time frame that is consistent with the turnaround times set forth in the Schedule.

- 8.16.6 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and may comment on the Construction Documents in accordance with the procedures set forth GC 2.4.1. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.
- 8.16.7 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.
- 8.16.8 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

8.17 Legal Requirements

- 8.17.5 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 8.17.6 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

8.18 Government Approvals and Permits

- 8.18.5 Except as identified in Attachment G, *Owner's Permit List*, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.
- 8.18.6 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

8.19 Design-Builder's Phase 2 Construction Services

- 8.19.5 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.
- 8.19.6 Design-Builder shall perform all construction activities efficiently and with the requisite skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

- 8.19.7 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.
- 8.19.8 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts, errors or omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 8.19.9 Design-Builder shall coordinate the activities of all Subcontractors.
- 8.19.10 If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. Unreasonable disruption or interference by Owner's separate contractors may result in a request for a Contract Adjustment under GC 8.1.3.
- 8.19.11 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas.
- 8.19.12 Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.

8.20 Design-Builder's Responsibility for Project Safety

- 8.20.5 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work, and shall develop a Project Safety Program which shall be implemented at the Project Site during the performance of the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project other than safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.
- 8.20.6 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents and incorporated into the Project Safety Program, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing

any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

- 8.20.7 Design-Builder's responsibility for safety under this GC 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- 8.20.8 Owner shall require that its officers, employees, guests, visitors, and other contractors entering the Project Site comply with the Project Safety Program then in effect.

8.21 Construction Warranty

- 8.21.5 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable.
- 8.21.6 Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this GC 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

8.22 Correction of Defective Work

- 8.22.5 **Construction Warranty Period.** Design-Builder agrees to correct any Work that is found not to be in conformance with the Contract Documents, including that part of the Work subject to GC 2.9, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.
- 8.22.6 **Correction of Non-Conforming Work.** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner may, in addition to any other remedies provided under the Contract Documents, provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.
- 8.22.7 The one (1) year period referenced in GC 2.10.1 applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

8.23 Performance Warranty

- 8.23.5 Design-Builder warrants to Owner that the Facility will meet the Performance Warranty set forth in Attachment F, *Owner's Project Criteria*, including Design Criteria and Facility Performance Criteria. Such Performance Warranty shall apply when Design-Builder has achieved Substantial Completion and the Facility has been commissioned and started up in accordance with Design-Builder's Commissioning and Start-up Manual, and is being maintained and operated by Owner's personnel in accordance with the Operations and Maintenance Manual for the Facility. Such Performance Warranty shall be satisfied upon successful completion of the Performance Tests set forth in Attachment F.
- 8.23.6 Design-Builder also warrants, subject to GC 2.11.3 and 2.11.4, that the completed Facility shall be capable of meeting the Performance Standards in Attachment F throughout the Performance Warranty Period ("Extended Performance Warranty").
- 8.23.7 Design-Builder shall have no responsibility under the Extended Performance Warranty to the extent that any failure of the Work is due to: (1) Owner action or non-action, such as (i) provision of inadequate staffing, (ii) failure to operate or maintain the Project in accordance with methods, standards and procedures generally recognized and accepted as good industry practices and with the Operation and Maintenance Information Systems prepared by Design-Builder, (iii) abuse, negligence or willful misconduct, or (iv) alteration of the Work; (2) Uncontrollable Circumstances; (3) Change in Law; (4) noncompliant operating conditions, such as raw [water or wastewater] influent not conforming to the parameters in Attachment F or other conditions exceeding the Project's design criteria in Attachment F; (5) unavailability of supplies, spare parts, chemicals, power or other consumables or items necessary for operation and maintenance; or (6) impossibility or frustration of purpose.
- 8.23.8 If the Work fails to satisfy the Extended Performance Warranty, Design-Builder shall, upon written notice from Owner delivered not later than five days after any such failure, promptly begin and continue to take necessary actions (including training or support of Owner's operation and maintenance staff; revision of operating or maintenance procedures; or modification or correction of equipment or facilities) to satisfy the Extended Performance Warranty. The costs of any such training or support of Owner's operations staff or revision of operating procedures that are effective in achieving satisfaction of the Extended Performance Warranty shall be paid by Owner. The costs of any such modification or correction of equipment or facilities required to achieve satisfaction of the Extended Performance Warranty shall be paid by the Design-Builder without reimbursement from Owner. Before any necessary correction or modification of equipment or facilities is initiated by the Design-Builder, all reasonable efforts to satisfy the Performance Warranty through operational training, support and revision shall be completed and a plan indicating the scope and schedule for such work shall be prepared by the Design-Builder and approved by Owner.

GC 3.0 Owner's Services and Responsibilities

3.1 Duty to Cooperate

- 3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.
- 3.1.2 Owner shall provide reviews and approvals of interim design submissions and Construction Documents consistent with the turn-around times set forth in the Schedule. Owner's review does not constitute acceptance of design errors or omissions, nor transfer design liability to Owner for the same.

3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

.1 Surveys describing the property boundaries, topography and reference points for use during construction, including existing service and utility lines;

.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project, access to the Site and any off-site storage or lay-down areas, and to enable Design-Builder to perform the Work;

.4 A legal description of the Site;

.5 To the extent available, as-built and record drawings of any existing structures and utilities at the Site; and

.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information

3.3.1 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources.

3.3.2 Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.3.3 [*Optional language:* Design-Builder shall not be required as a condition of award or contract to waive or subordinate its mechanic's lien rights, if any, to Owner's construction lender(s).]

3.4 Owner's Representative

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.4.2 [*Optional language:* If Owner retains a third party as Owner's Engineer or Owner's Program Manager, separately from Owner's Representative, then Owner shall designate such third party in writing to Design-Builder, together with a statement of the respective roles, responsibility, and authority of each such party with respect to the administration of the contract, the approval of drawings and specifications, the issuance of instructions and change orders, the resolution of disputes, and the relative priority of the authority of such parties.]

3.5 Government Approvals and Permits

- 3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as part of Attachment F, *Owner's Project Criteria*.
- 3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors

- 3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under separate agreements with Owner. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.
- 3.6.2 Owner recognizes the importance that all work performed on the Project or at the Site by separate contractors under separate agreements with Owner is performed in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Owner shall require such separate contractors to assume responsibility for implementing and monitoring all safety precautions and programs related to the performance of their work.

GC 4.0 Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

- 4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.
- 4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.
- 4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.
- 4.1.4 Design-Builder will be entitled, in accordance with these General Conditions, to an equitable adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.
- 4.1.5 To the fullest extent permitted by law, Owner shall defend, indemnify and hold harmless Design-Builder, Design Consultants, Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to attorney's fees, costs and expenses incurred in connection with litigation or arbitration, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the

fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the indemnitee.

- 4.1.6** Notwithstanding the preceding provisions of this GC 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Design Consultants, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by the parties identified in the first sentence of this GC 4.1.6.
- 4.1.7** The terms of this GC 4.1 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

4.2 Differing Site Conditions

- 4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, or (iii) differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an equitable adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.
- 4.2.2** Upon encountering a Differing Site condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

GC 5.0 Payment

5.1 Payment for Phase 1 Services

- 5.1.1** Design-Builder will submit an Application for Payment to Owner each month covering Phase 1 services performed to date. Each Application for Payment will be prepared in the standard form agreed to by the parties and supported by required documentation.

5.2 Schedule of Values for Phase 2 Services

- 5.2.1** Within ten (10) days of the Commencement Date, Design-Builder shall submit for Owner's review and approval a schedule of values for Phase 2 of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

5.3 Monthly Progress Payments

- 5.3.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by GC 2.1.4.
- 5.3.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

5.3.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

5.4 Withholding of Payments; Payment of Undisputed Amounts

5.4.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due, including the release of retention under Section 7.3.1 of the Agreement. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under GC 8.0.

5.4.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

5.5 Right to Stop Work and Interest

5.5.1 If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to GC 9.4. All payments due and unpaid shall bear interest at the rate set forth in Section 7.5 of the Agreement.

5.6 Design-Builder's Payment Obligations

5.6.1 Design-Builder will pay any Subcontractors and Design Consultants, in accordance with applicable law and its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Subcontractors and Design Consultants to pay those parties with whom they have contracted.

5.6.2 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within ten (10) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and charge Design-Builder with any costs and expenses incurred, including attorneys' fees.

5.7 Substantial Completion

5.7.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that

warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

- 5.7.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.
- 5.7.3** Owner, at its option, may use a portion to the Work which has been determined to be substantially complete, provided that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in GC 5.7.1, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and (iii) Owner and Design-Builder, agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.
- 5.7.4** Upon Substantial Completion, Design-Builder shall conduct performance testing of the Facility using Owner's operations and maintenance staff to demonstrate that the Performance Criteria set forth in Attachment F, *Owner's Project Criteria*, have been satisfied and that the Performance Guarantees have been met.

5.8 Final Payment

- 5.8.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, *provided* that Design-Builder has completed all of the Work in conformance with the Contract Documents.
- 5.8.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:
- 1) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
 - 2) a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
 - 3) consent of Design-Builder's surety, if any, to final payment;
 - 4) a certificate demonstrating that performance testing is complete and that the Performance Guarantees set forth in Attachment F, *Owner's Project Criteria*, have been met;
 - 5) all operating manuals, warranties and other deliverables required by the Contract Documents; and
 - 6) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
- 5.8.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion, (iii) the terms of any special warranties required by the Contract Documents, and (iv) claims which are identified as unsettled at the time of making final payment.
- 5.8.4** Final payment by Owner shall constitute Final Acceptance of the Project for all purposes hereunder, subject to Design-Builder's remaining warranty obligations and any remaining indemnity obligations hereunder.

5.8.5 Acceptance of final payment by the Design-Builder, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

GC 6.0 Time

6.1 6.1 Obligation to Achieve the Contract Times

6.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5.0 of the Agreement.

6.2 Delays to the Work

6.2.1 If Design-Builder is delayed in the performance of the Work due to Uncontrollable Circumstances, the Contract Time(s) for performance shall be reasonably extended by Change Order, and the Schedule adjusted accordingly.

6.2.2 In addition to Design-Builder's right to a time extension for delays in the Work under GC 6.2.1, Design-Builder shall also be entitled to an equitable adjustment of the Contract Price and equitable commutation of any Liquidated Damages under Section 5.4 of the Agreement.

GC 7.0 Changes to the Contract Price and Time

7.1 Change Orders

7.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1** The scope of the change in the Work;
- .2** The amount of the adjustment to the Contract Price; and
- .3** The extent of the adjustment to the Contract Time(s) and Schedule.

7.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

7.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

7.2 Work Change Directives

7.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

7.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

7.2.3 [*Optional language:* If Owner has requested a proposal for a change in the Work from Design-Builder, Owner shall notify Design-Builder as expeditiously as possible whether such proposal is accepted. Design-Builder shall not commence changed work until a written Work Change Directive or Change Order has been delivered by Owner. The parties recognize that delay in response to such proposals may increase the impact or cost of the Change.]

7.3 Minor Changes in the Work

7.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, *provided, however*, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

7.4 Contract Price Adjustments

7.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1** unit prices set forth in the Agreement or as subsequently agreed between the parties (which may include daily or monthly overhead rates for the extension of services);
- .2** a mutually-accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
- .3** costs, fees and any other markups set forth in the Agreement; and
- .4** if an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase or a decrease in the Contract Price, overhead and profit shall be calculated on the basis of the net increase or decrease to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

7.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

7.4.3 If Owner and Design Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to GC 8.0. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

7.5 Emergencies

7.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract

Time(s) on account of emergency work shall be determined as provided in this GC 7.0.

GC 8.0 Contract Adjustments and Disputes

8.1 Requests for Contract Adjustments and Relief

8.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any Changed Condition arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief.

8.1.2 A Changed Condition may include a Change in Law following the date of Design-Builder's proposal to Owner which has a material impact on the cost of the Work, the Schedule, the Performance Criteria, or other aspects of Design-Builder's performance hereunder.

8.1.3 Changed Conditions may include Uncontrollable Circumstances having an impact on Design-Builder's cost of the Work, the Schedule, the Performance Criteria, or other aspects of Design-Builder's performance hereunder.

8.1.4 Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.

8.1.5 Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, and, if then available, the specific contractual adjustment or relief requested and the basis of such request.

8.2 Dispute Avoidance and Resolution

8.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each agree to resolve such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

8.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the Project level through discussions between Design-Builder's Representative and Owner's Representative.

8.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, upon the request of either party, then the matter shall be referred to the Senior Representatives of each party for resolution. Design-Builder's Senior Representative and Owner's Senior Representative shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

8.2.4 If, after meeting, the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, then the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

8.3 Arbitration

8.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in GC 8.2, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

8.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

8.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this GC 8.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

8.3.4 In any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, each party shall be responsible for its own legal costs, including attorneys' fees.

8.3.5 The arbitration shall be held at the location of the Project, unless the parties mutually agree to another acceptable site for the arbitration. The law applicable to the arbitration shall be the law of the jurisdiction in which the Project is located.

8.4 Duty to Continue Performance

8.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

GC 9.0 Suspension and Termination

9.1 Owner's Right to Stop Work

9.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

9.1.2 Design-Builder is entitled to an equitable adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

9.2 Termination for Convenience

9.2.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- .1 All Work executed and for proven loss, cost or expense in connection with such Work;
- .2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- .3 The fair and reasonable sums for overhead and profit on the sum of items .1 and .2 above.

9.2.2 If Owner terminates this Agreement pursuant to GC 9.2.1 and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work product shall be as set forth in Section 4.3 ("Owner's Limited License upon Owner's Termination for Convenience or Design-

Builder's Election to Terminate").

9.3 Owner's Right to Perform and Terminate for Cause

9.3.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, *then* Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in GC 9.3.2, 9.3.3, and 9.3.4.

9.3.2 Upon the occurrence of an event set forth in GC 9.3.1, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

9.3.3 Upon declaring the Agreement terminated pursuant to GC 9.3.2, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

9.3.4 In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in GC 2.12.2.

9.3.5 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of GC 9.2.

9.4 Design-Builder's Right to Stop Work

9.4.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

.1 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

9.4.2 Should an event set forth in GC 9.4.1 occur, Design-Builder may provide Owner with written notice that Design-Builder will stop work unless such event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work. In such case, Design-Builder may make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

9.5 Design-Builder's Right to Terminate for Cause

9.5.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of a court order, any government authority having jurisdiction over the Work, or orders by Owner under GC 9.1.1, *provided* that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible; or
- .2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to GC 9.1.1; or
- .3 Owner's failure to cure the problems set forth in GC 9.4.1 after Design-Builder has stopped the Work.

9.5.2 Upon the occurrence of an event set forth in GC 9.5.1, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under GC 9.2.

9.6 Bankruptcy of Owner or Design-Builder

9.6.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this GC 9.0.

9.6.2 The rights and remedies under GC 9.6.1 shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions.

GC 10.0 Miscellaneous

10.1 Assignment

10.1.1 Neither Design-Builder nor Owner shall without the written consent of the other, assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

10.2 Successorship

10.2.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

10.3 Governing Law

10.3.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

10.4 Severability

10.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

10.5 No Waiver

10.5.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

10.6 Headings

10.6.1 The headings used in these General Conditions or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

10.7 Notice

10.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the number of the intended recipient, or (iv) if transmitted by e-mail to the individual to whom such notice is required to be given, by the time stated in a machine-generated confirmation that notice was received at the e-mail address of the intended recipient.

10.8 Amendments

10.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

10.9 Third Parties

10.9.1 The services to be performed by Design-Builder are intended solely for the benefit of the Owner. No person or entity not a signatory to this Agreement shall be entitled to rely on the Design-Builder's performance of its services hereunder, and no right to assert a claim against the Design-Builder by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of the Design-Builder's services hereunder.

GC 11.0 Electronic Data

11.1 Electronic Data.

11.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

11.2 Transmission of Electronic Data

11.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

11.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

11.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4.0 of the Agreement ("Ownership of Work Product"). Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

11.3 Electronic Data Protocol

11.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this GC 11.3.

11.3.2 Electronic Data will be transmitted in the format agreed upon in GC 11.2.1, including file conventions and document properties, unless prior arrangements are made in advance in writing.

11.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

11.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data by electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

ATTACHMENT E INDEMNITY, INSURANCE & BONDING

1.0 Indemnity

1.1 To the fullest extent permitted by law, Design-Builder shall defend, indemnify and hold Owner harmless from all claims by third parties for bodily injury and property damage (other than to the Work itself and other property insured hereunder), including resulting loss of use of third-party property that may arise from the performance of the Work. Design-Builder shall not be required to defend, indemnify or hold harmless Owner for any acts, omissions or negligence of Owner, Owner's employees, agents or separate contractors.

1.2 Owner shall cause any other contractor who may have a contract with Owner to perform work in the areas where Work will be performed under this Agreement, to agree to indemnify and defend Design-Builder, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable and hold them harmless from all claims for bodily injury and property damage, other than property insured under Section 5.0, that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to Design-Builder.

1.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, then Design-Builder's indemnity obligation set forth in Section 1.1 above shall not be limited by any limitation on the amount of damages, compensation, or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

2.0 Design-Builder's Liability Insurance

2.1 Design-Builder shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Agreement, whether resulting from Design-Builder's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

2.1.1 workers' compensation, disability and other employee benefit claims under acts applicable to the Work;

2.1.2 under applicable employers' liability law, bodily injury, occupational sickness, disease or death claims of Design-Builder's employees with limits of \$1,000,000 per accident or employee disease;

2.1.3 bodily injury, sickness, disease or death claims for damages to persons not employed by Design-Builder;

2.1.4 usual personal injury liability claims for damages directly or indirectly related to the person's employment by Design-Builder or for damages to any other person;

2.1.5 damage to or destruction of tangible property, including resulting loss of use, claims for property other than the Work itself and other property of third parties;

2.1.6 bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle; and

2.1.7 contractual liability claims involving Design-Builder's obligations under Paragraph 1.1.

2.2 Design-Builder's Commercial General and Automobile Liability Insurance as required by Paragraph 2.1 shall be written for the following limits of liability:

1. Commercial General Liability Insurance

a. Each Occurrence Limit	\$1,000,000
b. General Aggregate	\$ 2,000,000
c. Products/Completed Operations Aggregate	\$ 2,000,000
d. Personal and Advertising Injury Limit	\$ 1,000,000
e. Contractual Liability	\$ 1,000,000

2. Commercial Automobile Liability Insurance

a. Combined Single Limit Bodily Injury and Property Damage Each Occurrence	\$ 1,000,000
<i>or</i>	
b. Bodily Injury	\$ 1,000,000 Each Person \$ 1,000,000 Each Occurrence
c. Property Damage	\$ 1,000,000 Each Occurrence

Owner shall be an Additional Insured on Commercial General Liability insurance and the Commercial Automobile Liability insurance obtained by Design-Builder pursuant to this clause.

2.3 Excess Liability Insurance above the required Commercial General, Commercial Automobile, and Employer's Liability insurance to result in overall liability coverage in the amount of \$5,000,000 annual aggregate limit.

2.4 Contractor's Pollution Liability Errors and Omissions Insurance in the amount of \$1,000,000 per loss and annual aggregate limit of \$2,000,000.

2.5 The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to Owner. Certificates of insurance showing required coverage to be in force shall be filed with Owner prior to commencement of the Work.

2.6 Products and Completed Operations insurance shall be maintained for a minimum period of at least two year(s) after either ninety (90) days following the date of Substantial Completion or final payment, whichever is earlier.

2.7 The insurance limits stated in this Attachment E may be satisfied through a combination of underlying and excess or umbrella coverage.

2.8 Subcontractors. Design-Builder shall require that all Subcontractors working on the Project secure and maintain the same insurance coverages required for Design-Builder for workers' compensation insurance, employer's liability insurance, commercial automotive liability insurance and commercial general liability insurance and other financial sureties required by applicable law in connection with their presence and the performance of their duties pursuant to this Agreement; provided that Owner may approve lower limits for specific subcontractors pursuant to a request submitted by Design-Builder to Owner prior to any work being performed by the subcontractor. Design-Builder shall require that all subcontractors performing engineering services and all subcontractors performing work with potential pollution liability risk secure and maintain Professional Liability or Pollution Liability insurance coverage, respectively, with such coverage limits commensurate with the scope of the subcontract work performed. Owner, Design-Builder and all other parties required of Design-Builder shall be named as additional insured on subcontractor's required commercial general liability insurance policy. Alternatively, Design-Builder may obtain and maintain said policies and sureties on the subcontractor's behalf.

3.0 Professional Liability Insurance

3.1 Professional liability insurance for claims arising from the negligent performance of professional services under this Agreement shall be written for \$1,000,000 per claim and in the annual aggregate with a deductible not to exceed \$2,000,000. These requirements shall be continued in effect for two year(s) after the date of Substantial Completion. If the Design-Builder retains consultants for a portion of the design, Owner may approve lower limits for specific Design Consultants pursuant to a request submitted by Design-Builder to Owner prior to any work being performed by such Design Consultants.

4.0 Owner's Liability Insurance

4.1 Owner shall be responsible for obtaining and maintaining its own liability insurance. Insurance for claims arising out of the performance of this Agreement may be purchased and maintained at Owner's discretion.

4.2 If Owner hires separate contractors for with respect to the Project or for any portion of the Work, then Owner shall require that such separate contractors waive any insurers' rights of subrogation against the Design-Builder and its Subcontractors, Design Consultants, and their officers, directors, and employees.

5.0 Insurance to Protect Project

5.1 Design-Builder shall obtain and maintain Builder's Risk Property Insurance including work and materials, upon the entire project for the full replacement cost at the time of loss. This insurance shall include as named insureds Owner, Design-Builder, Subcontractors and Subsubcontractors. The policy shall insure against direct risk of physical loss or damage including flood or other water damage, earthquake, transit, off-premises storage, boiler and machinery, delay in opening, testing (both hot and cold) [*and damage resulting from defective design, faulty workmanship or materials*]. Minimum deductible for all risks perils is \$50,000 except flood and earthquake which shall be \$250,000 and \$250,000 respectively. Subcontractors and Subsubcontractors shall be responsible for up to a \$1,000 deductible per the Subcontract Terms and Conditions.

The Builder's Risk Property Insurance shall contain provisions to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against any of the insureds or additional insureds. Owner, Design-Builder, Subcontractors and Subsubcontractors and Suppliers of any tier waive all rights and claims against each other and their respective officers, directors, employees and agents for all loss or damages including loss due to business interruption, loss of use or other consequential damage extending beyond direct physical loss or damage to Owner's property or the work whether or not insured by Owner, caused by, arising out of or resulting from any of the perils covered by such insurance and any other property insurance applicable to the Work during construction and after. None of the waivers will extend to the rights of any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy issued.

Owner and Subcontractor(s) shall maintain at their option, separate all risk commercial property insurance to cover their property, tools and equipment not covered by the Builder's Risk Insurance Policy.

5.2 If Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by Owner and Design-Builder and to which the insurance company or companies providing the property insurance have consented by endorsing the policy or policies. This insurance shall not be canceled or lapsed on account of partial occupancy. Consent of Design-Builder to such early occupancy or use shall not be unreasonably withheld.

5.3 Owner shall obtain and maintain boiler and machinery insurance as necessary. The interests of Owner, Design-Builder, Subcontractors and Subsubcontractors shall be protected under this coverage.

5.4 Upon Substantial Completion and during any period of startup, testing, commissioning, or initial operation of the Project, Owner shall obtain and maintain insurance with respect thereto consistent with that insurance which Owner obtains and maintains with respect to any damage or loss to its permanent plant during commercial operation. Design-Builder, Subcontractors and Subsubcontractors shall be named as additional insured on such insurance, and Owner hereby waives any rights of subrogation with respect thereto.

6.0 Property Insurance Loss Adjustment

6.1 Any insured loss shall be adjusted with Owner and Design-Builder and made payable to Owner and Design-Builder as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

6.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with a mediation agreement, or, if not resolved through mediation, then by an arbitration award pursuant to arbitration. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution by mediation or arbitration.

7.0 Waiver of Subrogation

7.1 Owner and Design-Builder waive all rights against each other, and any of their respective employees, agents, consultants, subcontractors and subsubcontractors for damages caused by risks covered by insurance provided in Section 5.0 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by Owner and Design-Builder as trustees. Design-Builder shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements.

7.2 Owner waives subrogation against Design-Builder, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

7.3 If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

8.0 Bonding

8.1 Design-Builder will provide Performance and Payment Bonds for the Phase 2 Services. The costs of such bonds shall be in addition to the Contract Price.

8.2 Design-Builder shall furnish Performance and Payment Bonds, each in an amount equal to the Contract Price, as security for the faithful performance and payment of all Design-Builder's obligations to furnish, provide and pay for Construction and related materials, design, and other services under the Contract Documents.

8.3 These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

8.4 All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

8.5 Licensed Sureties All Bonds required by the Contract Documents to be purchased and maintained by Design-Builder shall be obtained from surety companies that are duly licensed or authorized to issue bonds in the jurisdiction in which the Project is located to issue Bonds for the limits and coverages so required.

ATTACHMENT F OWNER'S PROJECT CRITERIA

This section provides basic project technical requirements to be incorporated into the design of the pump station upgrades. These requirements are provided as the basis for this project. During the design process, alternatives can be recommended by the Design-Builder for consideration by the Owner as a cost saving measure or to improve long-term system performance. The Owner must provide approval of any recommendations of technical requirements provided in this section prior to incorporation into the project.

Electrical Systems

Motors

All motors shall be suitable both electrically and mechanically to drive the connected equipment under any and all modes of operation. The speed, horsepower, torque, base, bearing, shaft, insulation, and enclosure shall be closely coordinated with equipment requirements specified herein and in other portions of this Specification so as to provide a satisfactory, efficient drive without overloading, overheating, abnormal noise or vibration.

All motors shall be designed and built for long, trouble-free life in industrial service and shall be capable of operating successfully under the following application conditions:

- a. 40 degrees centigrade maximum ambient temperature to -20 degrees centigrade minimum ambient temperature.
- b. 3,000 ft. maximum altitude.
- c. Voltage variations to plus or minus 10% of nameplate rating.
- d. Frequency variations to plus or minus 5% of nameplate rating.
- e. Variable speed motor suitable for use with variable speed controller.

All motors shall be rated for full voltage starting, NEMA Design B, normal torque, normal starting current, unless otherwise required by the driven equipment or specified.

All motors shall be suitable for the environment in which they are to be installed. The environment in which motors will be installed in this project will be 100% humidity continuously. Motors for use with variable frequency drives shall be labeled by the manufacturer for inverter use.

Motor nameplate efficiency shall conform with the nominal values shown in NEMA MG 1-1998. Energy efficient motors shall be Reliance Electric Duty Master XE, Baldor Super-E, US Motors Premium Efficiency motors, or equal.

Variable Frequency Drives

The Design Builder shall provide the VFDs. The VFD's shall be provided as a complete and operational system, integral to the MCC or other control panels, as shown on the drawings. The VFDs shall be compatible with the electrical motors provided.

CONTROL SYSTEM

This section includes the general requirements for furnishing, installing, adjusting, testing, documenting, and startup of the complete and functional Control System. Major components of this system include, but are not limited to, all materials, equipment, and work required to implement a complete and operating system as described herein. The system shall include primary elements for process variable measurements, control elements, analog displays, communication systems, and all hardware and software required to program, calibrate and monitor the instrumentation, communication and control devices. The Design-Builder shall provide, calibrate, and assist with the testing of the complete control system. The Design-Builder shall assist to place the completed system in operation, including tuning loops, testing and adjusting communications and making final adjustments to instruments and equipment as required during system start-up. The Design Builder shall provide the services of trained and qualified instrument technicians for these services.

The Control System Integrator shall be specialized in the design, assembly, testing, installation and service of municipal control and communication systems in the Pacific Northwest for at least the last five years. The Control System Integrator shall employ technicians and engineers with documented experience in the design, assembly, testing, installation, operation, calibration, trouble-shooting, service and repair of control and communication systems for municipal systems and facilities. The Control System Integrator's manufacturing and testing facility shall be located within a 100-mile drive from the project location. The Control System Integrator shall be a UL listed and certified control panel manufacturing facility.

The Control System Integrator shall be responsible for the following:

- Provide Local Control Panels, PLC and operator interface system, and communications equipment.
- Provide Control Panel that is UL Listed
- Provide and configure all VFDs, instrumentation and other process control equipment. Provide additional system accessories as required for a complete and operational control system.
- Attend system startup and testing, perform all I/O testing and verification, assist Contractor and Programmer as required.
- Provide PLC programming as required for monitoring and control of new and existing system equipment (Includes Pump No. 3).
- Attend system startup and testing
- Fully program, commission, adjust, test and put the new equipment into operation.

CONTROL PANELS

Control panels shall be designed, assembled, tested and placed into operation by the Design-Builder. The contract drawings shall show general control panel layout and space requirements. Final dimensions shall be selected by the Controls Designer to adequately install and wire the required control equipment. Detailed panel layout and interconnecting drawings shall be submitted prior to ordering of materials, and shall be subject to review

and approval by the Owners Representative. Material shall be new, free from defects. Similar items in the system shall be the products of the same Manufacturer. All equipment shall be of industrial grade and of standard construction, shall be capable of long, reliable, trouble-free service, and shall be specifically intended for control and monitoring industrial equipment.

Control panel cabinet(s) shall be a NEMA 12 enclosure, with back panel. Cabinet shall be fabricated from 16 ga. minimum thickness sheet steel, and shall be ANSI 61 gray standard phosphate finish. Panel interiors and back panels shall be white. Cabinet shall be provided with an interior frame or otherwise formed so as to provide a rigid structure. Three-point latch hardware shall be provided for doors exceeding 30 inches high. The panel shall include padlocking quick release L-handles to allow the panel to be opened without the use of tools.

INSTRUMENTATION

The Owner desires to utilize float switches for alarms and submersible level transducers for level control and measurement in the wet well. The wet well level control design shall include two submersible level transducers for wet well level measurement with control logic to monitor both and provide logic to negate the input of a failed transducer. Float switches shall be used for alarms as follows:

- Wet well high level alarm
- Wet well high-high level overflow alarm
- High level pump start, independent of the PLC.
- Wet well low level and pump shut-off alarm, independent of the PLC

Float Switches

Switch shall be free floating, direct acting float switch designed for operation in raw sewage. Mounting hardware shall include fixed installation on a 1" pipe, or suspended with a Kellems cord grip/strain relief and a weighted stainless steel support cable. The float cable shall be a PVC coated multicore connecting cable, which also contains the conductors, and shall be UL listed. Float shall contain a mercury switch with a minimum rating of 4 amps at 120 Volts. Float shall be foam-filled, hermetically sealed and polypropylene coated. Floats shall be supplied with cable of sufficient length to reach the junction box without splices. Intermediate relays and intrinsic safety barriers shall be provided for all wet well instrumentation in accordance with NFPA 820 and NEC article 500 for Class I, Div 1 areas.

Submersible Level Transducer

The level sensor shall be a submersible pressure transducer designed for raw wastewater applications. It shall utilize a piezoresistive silicon strain gauge transduction principle with an accuracy of +/- 0.25%. The sensor housing and internal components shall be titanium, and the diaphragm shall be Teflon coated rubber. The sensor shall be selected to provide sensing over the full range of levels in the wet well for the application. The sensor shall include a PVC support structure (stilling well), stainless steel mounting hardware, and all manufacturer recommended hardware for mounting in the wet well. The sensor shall be

FM approved for installation in Class 1, Div I Hazardous areas, and shall include an Intrinsic Safety Barrier in the Pump Control Panel. Safe access shall be provided for flushing and cleaning of the stilling well by operations and maintenance staff, as required.

PLC Hardware

A complete PLC system shall be provided with the logic and communications capabilities to interface with the wet well level controls, the VFDs and the City's existing alarm notification system located in the pump station. A minimum of 20% spare I/O shall be provided. The PLC shall be Allen Bradley 1769 Compact Logix series or Allen Bradley model as approved by the Owner. The control system integrator shall provide a complete PLC system to provide the functions described in this specification, and shall include the parts and quantities shown on the drawings, or as required for a complete and operational system.

Operator Interface

The operator interface unit shall be 10.4" color touch panel with Ethernet communications. Display shall be color active matrix TFT, 640 x 480 minimum resolution. Operator interface shall run Windows CE 6.0 operating system and shall provide for real time monitoring of the terminal displays from a web browser. Provide all required cables and pre-loaded runtime software and licenses for a complete and operational system. The operator interface shall be an Allen-Bradley Panelview Plus 6 or other interface approved by the Owner.

Uninterruptible Power Supply (UPS)

UPS systems shall be provided for all PLC control panels.

SYSTEM COMMISSIONING

The Design-Builder shall provide the Owner with a sequence of construction that includes system commissioning. This sequence must ensure that the station can continuously pump flow on a variable speed basis. The following construction constraints must be considered:

- One pump and the control system must be commissioned and operated for a minimum of seven (7) days without interruption prior to taking the second pump out of service for upgrade.
- Either Pump No. 1 or Pump No. 2 must be operational and have the ability to pump raw wastewater to the treatment plant at all times
- Pump No. 3 must be operational at all times
- If a shutdown is required that will cause a wet well backup beyond a depth of 6-feet, backup pumping will need to be installed and utilized by the Design-Builder

Control System Commissioning

The Control System Integrator shall put the control system into operation. The functionality of all aspects of the system shall be verified at this time. The Design-Builder will provide all labor and services for a complete installation. A witnessed functional

acceptance test shall be performed on the completed control system. A complete test procedure and test forms shall be provided by the Control System Integrator. Each feature and function shall be demonstrated to the satisfaction of the Owners Representative. The actual testing program shall be conducted in accordance with the prior approved procedures, and shall be witnessed and signed off by both the Contractor and the Engineer upon satisfactory completion. All testing must be coordinated with other associated suppliers and subcontractors by the Design-Builder.

Pump Commissioning

1. Inspect installation for compliance with design.
2. Check the amperage draw from the pumps.
3. Make sure equipment is installed to allow easy access.
4. Verify flow.
5. Make sure all operations of the controls, including floats, are working properly.
6. Review Operation and Maintenance Manual with personnel.
7. Demonstration and Training on controls.

PROJECT DRAWINGS

Design drawings and equipment specifications are to be provided at the 90% design point with the GMP. Five sets of drawings in 8-1/2" x 11" format are to be provided as well as one set of drawings and specifications in electronic format as a pdf. One set will be submitted to DEQ for review

Record Drawings will be provided at the completion of the project. These will include the control panel drawings including wiring diagrams. Five sets of drawings in 8-1/2" x 11" format are to be provided as well as one set of drawings and specification in electronic format as a pdf. Record drawings must be submitted prior to final payment

During the construction period, the Design-Build Contractor shall maintain a complete set of prints for the sole purpose of maintaining a day-by-day record of installed information. This information shall include, but not be limited to: the size and location of all concealed or underground piping, conduit, and ductwork; all approved deviations from the specifications and drawings; the location of any visible objects relocated due to interference's or requested relocations submitted and approved on shop drawings. Such relocations shall be dimensioned

OPERATION AND MAINTENANCE MANUALS

Provide Operation and Maintenance (O&M) manuals and equipment data for the complete control system and related equipment.

COOPERATION AND COORDINATION

1. Design-Builder is responsible for coordinating and scheduling work of subcontractors to expedite progress of the Project.
2. Contractor shall communicate through the appropriate points of contact as defined in the agreed upon project management plan.
3. Contact with Permitting Agencies shall be routed through the Owner

CONSTRUCTION STAGING AREA

The staging areas for construction will be within the pump station fenced area and needs to be coordinated with the Owner.

REGULATORY REQUIREMENTS

As required by General Conditions: "Contractor shall comply with and give notices required by all federal, state, tribal, and local laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work." Except where otherwise expressly required by applicable Laws and regulations, neither OWNER nor ENGINEER will be responsible for monitoring CONTRACTOR'S compliance with any Laws and Regulations. Contractor is responsible for keeping the Owner, Labor & Industries, and other authorities completely informed of any changes in the work in a timely manner, and is responsible for informing them of any changes in the work that may affect codes and laws. This includes contract modifications, amendments, additions, shop drawings, and the like, current as of Project Manual date.

WORKMANSHIP

First Class Workmanship is expected. Prior to installing any item or material, verify that receiving surfaces are plumb, level, true to line, and straight to the degree necessary to achieve tolerances specified or required. Perform without extra cost all shimming, blocking, grinding, or patching required to make such surfaces plumb, level, true to line, and straight. Take care in attention to details and fitting at intersections and junctures of materials. All joints are to be tight, straight, even, and smooth.

SAFETY AND HEALTH PLAN

The Design-Builder shall develop and maintain for the duration of the Contract a Safety and Health Plan that will effectively incorporate and implement all required health and safety precautions. The Safety and Health Plan shall be submitted by the Design-Builder prior to beginning work on-site. The Design-Builder shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the Safety and Health Plan. The Design-Builder is responsible to ensure that all necessary monitoring equipment, protective clothing, and other supplies and equipment are available to implement the plan. In the event the Safety and Health Plan proves to be inadequate to protect the employees and the public, as determined by the Owners Representative or any regulatory agency or jurisdiction, then the plan shall be modified to meet the requirements of those regulatory agencies and the Owner.

PROJECT MEETINGS

Project meetings will be held to accomplish the following:

1. Coordinate the work of the project and resolve any conflicts or construction problems.
2. Establish a sound working relationship between the Design-Builder, Owner, and Engineer.
3. Establish sound working procedures.
4. Review job progress and quality of work.
5. Expedite the work to completion within the scheduled time limit.

6. Representatives of Design-Builder, subcontractors, and suppliers attending the meetings shall be qualified and authorized to act on behalf of the entity each represents.

PROJECT KICKOFF MEETING

Project Kickoff meeting will be scheduled after the Notice to Proceed has been issued. The Owner's Representative will notify the Design-Builder as to the time and place of the meeting.

PROGRESS MEETINGS

Unless otherwise required, progress meetings will be held by the Owner on a once per two-week basis at a location near the site. Present at these meetings shall be the Design-Builder, subcontractors and suppliers as required, the Owner and/or Owner representative, and other interested parties, i.e., material suppliers, public utility, etc.

The Contractor must be prepared for a thorough discussion and review, as well as revisions that may be deemed necessary in the opinion of the Owner, of the following:

1. Review work since previous meeting.
2. Make field observations and address any conflicts or problems.
3. Review material delivery schedules.
4. Review work progress including any issues that may impact project schedule.
5. Review submittal schedule.
6. Maintenance, testing and quality standards.
7. Review any proposed changes.
8. Review pay requests and procedures.
9. RFI discussion

The Owner or Owner's Representative shall preside over progress meetings and shall be responsible for taking minutes, recording all significant proceedings and decisions.

FINAL CLEAN-UP

At the completion of the work, the Contractor shall leave the premises in a neat and unobstructed condition, ready for Owner occupancy. The buildings shall be left in a dust-free condition and all equipment and materials in perfect repair and adjustment.

The Contractor shall develop and submit a project schedule within 10 days of Contract Award. The schedule shall be a horizontal bar chart or critical path diagram depicting the first day of each week and sized to be legible and permit notations and future revisions.

**ATTACHMENT G
OWNER'S PERMIT LIST**

To be determined during Phase I Design. Permit fees are to be paid by the Owner or will be clearly identified in the GMP.

ATTACHMENT G OWNER'S PERMIT LIST

To be determined during Phase I Design. Permit fees are to be paid by the Owner or will be clearly identified in the GMP.



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

August 27, 2015

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: BRETT ESTES, CITY MANAGER

SUBJECT: **PUMP STATION NO. 1 UPGRADES – CONTRACT AMENDMENT FOR CONSTRUCTION PROJECT MANAGEMENT**

DISCUSSION/ANALYSIS

The City of Astoria's wastewater treatment facility, interceptor and the main pump and lift stations were constructed in the mid-1970s. Pump Station No. 1 (PS#1) is the largest pump station in Astoria and is located in the Alderbrook neighborhood. This pump station receives approximately 95% of the City's combined sewage flows and, depending on the weather and the season, it pumps between one and eighteen million gallons per day to the City's wastewater treatment plant (WWTP).

PS#1 contains three wastewater pumps with two variable speed 125 horsepower (hp) pumps and one fixed speed 75 hp pump. The system has provided reliable service for the past 40 years, but lacks efficiency. Replacement parts are no longer readily available and parts of the system have reached the end of their useful life. It is a credit to our wastewater treatment plant operators that this unit has functioned for such an extended number of years.

On June 1st, Council authorized Richwine Environmental to prepare a Concept Design Report for this project. Based on this report, a project was developed that includes replacement of the pump's variable frequency drives (VFDs) and installation of a new control system at PS#1. The project was advertised as a progressive design build contract with award being included in the current Council package.

It is recommended that the City hire Richwine Environmental to continue providing expertise as a construction project manager for the PS#1 Upgrades Project. Dale Richwine P.E., President, has over 35 years of experience in planning, design, operation and management of wastewater treatment facilities. Mr. Richwine has been working with the City of Astoria as a key wastewater expert since 2008 when he provided integral expertise to help negotiate a favorable National Pollutant Discharge Elimination System (NDPES) Permit with the Department of Environmental Quality and then lead the effort to develop Astoria's WWTP Facility Plan. Mr. Richwine has continued to support the City as an on-call consultant by providing advice and input during project development, particularly during the WWTP Effluent Treatment Upgrades Project from the scoping effort through construction. He is also a technical resource to the wastewater treatment plant operators.

Included in the scope of services for Richwine Environmental is reviewing design documents and submittals, facilitating Phase 2 Progressive Design Build scope and fee with Portland Engineering, Inc., review submittals and pay requests during installation of the upgrades. The estimated fee for the engineering services with Richwine Environmental through completion of the project is \$19,500.

Also included in the Council packet is authorization of a phase 1 progressive design build contract with Portland Engineering, Inc. Below is the project budget:

PROJECT BUDGET

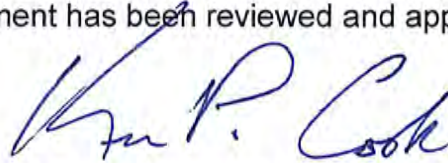
Phase 1 Progressive Design Build	\$30,000
Phase 2 Progressive Design Build	\$175,000
Construction Project Management	\$19,500
Electrical Permit	<u>\$500</u>
TOTAL	\$225,000

Funding is available in the Public Works Improvement Fund.

RECOMMENDATION

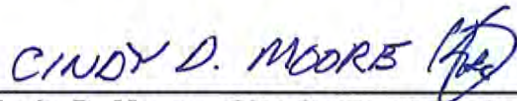
It is recommended that Council execute a contract amendment for construction project management with Richwine Environmental for a total not to exceed amount of \$19,500.00 for the Pump Station No. 1 Project. The contract amendment has been reviewed and approved as to form by City Attorney Henningsgaard.

Submitted By: _____



Ken P. Cook, Public Works Director

Prepared By: _____



Cindy D. Moore, City Support Engineer



**CONTRACT AMENDMENT
BETWEEN
THE CITY OF ASTORIA AND RICHWINE ENVIRONMENTAL, INC.
FOR
PUMP STATION NO. 1 UPGRADES**

The AGREEMENT dated June 1, 2015, by and between THE CITY OF ASTORIA, hereinafter called "THE CITY" and RICHWINE ENVIRONMENTAL, INC., hereinafter called "CONSULTANT", is hereby amended as follows:

Amend Scope of Services of the AGREEMENT for design engineering services and construction support services (see attached scope and fee).

Amend Compensation of the AGREEMENT to increase contract amount by \$19,500

IN WITNESS WHEREOF, THE CITY AND CONSULTANT have executed this AMENDMENT as of _____, 2015.

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

CONSULTANT:
Richwine Environmental, Inc.

BY: _____
Arline LaMear Date
Mayor

BY: _____
Consultant Date

BY: _____
Brett Estes Date
City Manager

SCOPE OF SERVICES ASTORIA PS#1 UPGRADES PROJECT MANAGEMENT ASSISTANCE

A study of the pumping systems in Pump Station No. 1 (PDS#1) showed that the electrical equipment and controls are over 45 years old and can no longer be maintained. In addition, the pumping system is not energy efficient. It has been recommended that the station be updated in a two-phase project performed over two years. The first phase is to update the station controls and the electrical motors and drives on the two large pumps, Pump Nos. 1 and 2. The second phase is to change out Pump No. 3 with a high efficient smaller pump that can efficiently pump during low flow periods. Phase I of the project has been included in the 2015/2016 budget.

An evaluation performed by the Energy Trust of Oregon showed energy savings with both projects. The Energy Trust will be providing partial funding of each project based on the energy savings that will be realized.

The City of Astoria is limited on engineering resources and will be utilizing Richwine Environmental, Inc. (REI) to provide project management services for the delivery of the Phase I project utilizing a Progressive Design Build delivery approach.

Scope of Services

REI will provide project management assistance for the Phase I PS#1 Upgrade project. REI will coordinate all services with the City's Public Works Division. The project will be performed in two phases utilizing the progressive Design Build delivery approach.

Task 1 – Phase I Services

Phase I services is the design of the station upgrades. REI will coordinate with the Design-Builder to develop the 90% design documents, Guaranteed Maximum Price and construction schedule. REI will provide the necessary information to the City for presentation of the GMP and Phase II project for approval to proceed to Phase II.-

Deliverables:

1. REI will lead and coordinate the design kickoff meeting with the Design-Builder.
2. The design will be completed within one month of NTP.
3. REI will coordinate design issues and equipment specifications with City staff.
4. REI will work with City staff and Design-Builder to develop a construction sequence that will minimize disruption of the station.
5. REI will provide information as required to DEQ.
6. Two trips to Astoria

Task 2: Phase II Services

REI will coordinate the construction activities of the Design-Builder throughout the installation of the new control system and electrical equipment. REI will lead a weekly construction meeting with City staff and the Design-Builder throughout the construction period. REI will receive from the Design-Builder monthly pay estimates and will submit them to the City staff for payment following their approval. REI will review schedules, coordinate and review submittals and will coordinate changes with City staff.

Deliverables:

1. REI will lead and coordinate up to 6 weekly construction meetings.
2. REI will review monthly pay estimates prior to submittal to City staff for payment.

Task 3: Project Closeout

REI will work with the design-builder to obtain final record drawings and manufacture’s manuals for the project. REI will provide the Department of Environmental Quality final documents for their files. REI will coordinate with the City Project Manager to provide final payment and project closeout.

Deliverables:

1. Record drawings of the project.
2. Required information for project closeout and final payment.

Fee for Services

REI will perform the tasks outlined in the scope of services for a Not To Exceed Fee of \$16,000 as shown in **Table 1**. Additional services, as requested and approved by the OWNER, can be provided at a rate of \$165.00 per hour.

**Table 1
Fee Estimate by Task**

Task No.	Task Description	Labor Hours	Labor Cost	Expenses	Estimated Fee
1	Phase I Design	40	\$6600	\$250	\$6,850
2	Construction Management	60	\$9900	\$650	\$10,550
3	Project Closeout	12	\$1980	\$120	\$2,100
Total					\$19,500

REI will provide to the to the City of Astoria certificates of insurance for Errors and Omissions, Commercial Liability and Auto Liability with the City named as additional insured following the receipt of a Notice-to-Proceed for this project.



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

August 30, 2015

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ORDINANCE AMENDING THE ASTORIA CITY CODE TO PROHIBIT
TOBACCO AND MARIJUANA USE IN CITY OF ASTORIA PARKS

DISCUSSION/ANALYSIS

The mission of the Astoria Parks and Recreation Department is to provide life-long learning, wellness, and well-being through recreational opportunities and is dedicated to the preservation of natural resources, open spaces and facilities that inspire and bring neighbors together. To support and reinforce this mission, the Astoria City Code provides rules and regulations of Astoria's Parks. Currently these regulations do not limit tobacco or marijuana use or prevent users of City of Astoria Parks from second hand smoke exposure.

At the request of citizens and Parks and Recreation Advisory Board members, Mr. Stephen Blakesley, with the Clatsop County Public Health Department, gave a presentation on smoke and tobacco free parks and recreation areas during the May 27, 2015 parks and Recreation Advisory Board meeting. His presentation included an overview of tobacco control and enforcement, agencies throughout the state that have implemented tobacco and smoke free policies, statistics on tobacco use, information about the tobacco industry, and how to make an informed decision about such a policy. Mr. Blakesley's presentation is attached. Following this presentation, the Parks and Recreation Advisory Board, staff, and guests discussed implementation and enforcement of a smoke and tobacco free policy. Upon conclusion of the discussion, the Astoria Parks and Recreation Board unanimously voted to develop a smoke and tobacco free policy to be recommended for City Council adoption.

During the Monday, August 17th City Council Meeting, the City Council was presented with an ordinance and held a hearing to ban smoking and tobacco use in City of Astoria Parks. City Council voted in approval of the ordinance, and requested that staff update the ordinance to also ban the use of marijuana in City of Astoria Parks. The City Attorney reviewed the proposed changes and recommended a new hearing be held with the addition of banning marijuana use in City of Astoria Parks. Therefore, an additional public hearing and first reading of the updated ordinance is needed.

If City Council approves the ordinance amending the City Code to prohibit tobacco and marijuana use in City of Astoria Parks, signage informing users of the law will be printed and installed in all City of Astoria Parks. The cost to print the needed signage is estimated between \$2,500 - \$6,750 depending on quality and size. To assist in offsetting the cost of printing the signage, \$750 in funding is available from the Oregon Tobacco Prevention and Education Program via Clatsop County. The remainder of the funding to install signage would come from the Capital Improvement Fund.

In the event that enforcement is needed, Section 5.933 of the Astoria City Code provides the director, the director's authorized representative and police officers the authority to eject a person from the park. If further enforcement is needed, the penalties identified in Section 1.010 of the Astoria City Code also apply. These are the same laws that oversee the proposed regulation as all other City of Astoria Parks Rules and Regulations, such as horseback riding, alcohol consumption, or dumping refuse in City of Astoria Parks.

Tobacco use is the single most preventable cause of disease, disability, and death in the United States, Oregon, and Clatsop County. According to the surgeon general; there is no safe level of second hand smoke exposure, second hand smoke is a known trigger for asthma attacks, since 1964 2.5 million nonsmokers have died from second hand smoke exposure, 34,000 adult nonsmokers die of heart disease annually in the U.S., second hand smoke increases risk of cardio vascular disease, and second hand smoke increases risk of stroke.

Tobacco free and smoke free environments; discourage kids from ever starting, reduce exposure to second hand smoke, prompt more smokers to try to quit, support those who are trying to quit, reduce the number of cigarettes consumed, and reduce litter from cigarette butts. Therefore, amending the City Code to prohibit smoking and tobacco use promotes the mission of the Parks and Recreation Department, promotes healthy outdoor recreation, reinforces to children that most Oregonians don't smoke, reduces exposure to secondhand smoke, protects wildlife and the environment from cigarette butts, and saves money through less maintenance and lower fire risk.

RECOMMENDATION

The City Attorney has reviewed and approved the proposed ordinance and it is recommended that City Council amend the Astoria City Code to prohibit tobacco and marijuana use in City of Astoria Parks.

By: Angela Cosby
Angela Cosby
Director of Parks & Recreation

ORDINANCE NO. 15-_____

AN ORDINANCE AMENDING CITY CODE SECTION 5.926 AND 5.931
RELATING TO PARKS RULES AND REGULATIONS

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Astoria City Code Sections 5.926 and 5.931 are amended by adding the definition and section as follows:

5.926 Definitions. In Section 5.931 of this Code the following terms mean:

- (a) Smoking. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other device containing marijuana, tobacco or a tobacco product. This includes the use of any electronic cigarettes, and other vaping or inhalant devices which create smoke, aerosol, vapor from a liquid containing nicotine or other substances.
- (b) Tobacco Product. Any substance that contains tobacco or is derived from tobacco and is intended to be put in the human body. "Tobacco product" includes any liquid intended for use in an electronic smoking device or nicotine delivery device, but does not mean tobacco use cessation products approved by the United States Food and Drug Administration.
- (c) Tobacco Use. Smoking, chewing, inhaling, exhaling, vaping, and any other ingestion or consumption of tobacco or a tobacco product.
- (d) Marijuana. All parts of the plant Cannabis family Moraceae, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.

5.931 Parks Rules and Regulations, Actives Limited or Prohibited.

- (T) Smoking and Consumption of Tobacco or Marijuana. Smoking and any other use of tobacco or Marijuana is prohibited in all areas of Astoria City Parks.

Section 2. Effective Date. This ordinance will be effective 30 days following the date of its passage by the City Council.

ADOPTED BY THE COMMON COUNCIL THIS _____ DAY OF _____, 2015.

APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2015.

Mayor

ATTEST:

City Manager

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



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

Date: September 2, 2015

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: *BE* BRETT ESTES, CITY MANAGER

SUBJECT: **REMOVAL OF FILL FROM HERITAGE SQUARE**

DISCUSSION/ANALYSIS

The City of Astoria was awarded a United States Environmental Protection Agency (EPA) multi-purpose brownfield pilot grant in 2012 for assessment and cleanup of the Heritage Square site. The 1.37-acre site is located in a primarily commercial area of downtown Astoria. The site occupies an entire City block with the exception of a 0.11-acre portion in the southwest quarter of the block which is owned and occupied by the American Legion. During the construction of the Garden of Surging Waves (GSW) project, located at the northwest corner of the block, approximately 1,200 cubic yards of unsuitable material was excavated and stockpiled within the former Safeway building basement immediately east of the Garden of Surging Waves. The spoil material (approximately 1,200 cubic yards) was left on-site in lieu of testing and potential haul off to an approved site with the understanding that the City would be receiving the grant funds to be used towards removing the material along with additional contaminated materials at the site (approximately 260 cubic yards).

The material has been tested and is currently undergoing additional testing as a part of the EPA grant work. It is expected that the 1,200 cubic yards of material from the GSW project will be authorized for local disposal and not categorized for disposal at a qualified landfill such as the Hillsboro Landfill. If the material can be placed at a local site in lieu of hauling all the way to Hillsboro the project can benefit from substantial cost savings thereby allowing the project to remain within the grant budget. At this time, preliminary estimates indicate that a cost savings of up to \$120,000 can be realized by not needing to haul the material to the Hillsboro Landfill. The idea of removal of the material to a local site has been explored and it has been determined that the City owned quarry property (County Assessors Map T8N, R9W, Sec 16 WM, Tax Lot 1000) located along Pipeline Road would be a qualified site and is shown on the attached exhibit map. The site is approximately 460 feet from Pipeline Road which is above the old landfill site.

The dimensions of the fill are estimated at 160 feet in length by 40 feet in width and 5 feet in depth. The material will be placed and compacted in 2-foot lifts. The area shall be setback 10-

feet from the south property line and 10-feet from the rock quarry face. Once placed, the material will be covered with a geotextile fabric to serve as a demarcation in the event that excavation over the material takes place in the future. The material shall have a minimum of 3-feet of soil cover over the top of it. It is anticipated that the material will have up to 30 feet of cover over the top of it once the quarry site is fully reclaimed. The site will be seeded once fill is placed and temporarily stabilized over the winter during periods of inactivity at the quarry.

The Heritage Square material would be considered by Oregon Department of Environmental Quality to be classified as "Soil from a cleanup site" meeting the following criteria; 1) at a concentration of hazardous substance below a level that would present a human health risk or below the naturally occurring levels; 2) placed where it will not be in contact with or adversely impact water of the state and 3) covered in a manner that minimizes exposure to ecological receptors. The material can only be placed at a site that does not allow residential use. The site is currently zoned Institutional, which does not allow residential use. As long as the site use will not change, DEQ will not require a deed restriction to be placed on the site receiving the Heritage Square material. In addition, the City plans to cover the material with a geotextile fabric for demarcation and survey the material for inclusion in the City GIS system to ensure the material stays in place.

In regards to potential to contaminate groundwater, the contaminants associated with the stockpile soil are not considered highly leachable. In other words they are not easily susceptible to movement within the ground if exposed to groundwater. The material will be placed above the seasonally high water table and covered with up to 30 feet of cover. This minimizes the potential for contact with groundwater and minimizes the likelihood of the material ever impacting the surrounding area.

The EPA multi-purpose brownfield pilot grant requires a \$40,000 match from the City. In the near future, staff will bring a request to the Astoria Development Commission to allocate \$40,000 from the Astor East URA for use as a match.

RECOMMENDATION

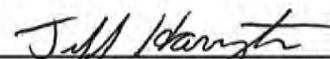
It is recommended that the City Council approve the use of the quarry property for placement of the Heritage Square material.

Submitted By



Ken P. Cook, Public Works Director

Prepared By



Jeff Harrington, City Engineer
Kevin A Cronin, CD Director

Impacted Soil Disposal Site Exhibit Map



City of Astoria
Property

City of Astoria
Property

Neikes Property
Currently being filled

Approx. location for impacted soil disposal
(40'x162'x5' thick) offset from quarry wall
and adjacent property at least 10'

460'

City of Astoria
Property

PIPELINE RD.

COXCOMB DR.

RESOLUTION NO. 15-_____

RESOLUTION OF THE ASTORIA CITY COUNCIL EXPRESSING OPPOSITION TO THE PROPOSED OREGON LNG LIQUEFIED NATURAL GAS TERMINAL AND THE OREGON LNG AND WASHINGTON EXPANSION PROJECT PIPELINES

WHEREAS, construction of the Oregon LNG terminal and Oregon Pipeline will involve staging materials in the City of Astoria's Tongue Point, and construction activities will dramatically impact traffic and transportation in the City of Astoria; and

- the heavy industrial nature of the Oregon LNG project will alter the shoreline of Youngs Bay with gas processing equipment, open flares, and massive dredging in the River, in close proximity to Astoria and clearly visible from Astoria, in a manner that is profoundly inconsistent with Astoria's robust, growing tourist and arts economy; and

WHEREAS: the storage, processing, and transport of natural gas and LNG to and from the proposed Oregon LNG terminal pose a direct health and safety risk to Astoria's residents, businesses, and visitors to our community; and

- the Oregon LNG terminal on the Skipanon Peninsula places a significant number of Astorians at risk of catastrophic accidents resulting from an LNG or natural gas release, fire, and explosion, as portions of the City of Astoria are within hazard zones identified for the project; and
- the storage, processing, and transport of natural gas and LNG to and from the terminal will place an enormous and unrealistic burden on Astoria's firefighting and other first-responder resources; and

WHEREAS, building the Oregon LNG terminal and dredging the Columbia River for LNG tanker access would harm salmon, salmon habitat, and the ecological balance of the Columbia River Estuary, and be disruptive to fishing and crabbing; and

- Astoria's economy relies on healthy fish runs and vibrant commercial and sportsfishing industries, and any threat to these industries undermines the economic viability of our region; and
- LNG tankers and the proposed LNG terminal will harm local tourism by creating air and water pollution and diminishing the aesthetic, environmental and economic resources of Astoria; and

WHEREAS, construction and maintenance of the pipeline and easement will permanently impact natural resources along the pipeline route, including streams, wetlands, water supplies, plants and animals native to the region, and fish resources, the re-establishment of which has been a major goal of fish and wildlife agencies;

NOW, THEREFORE, BE IT RESOLVED BY THE ASTORIA CITY COUNCIL AS FOLLOWS:

Section 1. That the Astoria City Council opposes the construction of the Oregon LNG terminal and its related Oregon Pipeline and Washington Expansion Project pipelines.

Section 2. That the Astoria City Council urges all local, state, and federal decision-makers to use their authority to deny the Oregon LNG terminal and its related Oregon Pipeline and Washington Expansion Project pipelines.

Section 3. This resolution is effective immediately upon its enactment by the City Council.

ADOPTED BY THE CITY COUNCIL THIS ____ DAY OF _____, 2015.

APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2015.

Mayor

ATTEST:

City Manager

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