



# AGENDA

## ASTORIA CITY COUNCIL

August 15, 2016

7:00 p.m.

2<sup>nd</sup> Floor Council Chambers

1095 Duane Street · Astoria OR 97103

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **REPORTS OF COUNCILORS**

4. **CHANGES TO AGENDA**

5. **PRESENTATIONS**

- (a) Oregon Brownfield Award
- (b) North Coast Crisis Resource Center
- (c) Scandinavian Immigrant Park Proposal
- (d) Waterfront Bridges Replacement Project for 6<sup>th</sup> – 11<sup>th</sup> Streets

6. **CONSENT CALENDAR**

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

- (a) City Council Minutes of 7/18/16
- (b) City Council Work Session Minutes of 7/18/16
- (c) City Council Special Meeting Minutes of 7/25/16
- (d) Waterfront Bridges Replacement 6<sup>th</sup> – 11<sup>th</sup> Streets ODOT Local Agency Agreement Amendments and IGAs for Right-of-Way Services (Public Works)
- (e) Authorize Solid Waste Engineering Consultant Services – Former Astoria Landfill (Public Works)
- (f) Addition of Job Title for Schedule F-1 of Salary Resolution No. 16-04 (Police)

7. **REGULAR AGENDA ITEMS**

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

- (a) Direction for Possible Scandinavian Immigrant Monument to be Located at Peoples Park (Parks)
- (b) Ordinance Approving the Assignment of Non-Exclusive Telecommunication Franchise from CoastCom, Inc., to Astound Broadband, LLC (1<sup>st</sup> reading) (Finance)
- (c) Verizon Wireless Leases (Police)
- (d) Resolution Declaring an Emergency and Authorizing the Award of a Public Improvement Contract for Street End Bridge Repair Work (Public Works)

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

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



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

August 12, 2016

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA CITY COUNCIL MEETING OF AUGUST 15, 2016

**Item 5(a): Oregon Brownfield Award**

The City of Astoria has received an Oregon Brownfield award recognizing the Astoria Athletic Complex as an outstanding brownfields redevelopment. The Award honors individuals and groups that have implemented innovative, yet practical, remediation projects that stimulated economic development through job creation or retention, or addressed a critical community development need. The selection criteria for the awards focused on two primary goals: balance of economic and quality of life improvements to the local community and significant environmental gains. Each award-winning project highlights one or all of the goals associated with the State's brownfields mission: protection of human health and the environment; enhanced collaboration and communication among essential partners to facilitate clean-up and reuse; strengthened economic marketplace by bringing industrial and commercial brownfields sites back into productive reuse; and sustained reuse through redevelopment of brownfields to meet and enhance a community's long-term quality of life. City staff were not available to receive the award at the 2016 Oregon Brownfields Conference held on May 16<sup>th</sup> – 17<sup>th</sup> in Sunriver, Oregon, so our consultant Maul Foster Alongi received the award on our behalf. They will be presenting the award to the City at the August 15, 2016<sup>t</sup> City Council meeting.

**Item 5(b): North Coast Crisis Resource Center**

North Coast Crisis Resource Center Director Warren Zimmerman will discuss the facilities and services provided at the Center.

**Item 5(c): Scandinavian Immigrant Park Proposal**

Loran Mathews and Judi Lampi of the Astoria Scandinavian Heritage Association (ASHA) will make a presentation regarding ASHA's proposal for a Scandinavian Immigrant Park and monument proposed to be located at the Peoples Park on 16th and Marine Drive.

**Item 5(d): Waterfront Bridges Replacement Project for 6<sup>th</sup> – 11<sup>th</sup> Streets**

Where each of the City's numbered streets between 6<sup>th</sup> and 11<sup>th</sup> Streets meet the Columbia River, a short bridge connects the solid-ground road to the over-water pier structure. These waterfront bridge structures are of utmost importance to the City as they provide access to a critical portion of our waterfront. They provide both pedestrian and vehicular access to many businesses and attractions. In addition, they provide essential emergency vehicle access to the waterfront. Currently the structures are all load limited. In September 2014, the City entered into an Agreement with ODOT for the design phase of the Project. In April 2015, OBEC Consulting Engineers, Inc. (OBEC) was hired by ODOT for provide these services. The design phase is now 30 percent complete. Staff will present an update on the project and show the computer rendered photo simulations for 8<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Streets that were prepared by the consultant team.

**CONSENT CALENDAR**

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

The minutes of the City Council meeting of July 18, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

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

The minutes of the City Council Work Session of July 18, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

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

The minutes of the City Council Special Meeting of July 25, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

**Item 6(d): Waterfront Bridges Replacement 6<sup>th</sup> – 11<sup>th</sup> Streets ODOT Local Agency Agreement Amendments and IGAs for Right-of-Way Services (Public Works)**

Where each of the City's numbered streets between 6<sup>th</sup> and 11<sup>th</sup> Streets meet the Columbia River, a short bridge connects the solid-ground road to the over-water pier structure. The waterfront bridge structures provide access to a critical portion of our waterfront. Currently the structures are all load limited. The City has received funding from the Oregon Department of Transportation (ODOT) to replace the six waterfront bridges with a 10.27% City match. In September 2014, the City entered into an Agreement with ODOT for the design phase of the Project. In April 2015, OBEC Consulting Engineers, Inc. (OBEC) was hired by ODOT for provide these services. The design phase is now 30 percent complete.

At this stage of the project, it is necessary to authorize the Right-of-Way Services task. This will be accomplished through an amendment to the Local Agency Agreement with ODOT to authorize the funds for this task and an Intergovernmental Agreement for Right-of-Way Services that states the requirements for this task. The stewardship agreement between ODOT and the Federal Highway Administration (FHWA) requires ODOT's Right-of-Way Section authorization to perform right-of-way activities when Federal Funding is involved.

Right-of-way activity is expected to occur adjacent to each of the waterfront bridge structures. The Agreement Amendments provide \$232,029 in LHBP funds with a City match of \$36,971 for a total Right-of-Way Services cost of \$360,000. A breakdown of these costs per waterfront bridge structure is shown below:

Street End	HBP Funds	City Match	Total Cost
6 <sup>th</sup> Street	\$53,838	\$6,162	\$60,000
7 <sup>th</sup> Street	\$53,838	\$6,162	\$60,000
8 <sup>th</sup> Street	\$53,838	\$6,162	\$60,000
9 <sup>th</sup> Street	\$55,633	\$6,367	\$62,000
10 <sup>th</sup> Street	\$55,633	\$6,367	\$62,000
11 <sup>th</sup> Street	\$50,249	\$5,751	\$56,000
<b>TOTAL</b>	<b>\$323,029</b>	<b>\$36,971</b>	<b>\$360,000</b>

These costs have been included in the overall project cost presented to the City Council over the past two years. Surface Transportation Program (STP) allocations will be used for the match. It is recommended that Council authorize the six Intergovernmental Agreements for Right-of-Way Services and the six Local Agency Agreement Amendments with ODOT to secure funding for the Waterfront Bridges Replacement Projects and also approve the proposed City match for the Right-of-Way Services.

**Item 6(e): Authorize Solid Waste Engineering Consultant Services – Former Astoria Landfill (Public Works)**

The Oregon Department of Environmental Quality (DEQ) issued the former landfill closure permit to the City on December 10, 2015. The permit outlines post-closure tasks that must be completed by various deadlines. Staff has asked the City's solid waste consultant, Maul Foster & Alongi, Inc. (MFA), to provide a scope of work to assist us with the work required up to June 30, 2017 (the current fiscal year). Tasks to be completed are identified in the memorandum. The work in the amount of \$23,560.00 will be funded through the Sanitation Fund. It is recommended that City Council execute a contract with Maul Foster Alongi for a total not-to-exceed amount of \$23,560.00 for solid waste engineering services for the Landfill Closure Project.



**Item 6(f): Addition of Job Title for Schedule F-1 Salary Resolution No. 16-04 (Police)**

This memo proposes the creation of a temporary position of Assistant to the Emergency Communications Manager, in order to meet immediate needs related to the dispatch center. It is anticipated that the duration of work will be approximately six months. The position would be a temporary, non-benefited position under City personnel policies (no medical; no earned paid leave); the position would not perform the duties of either a Records Specialist or a Communications Officer, and would perform a new set of duties as described in the memorandum, to include the creation of job duties for a new position of Operations Supervisor. This temporary position would assist the Emergency Communications Manager, Jeff Rusiecki, in special projects which otherwise cannot be accomplished as timely as needed. This temporary position would bridge the period until the Center is able to create a job description, recruit and hire a full-time Operations Supervisor. The Operations Supervisor position has been budgeted, funded and approved by Users, and we plan to move forward with recruitment and selection once a permanent position is created and approved by the City Council. As a rule, hours will not exceed 29 per workweek (seven day period Monday through Sunday), or a cumulative total of 1,000 per year. If the requirements of a particular workweek exceed 30, they will be offset on a flex basis in other weeks, and, some work may be performed on a tele commute basis.

Before a position can be posted, the creation of a job description was required to identify the essential duties, expectations, required experience and education as well as to review the current marketplace establishing appropriate salary range to fulfill the current requirements of the City. It is proposed Schedule F-1, Range 2, be utilized and step determined based on the experience and education of the candidate. Funds are included in the approved budget for FY2016-17 to accommodate the addition of this temporary position. Job recruitment and offer would commence should Council approve the description as noted in the memorandum and salary schedule range at the August 15th meeting. It is recommended that the City Council approve the addition of the Job Title/duties and use of Schedule F-1, Range 2, as contained in Salary Resolution No. 16-04.

**REGULAR AGENDA ITEMS**

**Item 7(a): Direction for Possible Scandinavian Immigrant Monument to be Located at Peoples Park (Parks)**

Earlier in the meeting representatives from the Astoria Scandinavian Heritage Association will make a presentation regarding the proposed Scandinavian Immigrant Park and Scandinavian Immigrant Monument. Parks and Recreation Director Cosby's memo accompanying this agenda item details the history of the Peoples Park. The memo also reviews the Park and Recreation Advisory Board's discussion and recommendation that ASHA would need to include not only fundraising for construction, but also for the monument's ongoing care and maintenance. The Parks and Recreation Advisory Board unanimously agreed to

recommend the Scandinavian monument project to the City Council contingent upon a formal park adoption agreement. Therefore, it is recommended that Council consider the Parks and Recreation Advisory Board's recommendation and direct staff to prepare an agreement with ASHA following adoption of an Adopt-A-Park program. Both the Adopt-A-Park program and ASHA agreement would be brought back to Council for consideration.

**Item 7(b): Ordinance Approving the Assignment of Non-Exclusive Telecommunication Franchise from CoastCom, Inc., to Astound Broadband, LLC (1<sup>st</sup> reading) (Finance)**

Ordinance 16-03 was approved March 21, 2016, granting a franchise to CoastCom, Inc., for operation of telecommunications facilities within City rights-of-way. The ordinance:

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

Astound Broadband, LLC has entered into a purchase agreement with CoastCom, Inc. to acquire the assets and operation of CoastCom, Inc. Matt Updenkelder, Vice President of Operations for CoastCom, Inc. has requested City Council consider assignment of the CoastCom franchise to Astound Broadband, LLC. Included in this packet is an Ordinance approving the assignment of a non-exclusive telecommunication franchise. The documents have been reviewed and approved as to form by City Attorney Blair Henningsgaard. It is recommended that City Council conduct the first reading of the proposed ordinance.

**Item 7(c): Verizon Wireless Leases (Police)**

At the July 5, 2016 meeting, draft leases were presented for the Verizon Wireless project at Reservoir Ridge and a lease extension at Coxcomb. Council indicated they believed the terms were supportable. These leases were returned to Verizon Wireless (VZW) for inclusion of two items listed in the memorandum presented that night. Additionally, the Council nondiscrimination policy was included in the contracts.

Verizon Wireless has signed the two leases with the terms presented to the Astoria City Council at the July 5th meeting. In addition they have provided a right of way easement for Pacific Power to provide power to the facility. The leases presented then, and now for signature, are in keeping with the guidance set out during the March 21, 2016 work session regarding the wireless communications facility at Coxcomb, Staff has negotiated a new lease with Verizon Wireless (VZW) for the site at Reservoir Ridge. The terms of the lease are favorable to the City in value of construction and use of tower for our

communication needs. For the term of the lease, there are no monthly payments for lease. The negotiations resulted in two leases. These leases are for the Coxcomb and Reservoir Site both of which have been reviewed and approved as to form by City Attorney Henningsgaard. With the previously proposed and now adopted amendments, the highlights of the leases are in the memorandum

In addition, an easement to Pacific Power is also included to provide electrical service to the Reservoir Ridge site. City Attorney Henningsgaard has asked for some changes to the easement document including clarification where the line would be placed in the respective tax lots and with language regarding waiver of a right to jury trial. Staff will work with Pacific Power to address these issues. It is recommended that Council authorize the Mayor and City Manager to sign the leases with Verizon Wireless for facilities at Coxcomb and Reservoir Ridge and the Pacific Power right of way easement, contingent on resolution of the City Attorney's requested changes.

**Item 7(d): Resolution Declaring an Emergency and Authorizing the Award of a Public Improvement Contract for Street End Bridge Repair Work (Public Works)**

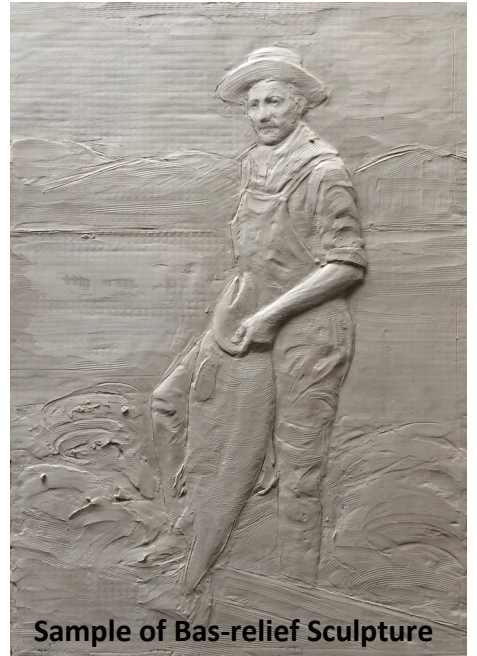
The City of Astoria has six timber street end structures at the north ends of 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Streets that are inspected annually by the Oregon Department of Transportation (ODOT) Bridge Department. ODOT inspects the structures and makes recommendations for repairs that will permit the structures to safely remain open. Without the identified repairs, the structures could be recommended for closure to both vehicular and trolley traffic by ODOT staff. A repair strategy was developed by OBEC and was designed to be limited to only what has been deemed absolutely essential in order to minimize the expenditure of funds prior to the upcoming planned replacement of the structures and to assure trolley operations.

Staff solicited quotes for the repair work and received two quotes that exceeded \$100,000: Bergerson Construction, Inc. for \$196,799 and Columbia Dockworks, Inc. for \$152,950. Columbia Dockworks is not prequalified with ODOT; therefore, considered a non-responsive quote and removed from consideration. The only responsive quote was received from Bergerson Construction (who is ODOT qualified) in the amount of \$196,799. At the time of this Council memo preparation, Staff and OBEC are in the processes of negotiating with Bergerson Construction to reduce the total cost of this contract through value engineering and alternative repair approaches at specific locations. The contract with scope of work, including the final contract amount, will be presented at the Council meeting along with a project budget. It is recommended that funds be provided for this project by the Capital Improvement Fund, which may require a budget amendment at the end of the fiscal year. It is recommended that the City Council adopt the Resolution declaring an emergency and award the public improvement contract for the Street End Bridge Repair Project to Bergerson Construction, Inc.

## Scandinavian Immigrant Park Proposal



Street View from Marine Drive



Sample of Bas-relief Sculpture

The **Astoria Scandinavian Heritage Association** is the non-profit partner of the Astoria Scandinavian Midsummer Festival Association.

The **Mission of ASHA** is preserve traditional Scandinavian culture and heritage through educational opportunities in areas of customs, language, food and the arts and to educate the citizens of Clatsop County and surrounding areas about the culture and heritage of the Scandinavian countries.

**City of Astoria:** According to the 1910 census there were 9599 inhabitants in Astoria and 35 % of the population identified as Scandinavian. The proposed Scandinavian Immigrant Park will honor the immigrant tradition that brought thousands of Scandinavians to Oregon's North Coast in the late 1800s and early 1900s. It will be erected in a public space to make locals and visitors aware of the ethnic heritage that contributed immensely to the fabric of our community. It will honor families that said their last good-bye in Scandinavia and moved to Astoria to become Americans. The park will educate locals and visitors about the City's rich history that has been influenced by its citizens from Scandinavia.

The proposed **Scandinavian Immigrant Park** will fill a need mentioned in the City of Astoria Parks and Rec Master Plan for more urban plaza space. ASHA intends to work with Parks and Rec throughout the planning process to gain their input and approval for the design. The proposed park is NOT a new park but an enhancement to a current park already under Parks and Rec jurisdiction.



Footprint of proposed park enhancement

The **proposed park** is at the site of the former People's Park on Marine Drive between 15th and 16th. The park is bordered on the north by the Astoria Trolley tracks, the River Walk, and the Columbia River. Marine Drive is on the south and the park is close to the Welcome to Astoria sign and the Columbia River Maritime Museum. The park will be visible, accessible, and welcoming.

Details and more information are available at:  
[www.fromscandinaviatoastoria.org](http://www.fromscandinaviatoastoria.org)



August 5, 2016

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

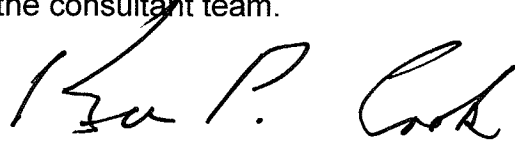
SUBJECT: **WATERFRONT BRIDGES REPLACEMENT PROJECT (6<sup>TH</sup> – 11<sup>TH</sup> STREETS)  
PRESENTATION**

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

In September 2014, the City entered into an Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) for the design phase of the Waterfront Bridges Replacement Project that will replace these six bridge structures. Then in April 2015, OBEC Consulting Engineers, Inc. (OBEC) was hired by ODOT as the engineering design consultant for this project. Since that time, OBEC has performed preliminary investigations and design to 30 percent completion.

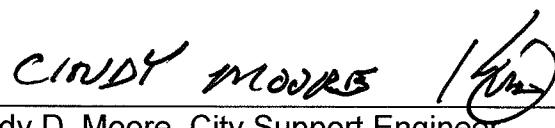
Staff will present an update on the project and show the computer rendered photo simulations for 8<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Streets that were prepared by the consultant team.

Submitted By:



Ken P. Cook, Public Works Director

Prepared By:



Cindy D. Moore, City Support Engineer

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:16 pm.

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

Councilors Excused: None

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

### **PUBLIC COMMENTS ON AFFORDABLE HOUSING**

This item was added to the agenda during the Work Session.

Mayor LaMear announced that because the Affordable Housing Work Session went so long, there was no time for citizen input, so City Council agreed to take citizen input on affordable housing at this time. She called anyone interested to come forward.

Jennifer Cameron-Lattek said she and her husband own Street 14 Café on 14<sup>th</sup> and Commercial. She thanked Council for addressing housing issues, and encouraged Council to continue the conversation. The tourism industry in Astoria is growing right now and that means lower wage jobs. Her staff has problems finding affordable housing. She did not have the answer, but was excited to hear ideas and see the community figure out a solution. She pays her employees as much as she can and appreciates the tips her employees receive. However, paying as much as possible sometimes means she must charge higher prices for products. When prices go up, the community is then paying for good wages. She wanted everyone to recognize that part of the reality, too.

Mayor LaMear confirmed there were no further comments and convened the Astoria City Council meeting.

Mayor LaMear called for a moment of silence for all of the recent killings across the country.

### **REPORTS OF COUNCILORS**

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

**Item 3(b): Councilor Price** reported that over the last several weeks she struggled with the events in Baton Rouge, Dallas, Nice, and Saint Paul. She was grateful to find grace in conversations with family, friends, and colleagues. She thanked those who step up, take part in the community, and find commonality among diverse views. She also thanked Chief Johnston for having a social media presence that speaks to the community.

**Item 3(c): Councilor Herzig** had no reports.

**Item 3(d): Councilor Nemlowill** reported that on her way to the Council meeting, she saw many people assembled at the Garden of Surging Waves. She wondered if they were participating in a protest or rally, but learned they were playing Pokémon Go.

**Item 3(e): Mayor LaMear** announced her appointment of Michelle Tompkins to the Parks and Recreation Board. Ms. Tompkins has extensive experience in library, recreation, and parks management and administration.

Mayor LaMear read the following statement:

“These days, I think all of us dread picking up a newspaper or turning on a news broadcast to find out that there has been another mass killing and an ever increasing number of victims of gun violence. The horror, sadness, fears, and feeling of helplessness is a human reaction to what seems incomprehensible. It doesn't matter if you are for gun rights or for stricter gun control. As human beings, we share these feelings of horror, sadness, fear, and helplessness. Would a gun resolution make any difference? Do letters to the editor and posts on social media help address the problem? I don't know. But, I do know that I must do something. We must do something to put a stop to this madness. I've written a letter to our congressional delegation, which I am planning to post as a large ad in the *Daily Astorian*. I'm paying for this as a private citizen. If you would like to sign the letter, I have sheets for you to sign, giving permission to add your name to the letter to be published in the *Daily Astorian*.

Here is the letter:

Honorable Governor Kate Brown, Senators Ron Wyden and Jeff Merkley, Congressional Representatives Suzanne Bonamici, Greg Walden, Earl Blumenauer, Peter DeFazio, and Kurt Schrader,

The City of Astoria joins with other communities in mourning the losses from mass killings around our country, but thoughts and prayers are no longer enough. We must act to put an end to this madness that is eroding our sense of safety, our sense of community, and our sense of pride in being an American.

The Astorians and those from neighboring communities who have signed this letter support the rights of individuals to own firearms for hunting and for their own protection, but urge you to work diligently to ban high capacity magazines and assault weapons. Make it illegal for someone on a no-fly list to obtain a weapon. Approve universal background checks and make funding for mental health services a national priority.

Thank you for all your efforts to make our communities and our State a safe place to live and raise our children and grandchildren.

Sincerely,  
Arlene LaMear, Mayor  
City of Astoria

Councilor Herzig thanked Mayor LaMear for making such a brave statement.

## **CHANGES TO AGENDA**

The agenda was approved with the addition of Public Comments on Affordable Housing, Item 7(f): McClure Park Grant Resolution, and Item 7(g): Authorization to Submit Request for Qualifications for Building Code and Code Enforcement Services.

## **PROCLAMATIONS**

### **Item 5(a): 90<sup>th</sup> Anniversary and Rededication of the Doughboy Monument**

Mayor LaMear read the proclamation declaring July 21, 2016 as the 90<sup>th</sup> Anniversary of the Doughboy Monument. She noted that the Astoria Column was also celebrating its 90<sup>th</sup> birthday this year.

## **CONSENT CALENDAR**

The following items were presented on the Consent Calendar:

- 6(a) City Council Minutes of 6/20/16
- 6(b) Boards and Commission Minutes
  - (1) Library Board Meeting of 5/24/16
- 6(c) 2016-2017 Ready to Read Grant Application (Library)
- 6(d) Promote Astoria Funds – Agreement for Professional Services with Astoria/Warrenton Chamber of Commerce (Finance)**
- 6(e) Promote Astoria Funds – Agreement for Professional Services with Astoria Downtown Historic District Association (ADHDA)**



- 6(f) Authorization to Light the Astoria Column a Pink Hue for the Month of October in Recognition of Breast Cancer Awareness Month (Parks)

Councilor Herzig requested Items 6(d) and (e) be removed for further discussion.

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

Councilor Herzig stated that in both Items 6(d) and (e), the City's Professional Services Agreement was utilized which included the City's mandatory non-discrimination. He corrected a typo in the phrase "gender ~~identity~~ **identity**/expression" and asked that the phrase should be changed to the more common usage, "gender identity **and** expression." This would make the phrase compliant with normal usage and easier to transcribe.

City Manager Estes clarified a vote of the City Council would be required to take that action as a Regular Agenda Item. When the policy was created, there was a lot of discussion about the language that should be used. Staff can add the topic to a future City Council agenda.

Councilor Herzig requested that Item 7(h): Edits to the City's Agreement for Professional Services Non-discrimination Clause be added to tonight's Regular Agenda Items, since it would not take much time.

Mayor LaMear confirmed there was no reason not to address the language tonight and agreed to add the item to the agenda.

**Item 6(d): Promote Astoria Funds – Agreement for Professional Services with Astoria/Warrenton Chamber of Commerce (Finance)**

Councilor Herzig said Promote Astoria Funds going to the Chamber of Commerce was one of the most controversial topics. Many Budget Committee members did not believe the Chamber fully complied with its contract with the City. Therefore, he wanted the Council to have to take a public vote on the agreement.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Nemlowill, to accept Item 6(d) on the Consent Calendar. Motion carried 4 to 1. Ayes: Councilors Price, Warr, Nemlowill, and Mayor LaMear; Nays: Councilor Herzig.

**Item 6(e): Promote Astoria Funds – Agreement for Professional Services with Astoria Downtown Historic District Association (ADHDA)**

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

## REGULAR AGENDA ITEMS

**Item 7(a): Ordinance Adopting Astoria Comprehensive Plan Amendment A16-03 to include the Parks and Recreation Comprehensive Master Plan (2<sup>nd</sup> Reading and Adoption) (Parks)**

This proposed ordinance received its first reading at the July 5, 2016 Council meeting. The ordinance amends Comprehensive Plan Section CP.028.J pertaining to Background Plans and Studies and Comprehensive Plan Section CP.275.25 pertaining to Parks, Recreation, and Open Space Element. It is recommended that Council conduct a second reading and adopt the ordinance.

City Manager Estes noted the proposed ordinance was recommended by the Parks and Recreation Citizen Advisory Committee and Advisory Board, as well as the Astoria Planning Commission.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Price, to conduct the second reading of the ordinance amending the Astoria Comprehensive Plan to include the Parks and Recreation



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

Director Brooks conducted the second reading of the ordinance.

Councilor Herzig said Astoria really needs this Master Plan. However, many citizens are concerned about the potential sale of City park properties. The citizens must be vigilant about ensuring complete transparency if park sales move forward because a lot of work went into the Master Plan and adopting the Plan cannot be postponed just for that one concern.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Nemlowill, to adopt the Ordinance with the Findings and Conclusions contained in the Staff report. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Mayor LaMear read the rules of appeal.

**Item 7(b): Trestle and Track Inspection Maintenance – Contract Amendment #2 (Public Works)**

The City of Astoria has approximately 4.7 miles of railroad track and eight timber trestles formerly owned and operated by Burlington Northern Railroad from the Port of Astoria to Tongue Point. The Astoria Riverfront Trolley currently operates on approximately 3 miles of this track, and over four of the trestles. Due to the age of the railroad infrastructure, required maintenance has increasing rapidly.

Trestles are inspected yearly to ensure safety. Last fiscal year Council authorized a comprehensive inspection contract with OBEC to provide information necessary to maintain proper Trolley operation and plan future funding allocation. OBEC has recently provided a report with the following recommendations:

<b>Table 1 – Trolley Infrastructure Maintenance Summary**</b>		
<b>Location</b>	<b>Immediate Maintenance Needs</b>	<b>Annual Maintenance Needs</b>
Trestles West of 39th Street (Active Trolley & River Trail)	\$276,000	\$233,000
Trestles East of 39th Street (River Trail & occasional service equipment)	\$293,000	\$243,000
Track Maintenance West of 39th Street	\$0	\$43,500
Totals =	\$569,000	\$519,500

\*\*Costs shown in this table are based on information presented in Table 1 of the Special Inspection Report "Maintenance Needs and Associated Costs" and include contingency and design/construction engineering.

There are three options to consider when looking at balancing usability of the River Trail and Trolley with cost effective repairs.

1. No repairs are made. City continues funding minor repairs and inspection. This option is not recommended due to the negative effects on trolley operation and impacts to the infrastructure.
2. All immediate repairs be completed with plans to complete annual repairs. This option is not recommended due to cost.
3. A hybrid approach focusing available funding on maintaining structures and track west of 39th Street (active rail) and providing minimal repairs and frequent inspection to ensure safe operations. This is the recommended approach.

The hybrid approach would be completed prior to Trolley operations in 2017 at an estimated cost of \$319,500. Funding for immediate repairs is available in the Capital Improvement Fund; however, a more sustainable method of funding the on-going maintenance should be explored.

If Council wishes to pursue a hybrid repair approach, approval for a contingency task in OBEC's contact is needed for Trestle CAD Drawings. The estimated cost for this work is \$17,778 and is available in the Promote Astoria Fund.

<b>Task</b>	<b>Cost</b>
Original Special Inspection Contract	\$37,067
Contingency Task 1 – 6th & 14th Street Park Inspection	\$9,963
Contingency Task 2 – Trestle CAD Drawings	\$17,778
Total =	\$64,808

It is recommended that City Council consider proceeding with a hybrid repair approach for the Trolley/River Trail trestles. It is also recommended that City Council authorize Contract Amendment #2 in the amount of \$17,778.

Assistant City Engineer Crater explained that OBEC recommended immediate repairs critical to keeping the trolley operational in 2017 and annual maintenance repairs needed over the next 10 years. The recommendations included planning level cost estimates, which were summarized in Table 1 of the memorandum. He reviewed the data in the table, the three options considered by Staff, and possible funding sources for both types of repairs. He understood that additional inspections would allow the City more time to complete the Street-Ends Repair Project, which originally had to be complete by August 1<sup>st</sup>.

Councilor Herzig asked if the hybrid approach would satisfy ODOT's safety requirements for the trestles. Engineer Crater said yes and explained that ODOT does not actively regulate structures, so this is the City's due diligence. Astoria has been given flexibility on the repairs and timeline on this project because it is not regulated by ODOT, but ODOT Rail will ask for a copy of the report. This hybrid approach will not impact funding for the Street-End Repair Project, which will begin prior to the Trestle Repair Project. Staff does not have solid information on such a large-scale trestle project, so the Street-End Repair project will help inform the annual maintenance repair costs. As the projects move forward, better information will help Staff target funding.

Councilor Price said the immediate repairs on the trestles could be completed before the trolley begins operating next year, so the work would be less disruptive than the Street-End Repair Project. She confirmed that Staff would look into sustainable funding and present their findings to Council. City Manager Estes added that Staff would discuss the necessary annual repairs with the Trolley Association and consider Promote Astoria Funds and other funding revenues.

Councilor Nemlowill believed it was interesting that ODOT inspected the street ends and waterfront bridges and said immediate repairs were necessary. The City conducted its own study on the trestles and also found that costly immediate repairs were necessary. The situation is unfortunate and ironic. She asked how much the annual projected maintenance costs exceeded the budget. Engineer Crater said the hybrid approach would be about \$276,000 annually. Currently, about \$100,000 has been budgeted for the trestles and track maintenance in the Promote Astoria Fund. Last year, the City spent a little more than \$100,000. He reminded that the annual maintenance costs were planning level estimates.

Councilor Nemlowill said during the budget hearings, Promote Astoria Funds were discussed the most. She believed the funds should be streamlined to uphold the Riverwalk and trolley. The Chamber and the Lower Columbia Tourism Committee do a great job, and visitor spending in Astoria is anticipated to be \$100 million this year. She was not suggesting that any money be taken from the Chamber or the Lower Columbia Tourism Committee, but she believed they should receive a percentage of lodging taxes. The City should streamline the fragmented funds and use the Promote Astoria Fund for Riverwalk maintenance, including the trestles, trash collection, and mowing.

City Manager Estes said if Council authorizes Staff to move forward with the computer-aided designs, firmer cost estimates could be developed and used to draft a proposal for the necessary work.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Nemlowill to authorize Contract Amendment #2 in the amount of \$17,778 with OBEC and approve the hybrid repair approach for the Trolley/River Trail trestles. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

**Item 7(c): Liquor License Application from Joshua Allison, dba Reach Break Brewing Located at 1343 Duane Street for a New Outlet for a Brewery Public House License (Finance)**

A liquor license application by Joshua Allison doing business as Reach Break Brewing, located at 1343 Duane Street, Astoria. The application is for a New Outlet for a Brewery Public House License. The appropriate departments have reviewed the application and it is recommended that Council consider approval.

Councilor Price said tremendous improvements have been made to the property.

Councilor Nemlowill declared a potential conflict of interest, as her husband owns a brewery in the vicinity. She did not believe this was a direct conflict, so she would vote.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Warr to approve the liquor license application has been filed by Joshua Allison for a Brewery Public House License. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

**Item 7(d): Liquor License Application from Charles Holboke, dba Charlie's Chop House Located at 1313 Marine Drive for a New Outlet for a Full On Premises Sales Commercial Establishment License (Finance)**

A liquor license application has been filed by Charles Holboke, doing business as Charlie's Chop House, located at 1313 Marine Drive for a New Outlet for a Full On-Premises Sales Commercial Establishment License. The appropriate departments have reviewed the application and it is recommended that Council consider approval.

Councilor Herzig said on this and the last application, both Applicants made the same error. He did not believe the form was clear and hoped the Oregon Liquor Control Commission (OLCC) would clarify where to write the name of the business on the form.

Councilor Nemlowill declared a direct conflict of interest and said she would abstain from voting. The Applicant is a client of her husband's brewery, Fort George Brewery.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Warr to approve the liquor license application by Charles Holboke for a New Outlet for a Full On-Premises Sales Commercial Establishment. Motion carried 4 to 0 to 1. Ayes: Councilors Price, Warr, Herzig, and Mayor LaMear; Nays: None; Abstentions: Councilor Nemlowill.

**Item 7(e): Resolution Supporting the City of Astoria's "Coast Guard City" Recertification Application (City Council)**

The City of Astoria was originally designated as a Coast Guard City on May 1, 2011. In order to retain this designation, every five years the City is required to submit an application for recertification as a Coast Guard City. The application will be reviewed by the Coast Guard City Board in September 2016 and, if approved, the City's status will be renewed for another five-year term. Jerry Ostermiller assembled the original application and is again assisting the City with this recertification process. It is recommended that Council adopt the resolution supporting the recertification application in order to retain its Coast Guard City status.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Herzig to adopt the resolution supporting the recertification application in order to retain its Coast Guard City status. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

**Item 7(f): McClure Park Grant Resolution**

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

City Manager Estes noted a copy of the resolution was available at the dais.

Director Cosby said on May 2<sup>nd</sup>, City Council authorized Staff to apply for an Oregon Parks and Recreation Small Communities Planning Grant. The grant application requires a resolution and a 40 percent match. Grant funds will be used to help implement the first phases of the Park and Recreation Master Plan that Council just adopted.

Site plans for Shively Park and McClure Park will be developed. The 40 percent match would be \$16,000 cash from the Capital Improvement Fund and \$11,000 of in-kind Staff time.

Councilor Price said she has lived on 12<sup>th</sup> and Jerome for 20 years and did not know about the park for a long time. The neighborhood adopted the park and it became very prominent in the Parks Master Plan. It is a wonderful neighborhood park with views of the city and ship traffic.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Nemlowill to adopt the resolution authorizing staff to apply for grant funds to develop site plans at McClure Park and Shively Park and provide a 40 percent match as recommended by staff. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

**Item 7(g): Authorization to Submit Request for Qualifications (RFQ) for Building Code and Code Enforcement Services**

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

City Manager Estes stated a memorandum was available at the dais and explained that the Community Development Department has been working to hire a new Code enforcement officer and building official. Staff conducted interviews last week and learned that none of the applicants would be able to serve the City in this capacity. A contractor could provide more consistent long-term services over time.

Director Cronin said on May 2<sup>nd</sup>, Council authorized a contract with the Building Department LLC, which expires at the end of July. This contract was meant to fulfill the City's needs until a building official/Code enforcement officer could be hired. Since none of the candidates will work for Astoria, he is requesting Council authorize a procurement process to hire a third-party consultant. The contractor could be hired for the interim so that the building official/Code enforcement position could remain open until filled. Right now, the market for building officials is very tight, so he planned to consider increasing the salary to make the position more competitive. If Council authorizes the RFQs, they would be due next week so that Council could consider the contract on August 1<sup>st</sup> and prevent a gap in services.

City Manager Estes added that the scope and services would include Code enforcement that is above and beyond what is being provided now. Currently, Community Development Staff have been dealing with Code enforcement, but Staff needs additional assistance.

Councilor Nemlowill asked if Staff explored other options, like working with the County building official and offering a separate Code enforcement position. She believed a building official would be more difficult to recruit because they need more education and experience. City Manager Estes replied the salary is the issue. The County's building official earns about \$25,000 to \$30,000 a year more than Astoria's salary range. Director Cronin added the County is interested in providing services to Astoria, as they were before. However, just like any other contractor, the County must provide the City with a competitive proposal.

Councilor Nemlowill believed it would be ideal to have one person on City Staff to provide the services. Astoria's businesses liked the County building official, so it might be worth charging more for building permits. City Manager Estes explained that if the County were not willing to provide the Code enforcement services, the City would need money from the General Fund to hire an enforcement officer.

Councilor Herzig asked if the motion before Council will give Staff the leeway to explore all the options.

City Manager Estes replied Staff was seeking authorization of the instruments of the Request for Qualifications. He confirmed no separate Council action would be needed if the City can work with the County and hire that person.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Price to authorize staff to submit a Request for Qualifications for Building Code and Code Enforcement Services. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill and Mayor LaMear; Nays: None.

**Item 7(h): Edits to the City's Agreement for Professional Services Non-discrimination Clause**

This item was added to the agenda during Item 6: Consent Calendar.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Price to amend the non-discrimination policy by changing the phrase "gender Identity/expression" to "gender *identity and* expression."

Councilor Nemlowill asked if the suggested change will result in any issues or is of concern. City Attorney Henningsgaard replied because it was the Council's policy, the language could state whatever the Council wanted. Councilor Nemlowill said she did not see the necessity of the change, but she would support it.

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

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

Mayor LaMear read a letter from City Council that will be sent to the Friends of the Astoria Column thanking them for the restoration work completed last summer. She thanked Councilor Price for developing the letter and noted the Friends had put in a lot of time, money, and energy.

Veronica Montoya, 324 38<sup>th</sup> Street, Astoria, said she has been a resident for about three and a half years. She spends a lot of time out on the docks taking pictures of and documenting the sea lions daily. The tourism industry is growing and the tourists love the animals. However, the tourists do not love it when Pacific Marine Fisheries is trapping and branding the sea lions in Astoria's basin. Last year, they decapitated one of the sea lions in front of the cruise ship guests. She wanted to know how much the Port of Astoria made on renting the space so the Oregon Department of Fish and Wildlife can trap the sea lions in the middle of town. Between 30 and 50 animals are branded each day and the animals are distressed for several days afterwards. Residents from Alderbrook to the museum must listen to the animals crying in pain. It is not fair that half of the city must suffer because of the small amount of money the Port makes by renting out the little space. Having this in the heart of the city is not good. With the sea lions being such a big tourist attraction, she believed the Port should be encouraged to stop this practice in the middle of the city and allow the branding at the Bonneville Dam where the sea lions are trapped and killed. She has hours of video tape of the animals being quiet until Oregon Department of Fish and Wildlife shows up in the morning, scaring them off the docks and trying to fill their traps with animals to be branded. She understood this was a complex problem, but it is important for Astoria's guests to enjoy their visit.

Councilor Price wanted to know if the City has ever asked the Port about this issue. She has seen Ms. Montoya's videos, which are gut wrenching and horrible. However, the trapping and branding is done on Port property. The sea lions do a lot of damage to the Port's docks and prevent people from going to the Port. The Port is a tremendous asset in the middle of town, but it cannot be used, which is a tremendous waste. She is not willing to give up Port property for the sea lions, but asked if the City had talked to the Port about the possibility of moving the trapping and branding to another location, and how inconvenient or impossible that might be. City Manager Estes did not believe the topic was discussed at the joint City Council/Port Commission meeting.

Ms. Montoya said she has presented ideas to the Port Commission, including requesting a \$1 donation of each person who comes to see the sea lions. People would be more than willing to donate to the animals. In Astoria, up to 3,000 people come to see the sea lions each day.

Councilor Price did not believe the conversation should be continued at that time or that charging money to get the sea lions in and continue to make the East Mooring Basin unsuitable for boats is not the answer. She thanked Ms. Montoya for her comments and said she would discuss the matter with Staff after the meeting.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:17 pm.

**ATTEST:**

**APPROVED:**

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

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

A work session of the Astoria Common Council was held at the above place at the hour of 6:00 pm.

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

Councilors Excused: None

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

### **AFFORDABLE HOUSING STRATEGY— PROGRESS REPORT (COMMUNITY DEVELOPMENT)**

The City Council held a special work session on September 14<sup>th</sup> to discuss the Affordable Housing Study that was completed by the Community Development Department in support of the City Council's goal setting for FY14-15/15-16. At the work session, Staff presented background information, a Draft Problem Statement, case studies, and a range of short term and long-term solutions to create more housing opportunities in Astoria. The City Council directed Staff to study the options in more detail and bring potential solutions back for review as part of an overall housing strategy. On November 2<sup>nd</sup>, Staff presented an affordable housing strategy based on comments received at the work session. Over the last six months, Staff has implemented various aspects of the strategy.

It is recommended that Council review and consider endorsement of the Affordable Housing Strategy. It is also requested that Council provide feedback on the Code amendments. If there are portions of the Code that Council has concerns about, direction as to inclusion or removal should be provided prior to the Planning Commission hearing being rescheduled.

Director Cronin gave a presentation on proposed Code amendments that promote affordable housing, reviewed the Affordable Housing Strategy Progress Report included in the agenda packet, and next steps. During the presentation, he and City Manager Estes answered Councilors questions about existing and proposed Codes, presented case studies, and explained how the proposed Code amendments would promote affordable housing. City Manager Estes confirmed Council's feedback would be forwarded to the Planning Commission before their public hearing.

Councilor Herzig recommended Council direct Staff to research Senate Bill 1533, regarding construction excise taxes. Councilor Price added that Council should also consider system development charges (SDCs). Staff answered questions about SDCs in other jurisdictions and said a lot of research would be necessary if Council wanted to consider implementing the charges.

Councilor Herzig said he was opposed to allowing an additional floor on residential buildings because the public has indicated they prefer to protect view sheds.

Councilor Nemlowill believed the proposed Code amendments were too aggressive. Astoria needs more housing, but not at the expense of quality of life. She doubted the proposed amendments would improve the housing situation and recommended that only Codes pertaining to accessory dwelling units (ADUs) be amended at this time.

Councilor Price agreed, but believed ADUs should fall under the Type 2 permitting process. However, she believed the proposed changes to administrative procedures were good. Some of the proposed Code amendments would only be appropriate in certain areas of the city, not citywide. She recommended a more lengthy public process, one similar to the model used to develop the Parks Master Plan. She also wanted to see how the proposed Codes would likely impact population growth over the next 10 and 20 years.

Councilor Nemlowill was interested in the City working with affordable housing partners to develop City property and asked how the City would move forward with such a partnership. Staff explained that housing providers, like Clatsop Community Action (CCA), would lead a project, seek funding, and ask the City to authorize a partnership. Sites owned by entities that are not in a position to develop could be marketed to private and non-profit developers. City-owned properties that would be appropriate for affordable housing developments can be identified using the inventory created two and a half years ago for the City's former land sales project.

- Councilor Herzig agreed the City should be proactive about letting developers know the City has properties it wants developed for affordable housing.
- Councilor Price said the Community Action Team had offered to help the City find funding for up to 12 derelict houses or abandoned properties. Staff confirmed the vacant house registry contains 36 houses, but the Community Action Team has not had the money to move forward. Councilor Price believed repurposing existing buildings was better than building new.

Councilor Herzig recommended the minimum lot size required for development be reduced.

Councilor Nemlowill believed Astoria should require that 20 percent of multifamily housing units be workforce housing. This could be funded by the excise tax. She said it was critical for the City to identify City-owned properties suitable for affordable housing. If the Recreation Center services were consolidated into an expanded Aquatic Center, the Yacht Club property could be used for housing. Then, the City would no longer be responsible for maintaining the building. She also believed a comprehensive countywide housing plan should be pursued.

Councilor Warr agreed that the Yacht Club property should be considered excess and sold. The property is surrounded by many apartments and putting apartments on the property would not be a problem. However, if the City is going to insist on affordable housing, it will have to find a way to make the project profitable for a builder.

Councilor Nemlowill believed selling the property at a market rate price would allow a builder to build market rate housing. The City could also offer incentives, like a lower price, property tax abatements, or property payment deferments. Astoria has a lot of service industry workers and seafood processors that make low wages and may need subsidized housing. Astoria also has many people who work for the Coast Guard and in the medical industry. Therefore, an entire building may not need to be subsidized, but it would be great if the City were involved in at least a portion of a housing development.

Councilor Warr said he agreed, but was concerned about the responsibility of the City of Astoria to provide people with housing. He believed housing should be market based and explained that if employers cannot find employees at the wages they are willing to pay, wages will have to increase, or the businesses will have to move. Many citizens believe they own their view, so it will be very difficult to consider Astoria as a mecca for affordable housing. Additionally, he did not believe affordable housing was the City's responsibility.

Councilor Nemlowill said she understood and added that there are a limited number of subsidies offered by the State anyway. However, subsidized housing happens to be a good business for some developers.

Director Cronin noted that the City is having this discussion now because the private market is not working. Astoria's housing partners, builders, and investors are not producing any housing right now. He explained that the State now allows inclusionary zoning, which allows the City to mandate a certain percentage of affordable housing. However, the City would have to offer funds, tax breaks, or some other incentive.

Councilor Price said these issues need much longer conversations because there are so many unanswered questions about how to solve the problems. Mayor LaMear agreed. City Manager Estes confirmed Staff would present revisions to the Planning Commission based on City Council's feedback and another work session would be scheduled with City Council to continue this discussion and learn more about construction excise taxes.

Mayor LaMear said she also wanted information on SDCs. City Manager Estes explained that SDCs are a funding mechanism for Public Works and are not related to affordable housing. He requested that a separate work session be scheduled to discuss SDCs. Staff agreed to provide Council with a list of SDC amounts charged by other jurisdictions. Councilor Warr also wanted information on how much those jurisdictions are charged to provide infrastructure.

Councilors discussed whether to allow public comments. Time was running late, but many people attended the work session. City Council decided to take comments during the regular session.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:09 pm to convene the regular Astoria City Council meeting.

**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 7:00 pm.

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

Councilors Excused: None

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

## **HERITAGE SQUARE/LIBRARY LOCATION – NEXT STEPS**

### BACKGROUND

The City Council adopted a FY15-16 goal to investigate locating the Astoria Public Library as part of a mixed-use project within Heritage Square, an almost 1.5 acre site in downtown Astoria. On December 7, 2015, the Astoria Development Commission heard a presentation from City staff and the City's consultant Walker I Macy and Hacker who provided initial architectural design, basic "order of magnitude" cost estimating, and a financing strategy. On January 12, 2016, the City Council held a work session to discuss various options for moving forward. Based on this discussion, staff received direction on two paths: evaluate the current cost estimate for Heritage Square to understand potential cost savings, and develop more information (including architectural concepts and cost estimates) on the options for expansion at the current library location. This would facilitate an "apples to apples" comparison of the universe of options to help decide the future of the library. On May 25, 2015, the City held an open house at the Astoria Library prior to a joint meeting of the Library Board and City Council. The design team provided an overview of six options to consider, four options on expanding the current library and two options at Heritage Square. The Council agreed to meet again to discuss the various options but no other decisions were made at this meeting.

### PROCESS

At the last work session, staff received feedback from Council to develop a more comprehensive financial analysis that includes funding sources while using the latest cost estimate for budgeting purposes. The purpose of this memo is to summarize the most recent public process, review the evaluation of the six options, and provide a basic financial analysis for planning purposes. In the lead up to the open house on May 25, and the scheduled debrief at City Council on July 25, City staff has attended the following meetings and events:

- ADHDA General Meeting - May 6
- 94.3 "Hits" Radio - May 17
- American Legion Post No. 12 - May 23
- Library Board - April 26, May 24, & June 28
- KMUN Radio: "Talk of the Town" - May 25
- Sunday Market - June 5
- Kiwanis Club - June 7
- Rotary Club - June 13

In addition, staff did direct outreach to other organizations including the Lower Columbia Hispanic Council, Astor/Lewis & Clark Parents Club, Lower Columbia Preservation Society, and Astoria Visual Arts.

The open house was attended by over 100 people and materials subsequently remained in the library for a 30-day comment period. Staff received 178 survey responses. Attached is a summary of the open house survey responses, including location preferences and general comments. Based on the public comment responses, Option C was the top choice with both Heritage Square options as the runner-ups. Materials illustrating the options are attached as well.

The Library Board met on June 28 to consider the technical merits of the various options. The Board selected a new library at Heritage Square. The Library Board's written recommendation is also attached.

Finally, staff developed a basic project estimate using the latest construction cost estimate as the basis and two financial models fill a funding gap. These are high-level estimates that utilize many assumptions and will change as the project evolves through the design process.

#### NEXT STEPS

The Council should select a site before any further work can be done on this project. Once Council selects an option, further design work will provide more refined cost estimates. However, the latest cost estimates provide adequate information for the site selection phase.

Staff developed a few key threshold questions for the Council to consider when making a decision on the future of the library. Staff comments are added to provide context only.

- *What is the overreaching goal that Council is trying to achieve?*  
The FY 15-16 Goal to evaluate Heritage Square is complete. However, the overall project goal has not been clearly defined. A goal statement can help narrow the choices and delineate the core issue.
- *Is this a short term or long-term goal?*  
A short-term goal can be achieved over a shorter period of time (<5 years) using limited funding. Conversely, a long-term goal can be achieved over an extended period (+5 years) but requires more patience in finding funding sources.
- *Is the Council wishing to allocate and secure the necessary funds to renovate or build a new library?*  
The City has limited capital improvement funds with increasing demands on antiquated infrastructure assets. With limited funds, tough choices need to be made to budget for the project still knowing that other sources of funds (bond, loan, and/or capital campaign, etc.) will be needed.
- *What is more important: location or other competing issues such as funding?*  
In order of priority, the Council can select a site and direct staff to develop a funding strategy. OR The Council can weigh the preliminary financial analysis and use it as tool to make a site selection.

It is recommended that the City Council consider the six options for moving forward and provide direction regarding implementation of the City Council Goal associated with the Astoria Public Library.

City Manager Estes briefly reviewed the memorandum in the Staff report.

Kate Summers, Library Board Chair, presented the Library Board's recommendation, which was included in the Staff report.

Councilor Herzig asked why the Library Board stated they had no preference between Options E and F, but only presented their reasons for supporting Option E. Ms. Summers explained Option F includes additional housing and the Board has assumed the library options would be the same for both Options. She agreed their reasoning supported Options E or F.

Mayor LaMear asked each Councilor to indicate their preferred Option.

Councilor Price reminded the original goal was to consider Heritage Square as an option for a library, with or without housing. She also believed the goal was to provide Astorian's and their visitors with an inviting, accessible, free, sustainable, diverse, and enduring source of knowledge. Everyone agrees that the Astoria Library has lacked the facilities and resources to support that goal for many years now. She found it interesting that the Library Board recommended an option that would make citizens wait as much as five or ten more years before realizing that goal. Their recommendation only represents their own point of view, but it is Council's job to take a much broader view. The City and its citizens have limited funds to support Astoria's eight departments, the city attorney, and the municipal court. City Council has the final say about how those funds are spent. The library has recommended an option estimated to cost \$11 million, not including furnishings, additions to the catalogue, equipment, operational expenses, etc. With the \$2.8 million from the City and \$1 million from the Foundation, \$8 million would have to be raised from outside sources. She posed the following questions for consideration:

- Who will investigate and apply for loans?
- What impact would a multi-year fundraising effort have on Staff?
- What impact would a bond measure have on our taxpayers?
- What impact would a bond measure have on our goal to find at least a few units of affordable housing?

- Would bond measures be required for other departments in the future? The earliest a measure could be added to the ballot is November 2017.
- What happens if the bond measure fails?
- How would loan payments affect the General Fund's ability to meet other needs?
- How might costs rise over the years to fund and complete a new building? In the three years since the Metz Study of 2013, estimated costs have tripled.
- What impact would a much larger building have on utility costs?
- What is sustainable operationally?
- Could a library that is doubled in size offer the additional programs to go with that space with only the current Staff?
- Where is the money for furnishing, technology, or books?
- What about the promise to citizens made during fundraising for the Garden of Surging Waves? The Garden was promised to be Phase 1 of a three-phase plan to provide an urban square in downtown.
- What about the hundreds of people who donated more than \$500, including Art DeMuro who donated \$200,000 on his death bed, to complete the project?
- What about the sentiment at the groundbreaking of Heritage Square when Mayor LaMear said, "I think there will come a day when we will look back on this day and think was there ever a time when we didn't have a Heritage Square in Astoria?"
- What about the majority of people who, during the Walker-Macey presentation last fall, rejected building in Heritage Square and said they preferred Heritage Square be a public space with a plaza and parking?
- What about the Sunday Market, which would be displaced by building at Heritage Square?
- What about the current library building? Should the City find a new use for the building before starting on a new building elsewhere?
- What about the Safeway hole and the cyclone fencing in the middle of downtown that citizens and visitors have lived with for six years now.
- She believed the Library Board's recommendation goes well beyond the needs of a library and Astoria's vibrant community. Astoria has a rich and diverse range of hubs, centers, and spaces that offer equally diverse and accessible activities. The City would be duplicating services and activities that are provided by mature, long-standing non-profits and businesses. Instead of competing, the City should be partnering with those non-profits and businesses. She suggested a partnership with the County for use of the Boyington Building, which is right across the street and very well appointed for lectures, talks, and storytelling for children. She also suggested partnerships with the Performing Arts Center, Astoria Event Center, Lovell Showroom, Baked Alaska, Clatsop Community College, KMUN, Maritime Museum, or the school district. She appreciated that the Library Board wants to go for the gold, but she could not see the wisdom in their recommendation. She would not vote to encumber Astorians with the financial burden or the timeline for such a grand plan. She believed the Senior Center was a model for aligning goals with resources. The Senior Center was in bad shape on the outside, but had good bones. In two years and with \$1.7 million, the Senior Center was transformed. The same could be done for the library. She wanted to concentrate on essential library services that only a public library can provide, use money on hand to match the Foundation's fundraising, and completely renovate just the main floor of the existing building. She wanted an open, inviting, technologically advanced facility with partnerships that provide additional space for other activities. There is room at the Yacht Club and in the basement for storage during renovations. A few spaces downtown could be leased to provide bare essential services during the renovations. This option fits the City's budget, the taxpayer's wallets, Staff resources, the citizen's library needs as defined by the Library of Congress, fits the Comprehensive Plan, and is compatible with other goals like affordable housing and with needs like bathrooms on the Riverwalk. This option is also sustainable, does not compete with private businesses or organizations, may inspire a developer to come forward with concrete plans for the Merwyn, and allows the City to make a whole downtown at Heritage Square.

Councilor Warr believed Astoria should do what it can afford and sustain. Currently, the City cannot adequately take care of its parks because there is not enough money in the General Fund. Many responsibilities were added without adding anything to the budget. The City just learned it would have to spend about \$300,000 on temporary emergency repairs to the street ends and trestles to provide access to the buildings on the water and keep the trolley running. Over the next ten years, about \$2.5 million will be spent on the street ends. Additionally, about \$569,000 per year must be spent to maintain the trestles and bridges. Funding is extremely precarious right now and the City has demonstrated that the General Fund does not have the money to properly take care of the streets, parks, and services. Citizens in the community are very angry about this. His business has primarily served Ocean View Cemetery over the last 99 years, so people have concluded that his company owns

the cemetery. He hears complaints about how badly the cemetery is being taken care of. There is not enough money to do what the community wants, but there is some money provided by the Foundation. The existing building could be remodeled, but fundraising to build a library at the scale most people want will take many years. He would rather get a remodel done now and accept what the City is able to provide.

Councilor Herzig believed Council's goal was to build a library of the 21<sup>st</sup> Century for Astorians to use and enjoy for the foreseeable future. The City can decide to build for the 21<sup>st</sup> Century or for the 20<sup>th</sup> Century. The City can build a building that can be used for generations or renovate a building that will be obsolete before the doors are open. He did not believe Council wanted to go backwards. The citizens are uncertain about Council's direction because Council is uncertain. Council has been unable to present a clear and united front to the public and he believed Council needed to move forward. The people of Astoria deserve a real, new, fresh library. Council has been considering six options and now Councilor Price has offered a seventh that is more reduced than any of the other options. The Library Board has recommended Options E or F and he agreed Astoria needed a new library. The City needs to build a library for the 21<sup>st</sup> Century and unfortunately, the current library cannot be brought into the 21<sup>st</sup> Century. Council must answer the public's questions about parking in the downtown through a downtown parking strategy, but the library should not be held hostage to the parking issue, which is completely separate. The Metz Study accounted for the need for 18,000 square feet, but the City still needs to prove that a librarian on every level is a necessity. The most recent survey done at the library was very well done, but it did not track library use. Council does not know if the feedback was from regular library users or people who showed up just for the event. The only option that will generate revenue for the City and provide a partial solution to the County's affordable housing problem is Option F. He has spoken to homeless people who have said they receive a pension check but cannot afford to rent anything in Astoria. Street 14 Café has told the City it cannot hire workers because they cannot find living spaces in Astoria. The City must address this problem because market forces created the problem. The concept of building a library at Heritage Square came after the Garden of Surging Waves was moved from its original location. The Square was created when people indicated they wanted more than one ethnicity represented. There was never a formal proposition and Heritage Square is not a fully realized, fully thought through, fully supported concept. He supported Option F.

Councilor Nemlowill said she completely agreed with Councilor Herzig about the community's vision of Heritage Square created in 2004 through an extensive public process. She believed a library would fulfill the community's vision for Heritage Square, be good for downtown and the citizens. The Library Board has selected the best site possible for a new library in terms of the Needs Assessment. However, the cost of building a new library is too much and she was convinced that there would not be enough community support to cover the costs.

Mayor LaMear read the following statement:

"Discussion and planning for renovation or building of a new library have been going on for many years now. Meanwhile, the current library continues its decline. We need to make a decision on siting of the library so we can move forward. The Library Board has made the recommendation to build a new library in Heritage Square. This recommendation was not made in a vacuum. It was based on studies, surveys, interviews, and community meetings. These are the reasons I concur with the Library Board's recommendation. I believe in the axiom form follows function. This, in essence, means that you can construct or renovate a building after you have determined the functions or uses of that building. The studies, surveys, interviews, and community meetings have identified the elements we want in a 21<sup>st</sup> Century library. If we build a new library, we can design it so it works for everyone and responds to the desires of our citizens. If we try to cobble two buildings or use the basement, it will be like trying to put a square peg in a round hole. The other options we have before use require building a two-story library. I am going to refer to an article by the Seattle Public Library addressing the reasons why a single-story library is much preferred:

- Movement of materials, a second floor in a library greatly increases the distance that materials must be carted, wheeled, and carried to deliver the expected level of library service.
- Security and support, in the interest of safety, libraries must be laid out to provide direct supervision in all public areas. This includes the entrance and lobby, the public meeting rooms, restrooms, and the collections. For safety reasons, the library requires that two staff members be present at all times. It is likely that this approach would have to be duplicated with a second story. Access to children's materials should be near adult areas of the library so parents can supervise their children while looking for their own books.
- Costs, the capital expenses of building a two-story library are increased by the need for an elevator, exit stairs, and additional services that would need to be duplicated on each level, such as restrooms and staff workspace. In addition, the annual operating costs of a two-story library are significantly greater

than a one-story facility. The study shows that in a 10,000 square foot library, it comes out to about \$400,000 a year. Add that up and you have the cost of building a library.

- Disruption of library services, renovating or building a two-story building would lead to a relocation of materials and disruption of services. We can continue to use our current library during construction if we build in Heritage Square without any disruption of services.
- In 2004, there was a block design and redevelopment study of Heritage Square that showed a public use concept gained the most support. The idea was for a possible library, public meeting rooms, a plaza, and parking. The Safeway and American Legion block was renamed Heritage Square with idea that we would honor the various heritages that make up our community. Libraries are repositories of our heritage. What better place to put our library than in Heritage Square.”

Mayor LaMear called for public comments.

Larry Allen, Astoria resident, said the Senior Center is a jewel in the town. After moving from a fabulous location on the bay, the Senior Center realized that being located near Heritage Square in downtown Astoria was important. Their membership has grown like crazy. Everything did not go as initially planned and funding did not happen. However, getting the Senior Center did not require the consensus of the City Council. This does not seem to be true for the library. The city would not have a Senior Center if a consensus were required. Heritage Square is the most important piece of property left in the city. There are so many unknowns and so many costs, but after years of working with city planning departments, he has learned that the longer the project is delayed the more the costs will increase. Heritage Square needs to be the centerpiece of the city and the library should be at the center of town.

Maurie Hendrickson, American Legion Executive Board member, said the Legion would like assurance that there will be no effort to remove them from the building. Astoria's Post 12 has been selected to host the State Convention in 2019, which will be the 100<sup>th</sup> anniversary of the American Legion. This means income for local businesses.

Jeff Jacques, 539 McClure, Astoria, said he has lived in Astoria since 2009 and pays his property taxes every year. As a library user, he listens to audio books on his phone and understands the importance of a good library in town. However, he agreed with Councilor Price that there are many costs involved with building a new library. A bond measure would be needed to make up the \$8 million shortfall, so most Astorians would pay \$200 per year more in property taxes. He believed Council did not really know what the project would cost and what the City would pay for. As a taxpayer, he agreed with what Councilor Warr said about the parks and streets. He was sure the City did not have unlimited funds. He believed more due diligence needed to be done on the costs of remodeling the library. He asked how many estimates the City received for remodeling the library. He believed \$7 million seemed like a lot to refurbish the building and asked if the City really investigated the costs of remodeling it. He also wanted to know what would happen to the empty building if the library relocated. He hoped the Library Board and Staff understood that he wanted a good library, but they should reconsider asking the taxpayers for the money when there other things in town that really need to be addressed.

Sylvia Davis, 2775 Steamwhistle Way, Astoria, said she believed a library is extremely important for a town. If the economy goes down or other problems arise, people have a library to get CDs and DVDs for free. The cemetery should not be mentioned because the library is a separate entity. The City has no idea what it will run into at the Merwyn or at the existing library building. She believed the library should be the most important thing inside the city limits. She did not know how the money would be raised, but believed it could be done if the City really wanted a library. She supported a new library at Heritage Square.

Paxton Hoag, 1786 Jerome, Astoria, said the City should provide modern library services to Astoria and contract for high-speed wireless internet services free for the entire town. He moved to Astoria in 1954 and remembered when the current library building was built. The building was really nice, but is now out of date. He agreed with Councilor Price that the building should be fixed up because that is what the City can afford. The Metz Study indicated that if Option A were chosen, the building could provide the space needed for everything mentioned in the study. He did not believe the City could afford a new library and he wanted to see Heritage Square kept open. Having an open square is one of the most important things in a community because people can gather, like at the Sunday Market. He also believed the Safeway lot should be developed as a small amphitheatre, which had already been suggested by survey respondents. He was dismayed to see the dirt moved, but understood it

was contaminated. An amphitheatre would not cost much. He concluded keep Heritage Square open and redevelop the library in its current location.

Dulcye Taylor, 856 11<sup>th</sup> Street, Astoria, said she was a member of the Citizens Advisory Committee for the library. The Committee was tasked with making a recommendation on behalf of the citizens, but the Committee was unable to make a decision. Many people love the library. The Metz Study was very informative, but there were citizens who wanted an open space. Astoria needs a library, but she did not believe the City could afford one. In 2004, when the Garden of Surging Waves was proposed, Councilor Herzig and Mayor LaMear may not have agreed with the proposal, but the citizens were sold a bill of sale for that space to be Heritage Square. She agreed that a library has tons of heritage, but she is very visual so she sees the garden, the arch, the fish lamps, and the sidewalk with heritage along it. Visitors will not spend a lot of time in the library; they will look at what Astoria is made of. Citizens might go read about the heritage, but visitors want to be outside, walking the streets, and see what is going on. Parking needs to be addressed. If a library is put in Heritage Square, it will take up a lot of space and parking will be needed for library patrons. This will leave no parking for library staff or visitors downtown. She wanted the existing library to be renovated via any option that keeps the costs down. City Hall was recently renovated and brought into the 21<sup>st</sup> Century and it is beautiful. Therefore, doing the same with the library is not impossible.

Mayor LaMear stated she believed Council should make a decision now because this discussion has been ongoing for about eight years.

**City Council Action:** Motion made by Mayor LaMear, seconded by Councilor Herzig, to build a new library in Heritage Square. Motion failed 3 to 2. Ayes: Mayor LaMear and Councilor Herzig; Nays: Councilors Nemlowill, Price, and Warr.

Mayor LaMear said she was very disappointed because choosing any option other than building a new library in Heritage Square was moving backward instead of forward. This project is so important and Council does not want it derailed or delayed if a bond issue fails. She and most library professionals agreed that a single-story library building is much preferable to a two-story building. Therefore, she wanted to eliminate Option A, which uses the library basement, and Options C and D, which extend into the Merwyn Hotel and would result in the use of two levels. Additionally, the main levels of the library and the Merwyn differ by four feet. She would agree to vote for Option B to expand into the library parking lot because it would allow the library to remain on one level and provide the clear line of sight necessary for safety and supervision. At least some library functions could continue during construction. If it were determined that some functions would be feasible in the basement, that area would still be available. Part of the City-owned parking lot across the street could be designated as library parking. The basement would provide 23,930 square feet, which exceeds the needed space and adds to projected costs. Without the basement, the library would have 15,290 square feet of space, which would be adequate. The estimated costs for Option B are \$6.4 million, which are the lowest estimated costs of all the options. She strongly supported a new library at Heritage Square, but she also believed a bond issue might not pass so another option is necessary. She did not want to put off a decision any longer.

City Manager Estes clarified the cost estimate for Option B without utilizing the basement was done quickly without the cost estimator used to determine costs per square foot. He confirmed the information was not included in the agenda packet, as Mayor LaMear had just requested the information earlier that day.

Councilor Nemlowill believed it would cost the same to renovate and expand into the parking lot as it would to build a new library at Heritage Square. The amount needed from taxpayers would be the same as well.

Councilor Herzig noted that survey respondents marked Option B as the least popular.

Paxton Hug, 1786 Jerome, Astoria, said Council has decided not to move into Heritage Square, which leaves the City with the option of refurbishing the existing building. Option A, Option B, and Councilor Price's new option should be sent back to Staff to determine real cost estimates.

Councilor Price said the City has done a lot of cost estimates and they are aware of other options for using the building in various ways. Therefore, she did not believe the City needed to go backwards.

Councilor Herzig added that the City knows the project will exceed the cost estimates, regardless of the option chosen. Relocation of the library during construction will be incredibly costly and difficult on the community and staff. Collections could be damaged during transfers. The real costs are unknown, but they will not be small. He did not believe the library would ever recover from the effects of being relocated temporarily.

Councilor Nemlowill believed a majority of Council wanted to avoid having taxpayers paying for a new library. The Library Board has a very important role. She did not believe there was enough support to raise \$8 million for a new library at Heritage Square, but she wanted to see what funding strategies the Library Board could come up with that did not include a bond measure.

David Oser, 254 W. Irving, Astoria, Library Board Chair, clarified that the Library Board is an advisory board with no authority to raise money or staff to direct. Library Board members have expertise and knowledge about how libraries operate. The Library Foundation, a 501(c)(3), has no money or plan as it has been waiting on direction from the City. So, the figure stated by City Manager Estes was pulled out of the air. Council has considered two choices, renovate, or build a new library. However, it appears as if some Councilors are moving towards a third choice, to do nothing at all. The existing building does not have the ability to be renovated cheaply. Currently, people with any type of disability cannot browse the fiction section, which is located up a staircase. Renovating the existing space will significantly reduce the already inadequate space. There have been decades of deferred maintenance in the building. The water cannot be used, the HVAC systems are shot, and the building will require moving everything out for an extended period of time. In the long run, renovation will be as costly as building a new library.

City Manager Estes noted the options to build a new library had been eliminated. He recommended Council narrow down the options to renovate, including Mayor LaMear's revised version of Option B. He confirmed Staff understood Council did not want to burden the taxpayers.

Councilor Price reiterated the City should do what it can with the money it has. A complete renovation can completely transform a space with new plumbing, new electrical, new technology, and everything new. A renovation will not give everybody everything and will require many compromises. She believed Council should consider the only two options that will not require a bond. She was also concerned about the Library Foundation because it was inactive for over a year because City Council had not made a decision. The Foundation was formed after the Metz Study and knew that the study recommended use of the basement or the Merwyn. The Foundation has had a lot of time to do something and the previous City Council adopted Option B of the Metz Study. All this time has gone by and the Foundation cannot tell Council whether grants are available. Additionally, foundations raise money for operational funds, not for building funds. The Library has asked for an \$11 million edifice, but the Foundation has stated it can only raise less than 10 percent of that. This is contrary to what libraries in every other city has done. There are a lot of needs and ideas, but no one has ever said, "I will bring that money to the table." If someone makes an offer now, she might change her mind about how to move forward. Otherwise, her choice is stay within the City's means. The only two options on the table are the Mayor's suggestion and a complete renovation of the main floor.

Councilor Herzig did not believe the Foundation should be blamed for what is Council's fault. It is not possible for the Foundation to receive funding for a library that will be built somewhere someday. He apologized to the Foundation for the outrageous statement. Councilor Price reiterated that the Foundation did nothing for 12 months after a decision had been made. Councilor Herzig added that Council has failed to give the Foundation a clear directive.

Maurie Hendrickson, P.O. Box 1392, Astoria, suggested the City write a grant proposal to the Bill and Melinda Gates Foundation for Option C.

Mayor LaMear said the City has looked into using the Merwyn Hotel, but there are many obstacles. The City does not own the property and the estimates to renovate the hotel are about \$5 million, which would be in excess of work done on the library. Keeping the library on one level is critical because a two-story library costs a lot more to maintain and operate. There are also issues with the Historic Preservation Society that wants to keep the hotel building as historic.

Jeff Jacques, 539 McClure, Astoria, asked how many contractors bid on the options and where the contractors were located. He believed \$7 million was a lot of money for the amount of work needed. Contracting costs are

not expensive. As a taxpayer, he wanted to know where the cost estimates came from and what was involved. It seems difficult to move forward without any money or grants.

City Manager Estes explained that the options are not projects that could be bid by contractors. The cost estimates were prepared by cost estimators and architects who have developed concepts. All of the options for renovation included an expansion of some sort, which accounts for the high price tag.

Mayor LaMear believed all of the options would require a bond measure. She suggested Council narrow down the options for renovating the library to at least two options.

Councilor Warr said he was astounded by the estimates even though they were developed by professionals. City Hall was a complete wreck three years ago and it was renovated for \$1.7 million. He asked Staff to explain what could run up the price of renovating the library. City Manager Estes said each option included additional building area and several options included the addition of an elevator. An elevator was added to City Hall, but there were also parts of the building that were not touched. He confirmed the heating and electric systems were upgraded, but some of the bathrooms remained untouched.

Councilor Warr understood the options were to increase the space currently available in the library. He asked why expansion into the basement, which would require an elevator and additional restrooms, would cost three times more than City Hall. City Manager Estes said City Hall was renovated in 2008, during an economic downturn when contractors had different bidding prices. He did not know which of the library building's mechanics were different from City Hall. City Hall does not have a forced-air system and it already had a radiator. A more efficient boiler was added, but much of the original plumbing remained intact.

Councilor Nemlowill noted Seaside built a new library for less than \$2 million. City Manager Estes reminded that the cost estimates were planning level numbers that included ranges. The actual costs will be determined by the choices made further into the project.

Councilor Warr understood, but he wanted to know how much the City could afford to spend on a library. Additionally, he wanted Council to settle on a project and get it done.

Mayor LaMear did not believe any of the Councilors wanted a Taj Mahal for a library. The community is looking for electricity that does not have to be turned on at the circuit breaker, water pipes that are not so corroded that water has to be brought in, and doors, restrooms, and mezzanines that are ADA accessible. Just to repair these very basic things will be extremely expensive. The City has gone around and around, but is doing nothing.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Price, to direct Staff to develop a funding strategy that does not require a bond measure. Motion passed 3 to 2. Ayes: Councilors Price, Nemlowill, and Warr; Nays: Mayor LaMear and Councilor Herzig.

Councilor Herzig thanked the public for attending, adding Council appreciates the interest, passion, and concern. The public must hold the City accountable. He also thanked the Library Board and Library Foundation for their work. He thanked the Mayor for insisting that Council move forward.

## ADJOURNMENT

There being no further business, the meeting was adjourned at 8:30 pm.

**ATTEST:**

**APPROVED:**

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


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





August 5, 2016

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: **WATERFRONT BRIDGES REPLACEMENT 6<sup>TH</sup> – 11<sup>TH</sup> STREETS  
ODOT LOCAL AGENCY AGREEMENT AMENDMENTS AND IGAs FOR  
RIGHT-OF-WAY SERVICES**

**DISCUSSION**

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

The City has received funding from the Oregon Department of Transportation (ODOT) through the Local Highway Bridge Program (LHBP) to replace the six waterfront bridges with a 10.27% City match.

In September 2014, the City entered into a Local Agency Agreement with the Oregon Department of Transportation (ODOT) for the design phase of the Waterfront Bridges Replacement Project that will replace these six bridge structures. Then in April 2015, OBEC Consulting Engineers, Inc. (OBEC) was hired by ODOT as the engineering design consultant for this project. Since that time, OBEC has performed preliminary investigations and design to 30 percent completion.

At this stage of the project, it is necessary to authorize the Right-of-Way Services task due to the Federal funding source. Right-of-Way Services includes coordination necessary to acquire private property for temporary and permanent easements. Strict guidelines must be followed due to the Federal funding source and requires a qualified professional to prepare appraisals, negotiate compensation and assemble final legal documents for easements.

Authorizing Right-of-Way Services will be accomplished through an amendment to the Local Agency Agreement with ODOT to approve the funds for this task and an Intergovernmental Agreement for Right-of-Way Services that states the requirements for this task. This is consistent with the process that was followed on the Franklin Avenue Bridge Replacement Project and Irving Avenue Bridge Replacement Project.

The stewardship agreement between ODOT and the Federal Highway Administration (FHWA) requires the Right-of-Way Section at ODOT to provide authorization to Local Public Agencies to perform right-of-way activities when a project is receiving Federal funds. OBEC's team will be performing these activities for this project and ODOT will review their work to ensure that it follows the legal rules, policies and procedures.

The project team expects right-of-way activity to be necessary adjacent to each of the six waterfront bridge structures. Even a temporary easement for construction is considered a right-of-way activity. The Local Agency Agreement Amendments that were prepared by ODOT provide total LHBP funds in the amount of \$323,029 with the City being responsible for a match of \$36,971 for a total Right-of-Way Services cost of \$360,000. A breakdown of these costs per waterfront bridge structure is shown below:

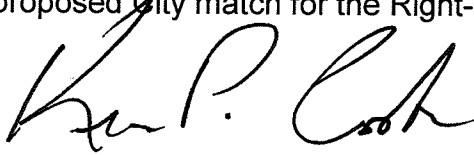
Street End	HBP Funds	City Match	Total Cost
6 <sup>th</sup> Street	\$53,838	\$6,162	\$60,000
7 <sup>th</sup> Street	\$53,838	\$6,162	\$60,000
8 <sup>th</sup> Street	\$53,838	\$6,162	\$60,000
9 <sup>th</sup> Street	\$55,633	\$6,367	\$62,000
10 <sup>th</sup> Street	\$55,633	\$6,367	\$62,000
11 <sup>th</sup> Street	\$50,249	\$5,751	\$56,000
<b>TOTAL</b>	<b>\$323,029</b>	<b>\$36,971</b>	<b>\$360,000</b>

Right-of-Way Services costs have been included in overall project costs that have been presented to Council over the past two years. OBEC included Right-of-Way Services in their scope as a contingency item in anticipation of this process. They are prepared to begin work on this task as soon as these agreements are fully executed and they receive notification from ODOT. A separate Local Agency Agreement Amendment and Intergovernmental Agreement for Right-of-Way Services is required for each of the six bridges for a total of 12 separate documents.

The City will utilize Surface Transportation Program (STP) allocations for the required match. The City Attorney has reviewed and approved all agreements as to form.

**RECOMMENDATION**

It is recommended that Council authorize the six Intergovernmental Agreements for Right-of-Way Services and the six Local Agency Agreement Amendments with ODOT to secure funding for Right-of-Way Services through the Highway Bridge Program for the Waterfront Bridges Replacement Projects and also approve the proposed City match for the Right-of-Way Services.

Submitted By:   
 Ken P. Cook, Public Works Director

Prepared By:   
 Cindy D. Moore, City Support Engineer

**AMENDMENT NUMBER 01**  
**LOCAL AGENCY AGREEMENT**  
**LOCAL BRIDGE PROGRAM (LBP) PROJECT**  
6<sup>th</sup> Street: Waterfront Bridge Replacement, Bridge No. 21224  
City of Astoria

This is Amendment No. 01 to the Agreement between the **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State," and **CITY OF ASTORIA**, acting by and through its elected officials, hereinafter referred to as "Agency." The Parties entered into an Agreement on September 25, 2014.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funds, add the Right of Way and Utility phases to the Project, and provide clarifying language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**
  - a. **Exhibit B, Attachment No. 1-Special Provisions, and Attachment No. 2-Federal Standard Provisions shall be deleted in their entirety and replaced with the attached Revised Exhibit B, Revised Attachment No. 1-Special Provisions, and Revised Attachment No. 2-Federal Standard Provisions. All references to "Exhibit B," "Attachment No. 1-Special Provisions," and "Attachment No. 2-Federal Standard Provisions," shall hereinafter be referred to as "Revised Exhibit B," "Revised Attachment No. 1-Special Provisions," and "Revised Attachment No. 2-Federal Standard Provisions.**
  - b. **DEFINITIONS, Paragraph 8, Page 2, which reads:**
    8. "Final Payment" means the final payment amount due to the contractor calculated by the total amount due to the contractor minus the sum of all payments previously made. Final payment is made after Third Notification is issued.

**Shall be deleted in its entirety and replaced with the following:**

8. "Final Payment" – the amount of Final Payment will be the difference between the total amount due the contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

**c. TERMS OF AGREEMENT, Paragraphs 1 and 2, Page 2, which read:**

1. Under such authority, State and Agency agree to conduct preliminary engineering for the replacement of the existing bridge with a structure built to current American Association of State Highway and Transportation Officials (AASHTO) design standards, hereinafter referred to as "Project." The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The Project Key Milestones, Budget and Progress Report details are further described in "Exhibit B," attached hereto and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Local Bridge Program (LBP), with funds provided under Title 23, United States Code. The total Project cost is estimated at \$312,000, which is subject to change. LBP funds for this Project shall be limited to \$279,958 with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

**Shall be deleted in their entirety and replaced with the following:**

1. Under such authority, State and Agency agree that Agency shall conduct preliminary engineering, right of way acquisition and/or easements, and utility work for the replacement of the existing bridge with a structure built to current American Association of State Highway and Transportation Officials (AASHTO) design standards, hereinafter referred to as "Project." The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The Project Key Milestones, Budget and Progress Report details are further described in "Revised Exhibit B," attached hereto and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Local Bridge Program (LBP), with funds provided under Title 23, United States Code. The total Project cost is estimated at \$372,000, which is subject to change. LBP funds for this Project shall be limited to \$333,796 with Agency providing the 10.27 percent match and any non-participating costs, including all costs in excess of the available federal funds.

**d. Insert new TERMS OF AGREEMENT, Paragraph 14, to read as follows:**

- 14.a. Information required by 2 CFR 200.331(a), except for (xiii) indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed.
- b. The indirect cost rate for this Project at the time the Agreement is written is zero percent.

e. **TERMS OF AGREEMENT, Paragraphs 14 through 22, shall be hereinafter re-numbered as Paragraphs 15 through 23.**

f. **TERMS OF AGREEMENT, Paragraphs 21 and 23, Page 5, which read:**

21. State's Bridge STIP Coordinator is Anna Dunlap, ODOT Bridge Section, 4040 Fairview Industrial Drive SE, MS #4, Salem, Oregon 97302; phone: (503) 986-3391; email: [anna.m.dunlap@odot.state.or.us](mailto:anna.m.dunlap@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.

23. State's Program Manager for this Project is Michael Schroeder, Local Agency Liaison, ODOT, Area 1, 350 West Marine Drive, Astoria, Oregon 97103; phone: (503) 325-8274; email: [michael.k.schroeder@odot.state.or.us](mailto: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.

**Shall be deleted in their entirety and replaced with the following:**

21. State's Bridge STIP Coordinator is Rachelle Nelson, ODOT Bridge Section, 4040 Fairview Industrial Drive SE, MS#4, Salem, Oregon 97302; phone: (503) 986-3391; email: [rachelle.l.nelson@odot.state.or.us](mailto:rachelle.l.nelson@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.

23. State's Program Manager for this Project is Bill Jablonski, Local Agency Liaison, ODOT, Area 1, 350 West Marine Drive, Astoria, Oregon 97103; phone: (503) 338-7334; email: [william.r.jablonski@odot.state.or.us](mailto:william.r.jablonski@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.

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

**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.

City of Astoria / State of Oregon – Dept. of Transportation  
Agreement No. 30204, Amendment No. 1

This Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key No. 18431 that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

**CITY OF ASTORIA**, by and through its  
elected officials

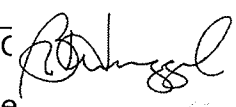
By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

By  \_\_\_\_\_  
Date \_\_\_\_\_

Digitally signed by  
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cn=com.apple.idms.appleid.prd.4931756647  
6d4a3867754144546f59324e744d354e773d  
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Date: 2016.07.28 10:44:05 -08'00'

**Agency Contact:**  
Ken Cook, Director  
City of Astoria Public Works  
1095 Duane Street  
Astoria, OR 97103  
Phone: (503) 338-5177  
Email: [kcook@astoria.or.us](mailto:kcook@astoria.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Planning and Development  
Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Area 1 Local Agency Liaison

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**  
Bill Jablonski, Local Agency Liaison  
ODOT, Region 2, Area 1  
350 West Marine Drive  
Astoria, OR 97103  
Phone: (503) 338-7334  
Email: [william.r.jablonski@odot.state.or.us](mailto:william.r.jablonski@odot.state.or.us)

**REVISED EXHIBIT B – PROJECT KEY MILESTONES AND SCHEDULE**  
**Agreement No. 30204**

**Project Name:** 6<sup>th</sup> Street: Waterfront Bridge Replacement, Bridge No. 21224

1. **Project Description** – Conduct preliminary engineering, right of way, and utility work for the replacement of the existing bridge with a structure built to current AASHTO design standards.
2. This Project is subject to progress reporting and project change process as stated in paragraphs 3 through 6 below.
3. **Monthly Progress Reports (MPR)** – Agency shall submit monthly progress reports using MPR Form 734-2850, attached by reference and made a part of this Agreement. The MPR is due by the 5<sup>th</sup> day of each month, starting the first full month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance.

The fillable MPR form and its instructions are available at the following web site:  
[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

**Table 1: Project Milestones**

	<b>Milestone Description</b>	<b>Obligation Date</b>	<b>Estimated Budget</b>
<b>1</b>	Obligation (Federal Authorization) of LBP Funds for the Preliminary Engineering phase of Project	9/30/2014	\$312,000
<b>2</b>	Obligation (Federal Authorization) of LBP Funds for the Right of Way phase of the Project	9/30/2016	\$54,000
<b>3</b>	Obligation (Federal Authorization) of LBP Funds for the Utility phase of Project	9/30/2016	\$6,000
<b>4</b>	Obligation (Federal Authorization) of LBP Funds for the Construction phase of Project	N/A	N/A
	<b>Total Project Cost</b>		<b>\$372,000</b>

5. **Project Change Request (PCR) Process** – Agency must obtain approval from State’s Bridge STIP Coordinator and State’s Bridge Engineer for changes to the Project’s scope, schedule, or budget by submitting a PCR, as specified in paragraphs 5a, 5b, and 5c, below. Agency shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget made prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** – A PCR is required for any significant change or reduction in the scope of work described in the Project Description (paragraph 1 of this Exhibit).
  - b. **Schedule** – A PCR is required if Agency or State's contact anticipates that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
  - c. **Budget** – The Project's estimated budget is used for determining the level of compensation for completed work. Increases or decreases in the budget which require a STIP amendment also require the submission of a PCR to the State's Regional Local Agency Liaison.
  - d. PCR requests that result in Project cost increases that are equal to or less than twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is less, can be approved by the State Bridge Engineer. Amendments can be approved and entered into by the State Bridge Engineer.
  - e. PCR requests that result in a Project cost increase in excess of twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is greater, must be approved by the State Bridge Engineer and the Local Agency Bridge Selection Committee with a majority vote. Amendments must be executed by the same officials who executed the original Agreement.
6. **PCR Form** – Agency must submit all change requests using PCR Form 734-2851, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State's Bridge Engineer.

The fillable PCR form and its instructions are available at the following web site:  
[http://www.oregon.gov.ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov.ODOT/TD/AT/Pages/Forms_Applications.aspx)

7. **Consequence for Non-Performance** – If Agency fails to fulfill its obligations in paragraphs 3 through 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's Active Transportation Section; (b) withdrawing unused Project funds; and (c) terminating this Agreement as stated in Terms of Agreement, paragraph 12a and 12b of this Agreement and recovery of payments pursuant to Terms of Agreement, paragraph 16 of this Agreement.



## **REVISED ATTACHMENT NO. 1**

### **SPECIAL PROVISIONS**

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, acquire necessary right of way and/or easements subject to approval of right of way certification by State, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates. State shall provide free bridge design to Agency, if Agency is eligible for such funds under ORS 366.155(1) (h) and if Agency has made request to State for free bridge design.
2. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, Agency shall provide State its share of the Project cost upon receipt of request from State. The Project cost is defined as the Engineer's estimate plus ten (10) percent.
3. State may make available Region's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. Agency shall design the Project to meet the American Association of State Highway and Transportation Officials (AASHTO) Load Resistance Factor Design, (LRFD) Bridge Design Specifications and the Local Agency Guidelines (LAG Manual).
5. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and Agency agree that the useful life of this Project is defined as seventy-five (75) years.
6. Maintenance responsibilities will survive any termination of this Agreement.
7. Agency or its consultant must electronically submit the following information for any bridge project by email to the State's Senior Local Bridge Standards Engineer, Holly.M.WINSTON@odot.state.or.us and to the bridge@odot.state.or.us mailbox. This information must be received within ninety (90) days of the issuance of Second Notification. Second Notification is further defined in definitions.
  - a. PDF copy of As-Constructed Drawings (signed, final copy, which contains final construction notes).

- b. PDF Copy of the Foundation Report.
- c. Pile Records and drill logs. (If applicable).
- d. Hydraulic Reports (scour analysis report included in this report)
- e. Stamped Load Rating calculation book with CD containing all electronic files.  
(Agency shall notify the State's Senior Local Bridge Standards Engineer if there is a contract in place to load rate the bridge. If there is not a contract in place, Agency shall hire a consultant to obtain the load rating.)

## **REVISED ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS**

### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing, and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

### **FINANCE**

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA)

number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in 2 CFR 200.330.

6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall follow the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to

December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials based on the records retention period identified in the Project Agreement. The cost of this audit can be partially prorated to the federal program.

11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction; b) last payment for right of way acquisition; and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. 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 Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition ((2 CFR 200.333(c)).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of

federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

- b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
14. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

#### STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's *A Policy on Geometric Design of Highways and Streets* (current version), or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design

exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.

19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

#### **PRELIMINARY & CONSTRUCTION ENGINEERING**

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.

25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF  
TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe\\_prog\\_plan.aspx](https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_prog_plan.aspx). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

**DISADVANTAGED BUSINESS ENTERPRISES (DBE) OBLIGATIONS**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
30. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work



including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; 2 CFR 1201, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

### **RIGHT OF WAY**

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.
33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.
34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.

36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

#### **RAILROADS**

37. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing and at Project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

#### **UTILITIES**

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

#### **GRADE CHANGE LIABILITY**

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

#### **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose

for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

#### **CONTRIBUTION**

43. 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.
44. 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.
45. 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.

#### **ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project 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.

**WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency, that employ subject workers who work under this Project 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 five hundred thousand (\$500,000) must be included. Agency shall ensure that each of its contractors complies with these requirements.

**LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions**

48. Agency certifies by signing the Project Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**

6<sup>th</sup> Street: Waterfront Bridge Replacement, Bridge No. 21224

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 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. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain 6<sup>th</sup> Street is part of the city street system under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. N/A is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in Local Bridge Program Project Agreement number 30204. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

**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, to accomplish the objectives in Agreement No. 30204, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services

State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$5,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than December 31, 2017, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

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3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

### **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Keith Benjamin, Senior Right of Way Agent, ODOT Region 2, 455 Airport Road SE, Building A, Salem, Oregon 97301; phone: (503) 986-2609; email: keith.s.benjamin@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:
  - a. Agency staff,
  - b. State staff,

- c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
- d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
- e. \*Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. \*Other right of way related services procured by Agency from any source of qualified contractors or consultants.

\* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the LPA A&E Requirements Guide (and must use the State's standard A&E Contract Template for LPAs which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

- 4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
- 5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency \(LPA\) Consultant Templates and Guidance Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency (LPA) Consultant Templates and Guidance Docs).
- 6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
- 7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
- 8. Agency's right of way contact person for this Project is Ken Cook, Public Works Director, City of Astoria, 1095 Duane Street, Astoria, Oregon 97103; phone: (503) 338-5177; email: [kcook@astoria.or.us](mailto:kcook@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.

**PAYMENT FOR SERVICES AND EXPENDITURES:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$5,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

**GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party 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 fails to correct such failures within ten (10) days or such longer period as may be authorized.
  - 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.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. 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 this 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.



4. 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 279B.220, 279B.225, 279B.230, 279B.235 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.
5. All employers 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. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. 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.
7. 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.
8. 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.

9. 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.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. 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.
14. This Agreement and attached exhibits and Agreement No. 30204 and its amendments constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all

necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State 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 to Follow**

**CITY OF ASTORIA**, by and through  
elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
City \_\_\_\_\_  
Date \_\_\_\_\_

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**Agency Contact:**

Ken Cook, Director  
City of Astoria Public Works  
1095 Duane Street  
Astoria, OR 97103  
Phone: (503) 338-5177  
Email: kcook@astoria.or.us

**State Contact:**

Keith Benjamin, Sr. Right of Way Agent  
ODOT, Region 2  
455 Airport Road SE, Bldg. A  
Salem, OR 97301  
Phone: (503) 986-2609  
Email: keith.s.benjamin@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By N/A  
Assistant Attorney General

Date \_\_\_\_\_

**APPROVED**

(If Litigation Work Related to Condemnation is  
to be done by State)

By N/A  
Chief Trial Counsel

Date \_\_\_\_\_

**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

**THINGS TO BE DONE BY STATE OR AGENCY**

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 2 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

**Instructions:** Insert either: State, Agency, or N/A on each line.

**A. Preliminary Phase**

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project on a quarterly basis.
  - b. Title to properties acquired shall be in the name of the Agency.
  - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
  - If contamination is found, a recommendation for remediation will be presented to Agency.

- e. Agency shall be responsible for proper treatment and cost of any necessary remediation.
  - f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.
- 

4. Appraisal:

- a. Agency shall conduct the valuation process of properties to be acquired.
- b. Agency shall perform the Appraisal Reviews to set Just Compensation.
- c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
- c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. Agency shall make all relocation and moving payments for the Project.
- c. Agency shall facilitate the relocation appeal process.

**C. Closing Phase**

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If State is working as a consultant for the Agency, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

#### **D. Property Management**

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with Agency prevailing laws and policies.

#### **E. Condemnation**

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

#### **F. Transfer of Right of Way to State**

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all



recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

#### **G. Transfer of Right of Way to Agency**

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility, subject to concurrence from FHWA at the time of the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

**EXHIBIT B (Local Agency or State Agency)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**DEPARTMENT OFFICIAL CERTIFICATION**

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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Exhibit C  
Federal Provisions  
Oregon Department of Transportation

**CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency; judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery
- 2. Have not within a three-year period preceding this Contract been convicted of or had a civil

- falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

**EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

**II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation

- shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
  4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
  6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
  7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such

prospective participant shall submit a written explanation to Department.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

**V. NONDISCRIMINATION**

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the

Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment,

upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with

respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

**DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither

Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

**CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL**   0   %

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE PROGRAM  
REQUIREMENT CONTACT OFFICE OF  
CIVIL RIGHTS AT (503)986-4354.

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. ~~No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.~~
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.



**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D**  
**Right of Way Services**

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

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

**AMENDMENT NUMBER 01  
LOCAL AGENCY AGREEMENT  
LOCAL BRIDGE PROGRAM (LBP) PROJECT**

7<sup>th</sup> Street: Waterfront Bridge Replacement, Bridge No. 21225  
City of Astoria

This is Amendment No. 01 to the Agreement between the **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State," and **CITY OF ASTORIA**, acting by and through its elected officials, hereinafter referred to as "Agency." The Parties entered into an Agreement on September 25, 2014.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funds, add the Right of Way and Utility phases to the Project, and provide clarifying language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**
  - a. **Exhibit B, Attachment No. 1-Special Provisions, and Attachment No. 2-Federal Standard Provisions shall be deleted in their entirety and replaced with the attached Revised Exhibit B, Revised Attachment No. 1-Special Provisions, and Revised Attachment No. 2-Federal Standard Provisions. All references to "Exhibit B," "Attachment No. 1-Special Provisions," and "Attachment No. 2-Federal Standard Provisions," shall hereinafter be referred to as "Revised Exhibit B," "Revised Attachment No. 1-Special Provisions," and "Revised Attachment No. 2-Federal Standard Provisions."**
  - b. **DEFINITIONS, Paragraph 8, Page 2, which reads:**
    8. "Final Payment" means the final payment amount due to the contractor calculated by the total amount due to the contractor minus the sum of all payments previously made. Final payment is made after Third Notification is issued.

**Shall be deleted in its entirety and replaced with the following:**

8. "Final Payment" – the amount of Final Payment will be the difference between the total amount due the contractor and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

**c. TERMS OF AGREEMENT, Paragraphs 1 and 2, Page 2, which read:**

1. Under such authority, State and Agency agree to conduct preliminary engineering for the replacement of the existing bridge with a structure built to current American Association of State Highway and Transportation Officials (AASHTO) design standards, hereinafter referred to as "Project." The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The Project Key Milestones, Budget and Progress Report details are further described in "Exhibit B," attached hereto and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Local Bridge Program (LBP), with funds provided under Title 23, United States Code. The total Project cost is estimated at \$312,000, which is subject to change. LBP funds for this Project shall be limited to \$279,958 with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

**Shall be deleted in their entirety and replaced with the following:**

1. Under such authority, State and Agency agree that Agency shall conduct preliminary engineering, right of way acquisition and/or easements, and utility work for the replacement of the existing bridge with a structure built to current American Association of State Highway and Transportation Officials (AASHTO) design standards, hereinafter referred to as "Project." The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The Project Key Milestones, Budget and Progress Report details are further described in "Revised Exhibit B," attached hereto and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Local Bridge Program (LBP), with funds provided under Title 23, United States Code. The total Project cost is estimated at \$372,000, which is subject to change. LBP funds for this Project shall be limited to \$333,796 with Agency providing the 10.27 percent match and any non-participating costs, including all costs in excess of the available federal funds.

**d. Insert new TERMS OF AGREEMENT, Paragraph 14, to read as follows:**

- 14.a. Information required by 2 CFR 200.331(a), except for (xiii) indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed.
- b. The indirect cost rate for this Project at the time the Agreement is written is zero percent.

- e. **TERMS OF AGREEMENT, Paragraphs 14 through 22, shall be hereinafter re-numbered as Paragraphs 15 through 23.**
- f. **TERMS OF AGREEMENT, Paragraphs 21 and 23, Page 5, which read:**

21. State's Bridge STIP Coordinator is Anna Dunlap, ODOT Bridge Section, 4040 Fairview Industrial Drive SE, MS #4, Salem, Oregon 97302; phone: (503) 986-3391; email: [anna.m.dunlap@odot.state.or.us](mailto:anna.m.dunlap@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.

23. State's Program Manager for this Project is Michael Schroeder, Local Agency Liaison, ODOT, Area 1, 350 West Marine Drive, Astoria, Oregon 97103; phone: (503) 325-8274; email: [michael.k.schroeder@odot.state.or.us](mailto: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.

**Shall be deleted in their entirety and replaced with the following:**

21. State's Bridge STIP Coordinator is Rachelle Nelson, ODOT Bridge Section, 4040 Fairview Industrial Drive SE, MS#4, Salem, Oregon 97302; phone: (503) 986-3391; email: [rachelle.l.nelson@odot.state.or.us](mailto:rachelle.l.nelson@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.

23. State's Program Manager for this Project is Bill Jablonski, Local Agency Liaison, ODOT, Area 1, 350 West Marine Drive, Astoria, Oregon 97103; phone: (503) 338-7334; email: [william.r.jablonski@odot.state.or.us](mailto:william.r.jablonski@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.

- 3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- 4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

**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.

City of Astoria / State of Oregon – Dept. of Transportation  
Agreement No. 30205, Amendment No. 1

This Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key No. 18427 that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

**CITY OF ASTORIA**, by and through its  
elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

By  \_\_\_\_\_  
City Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Ken Cook, Director  
City of Astoria Public Works  
1095 Duane Street  
Astoria, OR 97103  
Phone: (503) 338-5177  
Email: [kcook@astoria.or.us](mailto:kcook@astoria.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Planning and Development  
Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Area 1 Local Agency Liaison

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**

Bill Jablonski, Local Agency Liaison  
ODOT, Region 2, Area 1  
350 West Marine Drive  
Astoria, OR 97103  
Phone: (503) 338-7334  
Email: [william.r.jablonski@odot.state.or.us](mailto:william.r.jablonski@odot.state.or.us)

**REVISED EXHIBIT B – PROJECT KEY MILESTONES AND SCHEDULE**

**Agreement No. 30205**

**Project Name:** 7<sup>th</sup> Street: Waterfront Bridge Replacement, Bridge No. 21225

1. **Project Description** – Conduct preliminary engineering, right of way, and utility work for the replacement of the existing bridge with a structure built to current AASHTO design standards.
2. This Project is subject to progress reporting and project change process as stated in paragraphs 3 through 6 below.
3. **Monthly Progress Reports (MPR)** – Agency shall submit monthly progress reports using MPR Form 734-2850, attached by reference and made a part of this Agreement. The MPR is due by the 5<sup>th</sup> day of each month, starting the first full month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance.

The fillable MPR form and its instructions are available at the following web site:  
[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

**Table 1: Project Milestones**

	<b>Milestone Description</b>	<b>Obligation Date</b>	<b>Estimated Budget</b>
<b>1</b>	Obligation (Federal Authorization) of LBP Funds for the Preliminary Engineering phase of Project	9/30/2014	\$312,000
<b>2</b>	Obligation (Federal Authorization) of LBP Funds for the Right of Way phase of the Project	9/30/2016	\$54,000
<b>3</b>	Obligation (Federal Authorization) of LBP Funds for the Utility phase of Project	9/30/2016	\$6,000
<b>4</b>	Obligation (Federal Authorization) of LBP Funds for the Construction phase of Project	N/A	N/A
	<b>Total Project Cost</b>		<b>\$372,000</b>

5. **Project Change Request (PCR) Process** – Agency must obtain approval from State’s Bridge STIP Coordinator and State’s Bridge Engineer for changes to the Project’s scope, schedule, or budget by submitting a PCR, as specified in paragraphs 5a, 5b, and 5c, below. Agency shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget made prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** – A PCR is required for any significant change or reduction in the scope of work described in the Project Description (paragraph 1 of this Exhibit).
  - b. **Schedule** – A PCR is required if Agency or State's contact anticipates that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
  - c. **Budget** – The Project's estimated budget is used for determining the level of compensation for completed work. Increases or decreases in the budget which require a STIP amendment also require the submission of a PCR to the State's Regional Local Agency Liaison.
  - d. PCR requests that result in Project cost increases that are equal to or less than twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is less, can be approved by the State Bridge Engineer. Amendments can be approved and entered into by the State Bridge Engineer.
  - e. PCR requests that result in a Project cost increase in excess of twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is greater, must be approved by the State Bridge Engineer and the Local Agency Bridge Selection Committee with a majority vote. Amendments must be executed by the same officials who executed the original Agreement.
6. **PCR Form** – Agency must submit all change requests using PCR Form 734-2851, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State's Bridge Engineer.

The fillable PCR form and its instructions are available at the following web site:  
[http://www.oregon.gov.ODOT/TD/AT/Pages/Forms Applications.aspx](http://www.oregon.gov.ODOT/TD/AT/Pages/Forms_Applications.aspx)

7. **Consequence for Non-Performance** – If Agency fails to fulfill its obligations in paragraphs 3 through 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's Active Transportation Section; (b) withdrawing unused Project funds; and (c) terminating this Agreement as stated in Terms of Agreement, paragraph 12a and 12b of this Agreement and recovery of payments pursuant to Terms of Agreement, paragraph 16 of this Agreement.

## REVISED ATTACHMENT NO. 1

### SPECIAL PROVISIONS

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, acquire necessary right of way and/or easements subject to approval of right of way certification by State, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates. State shall provide free bridge design to Agency, if Agency is eligible for such funds under ORS 366.155(1) (h) and if Agency has made request to State for free bridge design.
2. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, Agency shall provide State its share of the Project cost upon receipt of request from State. The Project cost is defined as the Engineer's estimate plus ten (10) percent.
3. State may make available Region's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. Agency shall design the Project to meet the American Association of State Highway and Transportation Officials (AASHTO) Load Resistance Factor Design, (LRFD) Bridge Design Specifications and the Local Agency Guidelines (LAG Manual).
5. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and Agency agree that the useful life of this Project is defined as seventy-five (75) years.
6. Maintenance responsibilities will survive any termination of this Agreement.
7. Agency or its consultant must electronically submit the following information for any bridge project by email to the State's Senior Local Bridge Standards Engineer, Holly.M.WINSTON@odot.state.or.us and to the bridge@odot.state.or.us mailbox. This information must be received within ninety (90) days of the issuance of Second Notification. Second Notification is further defined in definitions.
  - a. PDF copy of As-Constructed Drawings (signed, final copy, which contains final construction notes).



- b. PDF Copy of the Foundation Report.
- c. Pile Records and drill logs. (If applicable).
- d. Hydraulic Reports (scour analysis report included in this report)
- e. Stamped Load Rating calculation book with CD containing all electronic files.  
(Agency shall notify the State's Senior Local Bridge Standards Engineer if there is a contract in place to load rate the bridge. If there is not a contract in place, Agency shall hire a consultant to obtain the load rating.)

## **REVISED ATTACHMENT NO. 2**

### **FEDERAL STANDARD PROVISIONS**

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#### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing, and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

#### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

#### **FINANCE**

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA)

number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in 2 CFR 200.330.

6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall follow the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to

December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials based on the records retention period identified in the Project Agreement. The cost of this audit can be partially prorated to the federal program.

11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction; b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. 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 Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition ((2 CFR 200.333(c)).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of

federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

- b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
14. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

#### STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's *A Policy on Geometric Design of Highways and Streets* (current version), or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design

exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.

19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

#### **PRELIMINARY & CONSTRUCTION ENGINEERING**

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.

25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF  
TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe\\_prog\\_plan.aspx](https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_prog_plan.aspx). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

**DISADVANTAGED BUSINESS ENTERPRISES (DBE) OBLIGATIONS**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
30. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work

including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; 2 CFR 1201, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

#### **RIGHT OF WAY**

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.
33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.
34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.



36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

#### **RAILROADS**

37. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing and at Project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

#### **UTILITIES**

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

#### **GRADE CHANGE LIABILITY**

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

#### **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose

for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

#### **CONTRIBUTION**

43. 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.
44. 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.
45. 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.

#### **ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project 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.

**WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency, that employ subject workers who work under this Project 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 five hundred thousand (\$500,000) must be included. Agency shall ensure that each of its contractors complies with these requirements.

**LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions**

48. Agency certifies by signing the Project Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**

7<sup>th</sup> Street: Waterfront Bridge Replacement, Bridge No. 21225

~~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 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. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain 7<sup>th</sup> Street is a part of the city street system under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. N/A is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in Local Bridge Program Project Agreement number 30205. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

**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, to accomplish the objectives in Agreement No. 30205, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services

State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$5,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than December 31, 2017, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

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3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

### **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Keith Benjamin, Senior Right of Way Agent, ODOT Region 2, 455 Airport Road SE, Building A, Salem, Oregon 97301; phone: (503) 986-2609; email: keith.s.benjamin@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:
  - a. Agency staff,
  - b. State staff,

- c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
- d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
- e. \*Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. \*Other right of way related services procured by Agency from any source of qualified contractors or consultants.

\* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the LPA A&E Requirements Guide (and must use the State's standard A&E Contract Template for LPAs which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency \(LPA\) Consultant Templates and Guidance Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency (LPA) Consultant Templates and Guidance Docs).
6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
8. Agency's right of way contact person for this Project is Ken Cook, Public Works Director, City of Astoria, 1095 Duane Street, Astoria, Oregon 97103; phone: (503) 338-5177; email: [kcook@astoria.or.us](mailto:kcook@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.

## **PAYMENT FOR SERVICES AND EXPENDITURES:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$5,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current ~~Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds.~~ Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

## **GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party 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 fails to correct such failures within ten (10) days or such longer period as may be authorized.
  - 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.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. 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 this 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.

4. 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 279B.220, 279B.225, 279B.230, 279B.235 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.
5. All employers 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. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. 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.
7. 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.
8. 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.

9. 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.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. 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.
14. This Agreement and attached exhibits and Agreement No. 30205 and its amendments constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all

necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State 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 to Follow**

**CITY OF ASTORIA**, by and through  
its elected officials

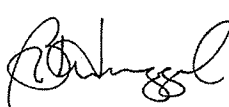
By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
City   
Date \_\_\_\_\_

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**Agency Contact:**

Ken Cook, Director  
City of Astoria PUblic Works  
1095 Duane Street  
Astoria, OR 97103  
Phone: (503) 338-5177  
Email: kcook@astoria.or.us

**State Contact:**

Keith Benjamin, Sr. Right of Way Agent  
ODOT, Region 2  
455 Airport Road SE, Bldg. A  
Salem, OR 97103  
Phone: (503) 986-2609  
Email: keith.s.benjamin@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By N/A  
Assistant Attorney General

Date \_\_\_\_\_

**APPROVED**

(If Litigation Work Related to Condemnation is  
to be done by State)

By N/A  
Chief Trial Counsel

Date \_\_\_\_\_

**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed ~~by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as~~ listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 2 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

**Instructions:** Insert either: State, Agency, or N/A on each line.

**A. Preliminary Phase**

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project on a quarterly basis.
  - b. Title to properties acquired shall be in the name of the Agency.
  - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
  - If contamination is found, a recommendation for remediation will be presented to Agency.

- e. Agency shall be responsible for proper treatment and cost of any necessary remediation.
  - f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.
- 

4. Appraisal:

- a. Agency shall conduct the valuation process of properties to be acquired.
- b. Agency shall perform the Appraisal Reviews to set Just Compensation.
- c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
- c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. Agency shall make all relocation and moving payments for the Project.
- c. Agency shall facilitate the relocation appeal process.

**C. Closing Phase**

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If State is working as a consultant for the Agency, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
- ~~2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.~~

#### **D. Property Management**

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with Agency prevailing laws and policies.

#### **E. Condemnation**

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

#### **F. Transfer of Right of Way to State**

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all

recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

#### **G. Transfer of Right of Way to Agency**

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When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility, subject to concurrence from FHWA at the time of the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.



For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

**EXHIBIT B (Local Agency or State Agency)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**DEPARTMENT OFFICIAL CERTIFICATION**

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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Exhibit C  
Federal Provisions  
Oregon Department of Transportation

**CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency; judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery
- 2. Have not within a three-year period preceding this Contract been convicted of or had a civil

- falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

**EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

**II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation

- shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction ~~that it is not debarred, suspended, ineligible~~ or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered ~~an erroneous certification~~, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction ~~that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.~~ A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such

prospective participant shall submit a written explanation to Department.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

**V. NONDISCRIMINATION**

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the

Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment,

upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with

respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

**DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither

Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

**CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL   0   %**

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE PROGRAM  
REQUIREMENT CONTACT OFFICE OF  
CIVIL RIGHTS AT (503)986-4354.

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. ~~No Federal appropriated funds have been~~ paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D**  
**Right of Way Services**

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

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





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

Date: August 3, 2016

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: **AUTHORIZE SOLID WASTE ENGINEERING CONSULTANT SERVICES –  
FORMER ASTORIA LANDFILL**

**DISCUSSION/ANALYSIS**

After many years of working diligently on accomplishing the closure of the old City Landfill, the landfill is now officially closed. The Oregon Department of Environmental Quality (DEQ) issued a closure permit to the City on December 10, 2015. The permit outlines post-closure tasks that must be completed by various deadlines. Staff has asked our solid waste consultant, Maul Foster & Alongi, Inc. (MFA), to provide a scope of work to assist us with the work required BY DEQ up to June 30, 2017 (the current fiscal year).

The following is an outline of the tasks included in the scope of work:

**Task 1 - Annual Environmental Monitoring Report (\$5,650)** - DEQ's Solid Waste Closure Permit Number 118 for Astoria Landfill requires an Annual Environmental Monitoring Report be submitted by February 15 of every year. This report will summarize the data collection activities at the site and compare data results to permit-specific concentration limits. The scope also includes data review and coordinating with DEQ on split sampling. The report will follow DEQ reporting standards and be prepared and stamped by a Registered Geologist in the State of Oregon.

**Task 2 - Annual Post-Closure Status and Financial Assurance Recertification Report (\$3,170)** - MFA will provide the City support with reporting the post-closure status of the landfill and in certifying financial assurance, which are to be submitted to DEQ by September 15 of each year. The landfill post-closure status report will document activities undertaken to implement the post-closure plan and will describe any corrective actions that have taken place over the past year. The City submitted draft Financial Assurance documents to DEQ in June 2016, satisfying the requirement for the current year. MFA will provide assistance to the City in responding to limited DEQ comments on the draft documentation.

**Task 3 - Operation, Monitoring, and Maintenance Plan (\$7,290)** - DEQ's Solid Waste Closure Permit for the Landfill requires an Operation, Monitoring, and Maintenance Plan (OMMP) be submitted by December 9, 2016. This plan has been prepared in draft form and is currently under revision to incorporate the requirements of the final closure permit in addition to comments on the Environmental Monitoring Plan and the Baseline Environmental Assessment Report, which will become attachments to the final OMMP. The City has also requested an organizational index of annual landfill obligations for monitoring, maintenance, and reporting, which will be provided to the City as a separate deliverable.

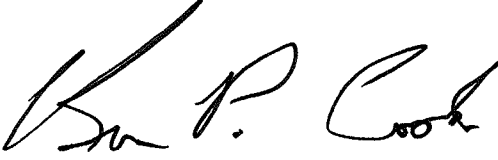
**Task 4 - On Call Consultation (\$7,450)** - MFA will provide continued landfill consultation (engineering and environmental science) to the City, as requested. The effort may include responding to minor DEQ comments on the previously submitted Environmental Monitoring Plan and Baseline Environmental Assessment.


The work in the amount of \$23,560.00 will be funded through the Sanitation Fund.

The attached contract has been reviewed and approved as to form by City Attorney Blair Henningsgaard.

### **RECOMMENDATION**

It is recommended that City Council execute a contract with Maul Foster Alongi for a total not-to-exceed amount of \$23,560.00 for solid waste engineering services for the Landfill Closure Project.

Submitted By   
Ken Cook, Public Works Director

Prepared By JEFF HARRINGTON   
Jeff Harrington, City Engineer

**CITY OF ASTORIA  
CONTRACT FOR PERSONAL SERVICES**

**CONTRACT:**

This Contract, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and Maul Foster & Alongi, Inc. (MFA), 400 East Mill Plain Blvd., Suite 400, Vancouver, WA 98660 hereinafter called "CONSULTANT", duly authorized to perform such services in Oregon.

**WITNESSETH**

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

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

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

1. CONSULTANT SERVICES

A. CONSULTANT shall perform professional services, as outlined in the Attachment A, to the City of Astoria pertaining to the Post Closure of the Astoria Landfill.

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

C. The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and the orderly progress of work. All work shall be completed no later than June 30, 2017.

2. COMPENSATION

A. The CITY agrees to pay CONSULTANT a total not to exceed \$23,560.00 for performance of those services provided herein;

B. The CONSULTANT will submit monthly billings for payment which will be based upon the percentage of work completed in each of the categories listed in the scope of work. Said progress billings shall be payable within 30 days of receipt by City.

C. CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract.

3. CONSULTANT IDENTIFICATION

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

4. CITY'S REPRESENTATIVE

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

5. CONSULTANT'S REPRESENTATIVE

For purposes hereof, the CONSULTANT'S authorized representative will be Erik Bakkom, PE Senior Engineer, Maul Foster & Alongi Incorporated.

6. CITY'S OBLIGATIONS

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

7. CONSULTANT IS INDEPENDENT CONSULTANT

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

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

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

8. CANCELLATION FOR CAUSE

CITY may cancel all or any part of this Contract if CONSULTANT breaches any of the terms herein and fails to cure such breach within 10 days after receiving notice thereof, or in the event of any of the following: Insolvency of CONSULTANT; voluntary or involuntary petition in bankruptcy by or against CONSULTANT; appointment of a receiver or trustee for CONSULTANT, or any assignment for benefit of creditors of CONSULTANT. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney's fees, and other costs of litigation at trial and upon appeal. CONSULTANT may likewise cancel all or any part of this contract if CITY breaches any of the terms herein and be therefore entitled to equivalent damages as expressed above for CITY.

9. ACCESS TO RECORDS

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

10. FORCE MAJEURE

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

11. NONWAIVER

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

12. ATTORNEY'S FEES

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

13. APPLICABLE LAW

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

14. CONFLICT BETWEEN TERMS

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

15. INDEMNIFICATION

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

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

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

16. INSURANCE

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

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

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

C. Additional Insured. The liability insurance coverage shall include CITY and its officers and employees as Additional Insured but only with respect to CONSULTANT'S activities to be performed under this Contract. Coverage will be primary and non-contributory with any other

insurance and self-insurance. Prior to starting work under this Contract, CONSULTANT shall furnish a certificate to CITY from each insurance company providing insurance showing that the CITY is an additional insured, the required coverage is in force, stating policy numbers, dates of expiration and limits of liability, and further stating that such coverage is primary and not contributory.

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

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

17. CITY'S BUSINESS LICENSE

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

18. WORKMEN'S COMPENSATION

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

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

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

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

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

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

20. NONDISCRIMINATION

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

21. PAYMENT OF MEDICAL CARE

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

22. OVERTIME

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

23. USE OF ENGINEER'S DRAWINGS AND OTHER DOCUMENTS

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

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

24. STANDARD OF CARE

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

25. NO THIRD PARTY BENEFICIARIES

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

26. ASSIGNMENT

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

27. SEVERABILITY AND SURVIVAL

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

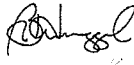


28. COMPLETE CONTRACT

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

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

Approved as to form:



Digitally signed by  
cn=suppl@dm.apple.com, o=Apple Computer, Inc., ou=Apple Computer, Inc., email=suppl@dm.apple.com, c=US  
DN: cn=suppl@dm.apple.com, o=Apple Computer, Inc., ou=Apple Computer, Inc., email=suppl@dm.apple.com, c=US  
Date: 2016.07.28 15:22:19 -0800

Attorney

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

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

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

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

**ATTACHMENT A**  
**MFA WORK ORDER AUTHORIZATION**

Between Maul Foster & Alongi, Inc. (MFA) and City of Astoria (Client).

The work is authorized under a City of Astoria Contract for Personal Services, dated \_\_\_\_\_, 2016.

MFA Project Number: P0097.02.07

Work Order Number: 01

Project Name: City of Astoria Landfill – Post Closure Assistance 2016-2017

Project Location: 1790 Williamsport Road, Astoria, Oregon

**SCOPE OF WORK**

**Task 1, Annual Environmental Monitoring Report.** DEQ's Solid Waste Closure Permit Number 118 for Astoria Landfill requires an Annual Environmental Monitoring Report be submitted by February 15 of every year. This report will summarize the data collection activities at the site and compare data results to permit-specific concentration limits. The scope also includes data review and coordinating with DEQ on split sampling. The report will follow DEQ reporting standards and be prepared and stamped by a Registered Geologist in the State of Oregon.

**Task 2, Annual Post-Closure Status and Financial Assurance Recertification Report.** MFA will provide the City support with reporting the post-closure status of the landfill and in certifying financial assurance, which are to be submitted to DEQ by September 15 of each year. The landfill post-closure status report will document activities undertaken to implement the post-closure plan and will describe any corrective actions that have taken place over the past year. The City submitted draft Financial Assurance documents to DEQ in June 2016, satisfying the requirement for the current year. MFA will provide assistance to the City in responding to limited DEQ comments on the draft documentation.

**Task 3, Operation, Monitoring, and Maintenance Plan.** DEQ's Solid Waste Closure Permit for the Landfill requires an Operation, Monitoring, and Maintenance Plan (OMMP) be submitted by December 9, 2016. This plan has been prepared in draft form and is currently under revision to incorporate the requirements of the final closure permit in addition to comments on the Environmental Monitoring Plan and the Baseline Environmental Assessment Report, which will become attachments to the final OMMP. The City has also requested an organizational index of annual landfill obligations for monitoring, maintenance, and reporting, which will be provided to the City as a separate deliverable.

**Task 4, On Call Consultation.** MFA will provide continued landfill consultation (engineering and environmental science) to the City, as requested. The effort may include responding to minor DEQ comments on the previously submitted Environmental Monitoring Plan and Baseline Environmental Assessment.

**SCHEDULE OF WORK**

MFA will begin work within 7 days of receiving authorization to proceed. Estimated time for completion is June 30, 2017.

**ESTIMATED COST OF WORK**

The estimated cost to complete the scope of work is \$23,560. This amount will not be exceeded without City approval. This cost estimate does not represent a lump sum. MFA bills on a time and materials basis. MFA may apply money from one task to another to complete the scope of work.

**Estimated Budget  
City of Astoria Landfill - Post Closure Assistance  
FY 2016-2017**

Task		Maul Foster & Alongi, Inc.			Subcontractors	Total
		Hours	Labor	Direct		
1	Annual Environmental Monitoring Report	49	\$5,350	\$300	\$0	\$5,650
2	Annual Post-Closure and Financial Assurance Recertification	22	\$2,970	\$200	\$0	\$3,170
3	Operation, Monitoring, and Maintenance Plan	57	\$6,990	\$300	\$0	\$7,290
4	On Call Consultation	52	\$7,150	\$300	\$0	\$7,450
<b>Total Estimated Cost</b>						<b>\$23,560</b>



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

August 10, 2016

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ADDITION OF JOB TITLE FOR SCHEDULE F-1 OF SALARY RESOLUTION  
NO. 16-04

### DISCUSSION/ANALYSIS

This memo proposes the creation of a temporary position of Assistant to the Emergency Communications Manager, in order to meet immediate needs related to the dispatch center. It is anticipated that the duration of work will be approximately six (6) months.

The position would be temporary, non-benefited position under City personnel policies (no medical; no earned paid leave); the position would not perform the duties of either a Records Specialist or a Communications Officer, and would perform a new set of duties, to include the creation of job duties for a new position of Operations Supervisor. This temporary position would assist the Emergency Communications Manager, Jeff Rusiecki, in special projects which otherwise can't be accomplished as timely as needed. This temporary position would bridge the period until the Center is able to create a job description, recruit and hire a full-time Operations Supervisor. The Operations Supervisor position has been budgeted, funded and approved by Users, and we plan to move forward with recruitment and selection once a permanent position is created and approved by the City Council.

As a rule, hours will not exceed 29 per workweek (7 day period Monday through Sunday), or a cumulative total of 1000 per year. If the requirements of a particular workweek exceed 30, they will be offset on a flex basis in other weeks, and, some work may be performed on a tele-commute basis.

This temporary Administrative Assistant would assist with the following time sensitive tasks, though not be limited to:

- Update Dispatch Standard Operating Procedures
- Update Dispatch In-house training program
- Project Management ("PM") for Airwatch Green Deployment
- PM for ODOT/9-1-1 joint camera deployment
- Dispatch hiring (testing, application review, observations)
- Develop job description & assist with recruiting, screening, hiring of Operations Supervisor
- Strategic Plan 3-5 years
- Assist w/Development of written policy & procedures for equipment
- Development of annual training plan

- Project Manager for Reservoir site move
- Project Manager Nexgen 9-1-1 transition

Before a position can be posted, the creation of a job description was required to identify the essential duties, expectations, required experience and education as well as to review the current marketplace establishing appropriate salary range to fulfill the current requirements of the City. It is proposed Schedule F-1, Range 2, be utilized and step determined based on the experience and education of the candidate. Funds are included in the approved budget for FY2016-17 to accommodate the addition of this temporary position. Job recruitment and offer would commence should Council approve the description as noted above and salary schedule range at the August 15<sup>th</sup> meeting.

**RECOMMENDATION**

It is recommended that the City Council approve the addition of the Job Title/duties and use of Schedule F-1, Range 2, as contained in Salary Resolution No. 16-04.

By:   
Jeff Rusiecki  
Emergency Communications Manager



August 10, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: DIRECTION FOR POSSIBLE SCANDINAVIAN IMMIGRANT MONUMENT TO BE LOCATED AT PEOPLES PARK

**DISCUSSION**

The vision for the City of Astoria Park located on 16th and Marine Drive known as Peoples Park was established in 1977 when the City completed the "Waterfront People Places System" Plan. The Plan envisioned "people places" within the urban environment such as fishing piers and "platform" public spaces. The plan states: "The concept of providing public land in urban areas which is pastoral and free of commercialism is necessary for the wellbeing of our people ... The Astoria Waterfront "People Places" system faces seemingly opposing priorities of providing facilities for public use which can provide recreational and pastoral qualities but can also encompasses the physical and economic intensity of activity that is embodied in the waterfront environment."

In 1982 the City acquired Tax Lot 600 from Clatsop County with a reversionary clause based on the construction of People Places Park. In 1984 the Park improvements were constructed by the Astoria Rotary Club and included an elevated river viewing platform, picnic facilities, parking, and landscaping. Following its construction, the Rotary Club continued to maintain and care for the structure by; rebuilding a portion of the structure, adding an ADA ramp, adding stairs leading to the railroad tracks, and partnering with the Coast Guard to rebuild the stairs leading to the observation platform.

The Rotary Club discontinued maintaining the structure and on June 18, 2015 the structure was temporarily closed due to the structure's hazardous state. This closure came after the Parks Maintenance team noticed one of the hand rails had fallen off, and upon repair found an additional rail down, several decking boards rotten and broken, and structural supports rotten. At this time, Parks and Recreation staff began requesting bids to repair the structure and began to ask the bigger question, of whether or not the structure will continue to be of value as it degrades further and requires increased levels of maintenance to keep it safe for the public's use. In recent years, the Parks and Recreation Department staff have been challenged with the task of keeping the structure safe for all users, as a large amount of illegal drugs, drug paraphernalia, alcohol, garbage, and illegal camping are found and take place on and underneath the structure.

After being informed that bids to repair the structure ranged from \$12,000 - \$16,000, Parks and Recreation Director, Angela Cosby, met with the Astoria Rotary Board on July 13, 2015 to seek assistance in repairing or removing the structure and ways to increase positive use of the park. Following this meeting, the Rotary President and Board solicited feedback from the Club's members. At the August 10, 2015 Rotary Board meeting, the Board reviewed the feedback received from its members and decided that: the Rotary Club was not in a position to financially contribute to the needed repairs; they would like to be involved with the removal of the structure; and they would like to replace the structure with grass.

At the August 19, 2015, Parks Advisory Board meeting, the Board concurred with the Parks and Recreation Department staff and Rotary's suggestion of removing the platform from People's Park. Therefore, as a donation to the Astoria Rotary Club, two local demolition, hauling and trucking companies offered their services to tear down and remove the structures at no cost, with the condition that the work will be performed during the precipitation season when their businesses obligations decrease. Unfortunately, the precipitation season did not decrease obligations and in March 2016 the Parks and Recreation Department removed the platform and planted grass seed at the Departments expense. Once the grass seed had established, the Park was re-opened for public use in April 2016.

Over the past few years members of the Scandinavian community have been working to develop a monument honoring the area's Scandinavian heritage. A presentation will be made at the August 15<sup>th</sup> meeting about these efforts with the possibility of locating the monument at Peoples Park. This will provide additional information on this agenda item.

During the June 22, 2016 Parks and Recreation Advisory Board meeting, Loran Mathews, Astoria Scandinavian Heritage Association (ASHA) President and Project Director, and Carol Lyngstad, ASHA Treasurer, presented a proposal to build a low maintenance, permanent monument in the Park on 16<sup>th</sup> Street to educate the public about Astoria's Scandinavian heritage and explained why Peoples Park would be an ideal location. The presentation included images and a description of the proposed monument and surrounding site. Loran and Carol added that the monument could help fill Astoria's shortage of urban plazas identified in the Parks and Recreation Comprehensive Plan and that there is a large amount of support in the community for the monument and volunteers could help maintain the site.

Park and Recreation Advisory Board members discussed that although the project was well planned and a good example of repurposing an underutilized park the Board had voted to recommend that City Council refrain from adding new parks, facilities, and services via the Parks and Recreation Comprehensive Master Plan, and that they were hesitant to recommend this addition until other higher priority park projects were completed. Other Board members explained how they believed the monument would help fulfill some of the recommendations in the Master Plan such as section 6.2 "Increased Community Stewardship" and establishing a formal "Adopt-A-Park program and develop a contract with guidelines and expectations". The Parks and Recreation Advisory Board concluded and that the ASHA would need to include not only fundraising for construction but for the monument's ongoing care and maintenance and unanimously agreed to recommend the Scandinavian monument project to City Council contingent upon a formal park adoption agreement.

**RECOMMENDATION**

It is recommended that Council consider the Parks and Recreation Advisory Board's recommendation and direct staff to prepare an agreement with ASHA following adoption of an Adopt-A-Park program. Both the Adopt-A-Park program and ASHA agreement would be brought back to Council for consideration.


By: Angela Cosby  
Angela Cosby  
Director of Parks & Recreation





Date July 22, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: ORDINANCE APPROVING THE ASSIGNMENT OF NON-EXCLUSIVE TELECOMMUNICATION FRANCHISE FROM COASTCOM, INC. TO ASTOUND BROADBAND, LLC

**DISCUSSION/ANALYSIS**


Ordinance 16-03 was approved March 21, 2016, granting a franchise to CoastCom, Inc. for operation of telecommunications facilities within City rights of way. The ordinance:

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

Astound Broadband, LLC has entered into a purchase agreement with CoastCom, Inc. to acquire the assets and operation of CoastCom, Inc. Matt Updenkelder, Vice President of Operations for CoastCom, Inc. has requested City Council consider assignment of the CoastCom franchise to Astound Broadband, LLC. Included in this packet is an Ordinance approving the assignment of a non-exclusive telecommunication franchise. The documents have been reviewed and approved as to form by City Attorney Blair Henningsgaard.

**RECOMMENDATION**

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

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

ORDINANCE NO. 16-\_\_\_\_\_

AN ORDINANCE APPROVING THE ASSIGNMENT OF A NON-EXCLUSIVE TELECOMMUNICATION FRANCHISE

WHEREAS, the City of Astoria ("Grantor") granted to CoastCom, Inc., an Oregon corporation ("Grantee"), a franchise as set forth in Ordinance No. 16-03, dated March 21, 2016, to own and operate a telecommunications system in Astoria, Oregon (the "Franchise");

WHEREAS, on June 3, 2016, Grantee and Astound Broadband, LLC ("Assignee") entered into an Asset Purchase Agreement (the "Purchase Agreement") for the sale of the assets of Grantee, including the Franchise, to Assignee (the "Transaction"); and

WHEREAS, Grantee and Assignee submitted a letter to Grantor on or about July 22, 2016, requesting Grantor's consent to the assignment and transfer of the Franchise from Grantee to Assignee (the "Consent Request"); and

WHEREAS, Grantor has conducted a review of the qualifications of Assignee to hold the Franchise and own and operate the telecommunications network authorized by the Franchise; and

WHEREAS, based on its review, Grantor can find no reason to object to the transfer of this franchise.

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

**Section 1.** Grantor hereby consents to the assignment of the Franchise from Grantee to Assignee effective upon the closing of the Transaction.

**Section 2.** Grantor confirms that: (a) the Franchise was duly issued to Grantee, is valid and enforceable in accordance with its terms, and is in full force and effect; (b) other than as set forth in this Consent and Approval, there have been no amendments or modifications to the Franchise; (c) to Grantor's knowledge, there are no defaults under the Franchise, and no event has occurred and is continuing which, with the giving of notice or passage of time, or both, could constitute a default thereunder; and (d) upon the closing of the Transaction, the duly authorized franchisee under the Franchise will be Assignee.

**Section 3.** Assignee may hereafter, without the need to obtain the prior consent of Grantor, from time to time pledge or grant a security interest in its assets, including but not limited to the Franchise, or of the ownership interests in Assignee, to any secured lender(s) solely for purposes of securing indebtedness (and not operational control).

**Section 4.** The Franchise and this Consent and Approval were and are made, passed and adopted in accordance with all applicable notice and procedure requirements under all laws applicable to Grantor, and with all applicable notice and procedure requirements, and do not conflict with the laws, ordinances, resolutions and other regulations of Grantor, as presently in effect or as the same were in effect at the time the particular action was taken.

**Section 5.** Grantor's approval of the Consent Request and its consent to the assignment of the Franchise to Assignee shall be effective from and after its adoption and approval by the Grantor. Assignee shall notify the Grantor in writing upon the closing of the Transaction (the "Closing Date").

**Section 6.** Assignee, shall assume all obligations and liabilities (including any guarantee or surety) under the Franchise whether related to the period before or after the Closing Date. However this this not relieve Grantee from all obligations and liabilities to Grantor which may have arisen prior to the Closing Date.

ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.

APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

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




CITY OF ASTORIA  
POLICE DEPARTMENT

August 12, 2016

## MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: VERIZON WIRELESS LEASES

### **DISCUSSION/ANALYSIS**

At the July 5, 2016 meeting, draft leases were presented for the Verizon Wireless project at Reservoir Ridge and a lease extension at Coxcomb. Council indicated they believed the terms were supportable. These leases were returned to Verizon Wireless (VZW) for inclusion of two items listed in the memorandum presented that night. Additionally, the Council nondiscrimination policy was included in the contracts.

Verizon Wireless has signed the two leases with the terms presented to the Astoria City Council at the July 5th meeting. In addition they have provided a right of way easement for Pacific Power to provide power to the facility.

The leases presented then, and now for signature, are in keeping with the guidance set out during the March 21, 2016 work session regarding the wireless communications facility at Coxcomb, Staff has negotiated a new lease with Verizon Wireless (VZW) for the site at Reservoir Ridge. The terms of the lease are favorable to the City in value of construction and use of tower for our communication needs. For the term of the lease, there are no monthly payments for lease.

The negotiations resulted in two leases. These leases are for the Coxcomb and Reservoir Site both of which have been reviewed and approved as to form by City Attorney Henningsgaard. With the previously proposed and now adopted amendments, the highlights of the leases are listed below.

#### **Coxcomb Site**

- Extension to the existing lease that has been in existence since 1992.
- Extends lease from September 1, 2017 through August 31, 2018 with an opportunity to extend the lease for one additional year.
- This lease is for \$1,969.64 per month. If second year is optioned the lease is \$2028.73 per month
- VZW is responsible for removal of tower and shelters, removal of tower footings and foundations 4 feet below grade.
- VZW is responsible to restore area as specified in a to be agreed on manner.

## **Reservoir Site**

- Five year lease with the option for VZW to extend four times (Total possible lease of 25 years).
- VZW will construct tower and two shelters.
- VZW will transfer ownership of a shelter to City.
- VZW will provide tower space to the City at no cost for period of lease or extensions.
- VZW will provide a generator which meets NFPA standards
- VZW will move all equipment from Coxcomb to the new tower with no interruption in service. They will replace all existing cables, antenna, and connectors.
- VZW will improve the road from Pipeline Road to the site with an all season roadway
- VZW will provide the City \$15,000 in consideration for maintenance of the roadway.
- Any colocator would be required to provide \$15,000 to the City in consideration for maintenance of the roadway.
- All colocators would be required to seek land access leases from the City in addition to tower lease from VZW.
- The City will have excess capacity in the shelter provided by VZW and may choose to rent space to colocators.
- The City will receive no income from VZW in consideration for the construction, access to tower, providing the shelter and generator.

In addition, an easement to Pacific Power is also included to provide electrical service to the Reservoir Ridge site. City Attorney Henningsgaard has asked for some changes to the easement document including clarification where the line would be placed in the respective tax lots and with language regarding waiver of a right to jury trial. Staff will work with Pacific Power to address these issues.

## **RECOMMENDATION**

It is recommended that Council authorize the Mayor and City Manager to sign the leases with Verizon Wireless for facilities at Coxcomb and Reservoir Ridge and the Pacific Power right of way easement, contingent on resolution of the City Attorney's requested changes.



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Brad Johnston  
Chief of Police  
Assistant City Manager

## LAND LEASE AGREEMENT

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, between City of Astoria, with its principal offices located at 1095 Duane Street, Astoria, Oregon 97103, hereinafter designated LESSOR and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

### DEFINITIONS

1. Definitions. For the purpose of this Agreement, and all Exhibits attached hereto, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

1.1 "Agreement" means this Land Lease Agreement with all attachments and exhibits.

1.2 "Commencement Date" means the date Lessee commences installation of equipment on the Premises, as set forth in Section 3.a., and jointly memorialized in writing between LESSOR and LESSEE.

1.3 "Existing Tenants" means the entities, other than LESSOR and LESSEE, who own or are legally responsible for the operation of communications antennas, equipment and related necessary facilities on the old tower and in the existing shelter.

1.4 "Facility" means any tangible component of LESSOR or LESSEE's tower, structure or equipment on the Premises, specifically including the secure equipment shelter for use of LESSOR as specified in Section 8.

1.5 "Governmental Approvals" means all approvals including permits that are necessary or required by applicable Federal, State or Local government authorities, including Lessor.

1.6 "Land Space" as set forth in Section 1 means the specified parcel of LESSOR's property leased to LESSEE.

1.7 "LESSOR" means the City of Astoria Oregon.

1.8 "LESSEE" means Verizon Wireless (VAW) LLC d/b/a Verizon Wireless.

1.9 "Mortgage" means any future master lease, ground lease, mortgage, deed of trust or other security interest of LESSOR, as referenced in Section 27, which from time to time may encumber all or part of the Property.

1.10 "Non-Disturbance Agreement" means the agreement/s with all applicable terms obtained by LESSOR from other third party users of the Property, as set forth in Section 27.

1.11 "Old Tower" means the existing communications tower and related facilities on Coxcomb Hill.

1.12 "Parties" or "Party" means the LESSOR and/or the LESSEE individually or collectively.

1.13 "Premises" means a portion of LESSOR's Property, described in Section 1 of the Agreement and leased to LESSEE, including specified Land Space and Rights of Way.

1.14 "Property" means the entirety of LESSOR's property, a portion of which is the specified parcel containing the Premises leased to LESSEE. This excludes structures or other improvements.

1.15 "Public Safety Communications Equipment" as used in Section 9 means all equipment, infrastructure and facilities deemed necessary by LESSOR or LESSOR-authorized entities for public safety use.

1.16 "Rental Documentation" means documentation evidencing LESSOR's interest in, and right to receive payments under the Agreement, as set forth in Section 3.b.

1.17 "Rights of Way" as set forth in Section 1 means the specified non-exclusive 24-hour/7 days per week ingress and egress to the Premises granted to LESSEE.

1.18 "Shelter" means the new, secure, key-pad locked shelter for LESSOR's exclusive use to house Public Safety Communications Equipment or LESSOR-authorized future users with emergency power and capabilities as set forth in Section 10 of this Agreement.

1.19 "Term" means the duration of this Agreement, including the initial term and any duly authorized extensions.

1.20 "Tower" means the new communications tower, with related facilities to be constructed by LESSEE under this Agreement.

1.21 "Tower Space" means the portion of Space granted and reserved to LESSOR by LESSEE for equipment of LESSOR and Existing Tenants or LESSOR authorized future uses under Section 10 hereof; the Parties understand that the antennas of LESSOR or LESSOR-authorized future users shall generally be located at the 140 foot (140') RAD center of the Tower unless otherwise approved by LESSEE in its sole discretion.

## AGREEMENT

2. PREMISES. LESSOR hereby leases to LESSEE a portion of that certain parcel of property (the entirety of LESSOR's property is referred to hereinafter as the Property), located at 3850 Reservoir Road (Assessor's Parcel No. 80916000100), County of Clatsop, State of Oregon, and being described as a 50' by 50' parcel containing 2,500 square feet (the "Land Space"), together with the non-exclusive right (the "Rights of Way") for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a right-of-way extending from the nearest public right-of-way, Pipeline Road, to the Land Space, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights of way from the Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof.

In the event any public utility necessary to the purposes set forth in Section 9 is unable to use the Rights of Way, the LESSOR hereby agrees to grant an additional right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

LESSEE shall engineer and construct the access road to the Premises at the Property and LESSOR shall maintain the access road and fire break around the Premises.

3. SURVEY. LESSOR also hereby grants to LESSEE the right to survey the Property and the Premises during the Term, and said survey, subject to acknowledgment and reasonable approval from LESSOR, shall, following reasonable approval by LESSOR, then become Exhibit "D" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by the LESSEE.

4. TERM; RENTAL.

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined). Effective on the Commencement Date, and continuing for the duration of this Agreement, no monthly rent shall be payable to LESSOR. The Agreement shall commence within thirty (30) days of LESSEE's receipt of all necessary Governmental Approvals to construct the Tower (as hereinafter defined). In the event the date of receipt of such Governmental Approvals falls between the 1<sup>st</sup> and 15<sup>th</sup> of the month, the Agreement shall commence on the 1<sup>st</sup> of that month and if the date of receipt of such Governmental Approvals falls between the 16<sup>th</sup> and 31<sup>st</sup> of the month, then the Agreement shall commence on the 1<sup>st</sup> day of the following month (either the "Commencement Date"). LESSOR and LESSEE agree that they shall jointly acknowledge in writing the Commencement Date.

If directed by LESSOR, LESSEE shall pay rental as set forth in Section 4 and Section 6 hereof by electronic funds transfer (ACH) and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose.



b. LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") evidencing LESSOR's interest in, and right to receive payments under, this Agreement, including without limitation: (i) documentation, acceptable to LESSEE in LESSEE's reasonable discretion, evidencing LESSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to LESSEE, for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation requested by LESSEE in LESSEE's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. The Rental Documentation shall be provided to LESSEE in accordance with the provisions of and at the address given in Section 26. Delivery of Rental Documentation to LESSEE shall be a prerequisite for the payment of any rent by LESSEE and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein. However, in no event shall any written request from LESSEE to LESSOR for Rental Documentation under this Section 4.b. be made less than 90 days prior to the date any rental payment is due to LESSOR under this Agreement.

Within fifteen (15) days of obtaining an interest in the Property or this Agreement, in whole or in part, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE Rental Documentation in the manner set forth in the preceding Section. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, any assignee(s) or transferee(s) of LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. Delivery of Rental Documentation to LESSEE by any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall be a prerequisite for the payment of any rent by LESSEE to such party and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments to any assignee(s), transferee(s) or other successor(s) in interest of LESSOR until Rental Documentation has been supplied to LESSEE as provided herein. However, in no event shall any written request from LESSEE to any assignee(s) or transferee(s) of LESSOR for Rental Documentation under this Section 4.b. be made less than 90 days prior to the date any rental payment is due to such assignee(s) or transferee(s) of LESSOR under this Agreement.

c. LESSEE shall pay to LESSOR as additional rent a one-time payment of \$15,000.00 for road maintenance at the Property, such payment to be made within 45 days of full execution of the Agreement.

5. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term. The initial term and all extensions shall be collectively referred to herein as the "Term".

6. [INTENTIONALLY DELETED].

7. [INTENTIONALLY DELETED].

8. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSOR and LESSEE shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSOR or LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Nothing in this Section shall be construed as making LESSEE liable for any portion of LESSOR's income taxes in connection with any Property or otherwise. Except as set forth in this Section, LESSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this Section, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

9. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purposes of constructing, maintaining, repairing and operating a communications facility, and uses incidental thereto, in reasonable cooperation with LESSOR. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement) however the Parties understand that authorized representatives of LESSOR shall have 24 hour-per-day, 365-day-per-year access to the Premises as necessary to service or monitor non-LESSEE facilities, as further set forth in this Section. All improvements, equipment, antennas and conduits shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. Subject to the obligation to obtain any necessary Governmental Approvals (as defined below), LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. LESSOR shall have the same

rights to use authorized representatives of LESSOR, and LESSOR-authorized representatives of future users to service and repair non-LESSEE equipment and related facilities in cooperation with LESSEE. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon LESSEE obtaining after the execution date of this Agreement, Governmental Approvals that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit LESSEE use of the Premises as set forth above. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests are unsatisfactory; (v) LESSEE determines that the Premises is no longer technically compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing pursuant to Section 26 hereof by certified mail, return receipt requested, and shall be effective upon receipt of such notice by LESSOR, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

#### 10. REMOVAL AND INSTALLATION OF IMPROVEMENTS.

a. Upon the Commencement Date, LESSEE shall construct certain improvements on the Land Space, to include a communications tower ("Tower"), depicted by Exhibit "B" attached hereto and made a part hereof. Prior to commencement of construction of the Tower, LESSEE shall provide reasonably detailed plans for the Tower which are subject to LESSOR's reasonable approval. LESSEE shall, at its reasonable cost and expense, cooperate with LESSOR and Existing Tenants located on the Old Tower to relocate any existing antennas and necessary appurtenances of LESSOR and Existing Tenant Equipment from the Old Tower or Existing Shelter to the Tower and Shelter in a manner that does not unreasonably interfere with the critical operations of LESSOR and Existing Tenants; provided, no such antennas and appurtenances of LESSOR or Existing Tenant Equipment shall be installed within the Tower Space that interferes with LESSEE's use of or operations at the Premises. The Parties acknowledge that EXHIBIT "C" sets forth the initial list of antennas, equipment and necessary appurtenances required on the Tower by LESSOR and Existing Tenants.

If LESSEE does not approve of the final list of such requirements within seven (7) days of delivery of such final list to LESSEE, LESSEE shall be deemed to have approved such plans. Following LESSOR's approval of the plans for the Tower, LESSEE may proceed with the construction of the Tower. Upon completion of construction of the Tower, LESSEE shall provide LESSOR with seven (7) days in which to inspect the Tower and note any construction deficiencies or deviations from the plans previously approved by LESSOR. Following the completion of construction of the Tower and the relocation of existing antennas and appurtenances of LESSOR and Existing Tenant Equipment, LESSOR and LESSOR-authorized Existing Tenants may thereafter install, at their sole cost and expense, necessary equipment on

the Tower, including Public Safety Communications Equipment for LESSOR's public safety communications needs, subject to the following terms and conditions. Upon LESSOR's satisfactory inspection of the Tower, LESSEE will execute and deliver to LESSOR a Bill of Sale substantially in the form attached hereto as Attachment "1", transferring all of LESSEE's right, title and interest in and to the shelter and generator to LESSOR. LESSOR shall accept with shelter and generator in its then-current "AS-IS" condition, however, LESSEE shall assign any shelter and generator manufacturer's warranty (if applicable) to LESSOR.

The Existing Tenants shall follow LESSEE's colocation process if they decide to add any future equipment or modify the original installed equipment.

b. LESSOR's additional equipment on the Tower shall be at no rental cost of LESSOR during the Term;

c. LESSOR shall provide plans and specifications of future proposed equipment to LESSEE for review and approval in LESSEE's sole discretion;

d. LESSEE, in its sole discretion, may require LESSOR to obtain a structural analysis report at LESSOR's sole cost, a copy of which shall be provided to LESSEE;

e. In no event shall LESSOR's equipment interfere with LESSEE's use of or operations at the Premises; and

f. Any modifications or change to LESSOR's equipment on the Tower shall require LESSEE's prior written approval, such approval not unreasonably withheld.

g. After removal from the Coxcomb tower and installation of the new Tower, all Existing Tenants shall follow LESSEE's colocation process.

11. TOWER SPACE AND SHELTER SPACE. Following LESSEE's completion of construction of the Tower, LESSEE shall provide to LESSOR at no cost throughout the duration of this Agreement a portion of certain space (the "Tower Space") on the Tower to install antennas related radio equipment and appurtenances described in Exhibit "C" attached hereto and made a part hereof. LESSEE hereby grants permission to LESSOR and Existing Tenants to install, maintain and operate the communications equipment, antennas and appurtenances described in Exhibit "C" attached hereto. LESSOR on its own behalf reserves the right to modify, update and replace the aforementioned equipment with similar and comparable equipment upon reasonable notice to LESSEE, provided said replacement does not increase tower loading of said Tower. From and after the Commencement Date, the term "Premises" as used herein shall collectively refer to the Tower Space, Land Space and Rights of Way.

In no event shall LESSOR's equipment installed on LESSEE's communications tower unreasonably interfere with LESSEE's use and operations of LESSEE's communications facilities at the Premises during the Term as contemplated in this Agreement.

LESSEE will relocate the antennas and appurtenances and any LESSOR or Existing Tenants appurtenances that are deemed un-usable in LESSEE's determination shall be replaced by LESSEE.

LESSEE shall cooperate with LESSOR, to the extent technically feasible, in providing for the co-location of facilities of additional communications service providers on LESSEE's Tower as sub-lessees of LESSEE's "Land Space", regardless of whether such providers commercially compete with LESSEE. Such sub-leases, however, shall not include rights to LESSEE's "Rights-of-way" for purposes of access to the Land Space, and such access rights shall be subject to a separate agreement between any such sub-lessee and LESSOR.

During the Term, and at no rental or capital cost to LESSOR, LESSEE shall provide a key-pad secured equipment "Shelter" on the Premises, as described and depicted on Exhibit "C" attached hereto and made a part hereof, for the exclusive use by LESSOR and its authorized designees with seven (7) days a week twenty-four (24) hours a day access. The dimensions of the Facility shall be 20 feet by 11 feet and will be equipped with a redundant heating and cooling system. LESSEE shall ensure that such Facility will have an emergency power supply in accordance with NFPA 110. Emergency power must be supplied in a way that public safety radios and network infrastructure are unaffected by generator start up or failure. Generator temperature, and systems monitoring shall interface with existing Astoria Public Works SCADA infrastructure and Facility must be capable of having a monitored alarm system. Facility shall be surrounded by security fencing.

12. INDEMNIFICATION. To the extent permitted by law and the Oregon Constitution, and subject to the provisions of the Oregon Constitution and the limitations of liability of public bodies set forth in ORS 30.260 *et. seq.* and Section 13 below, each Party shall indemnify and hold the other harmless against (i) any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, and (ii) the use and occupancy of the Premises or Property by the Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

13. INSURANCE.

a. Notwithstanding the indemnity in Section 12, the Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

b. LESSEE will maintain at its own cost;

- i. Commercial General Liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence.
- ii. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a minimum combined limit of not less than one million (\$1,000,000) per occurrence.
- iii. Workers Compensation insurance providing the statutory benefits and not less than one million (\$1,000,000) of Employers Liability coverage.

LESSEE will include the LESSOR as an additional insured on the Commercial General Liability and Auto Liability policies.

c. LESSOR will maintain at its own cost commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. LESSOR will include the LESSEE as an additional insured.

14. LIMITATION OF LIABILITY. Except for indemnification pursuant to Sections 11 and 31, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, competitive disadvantage, tortious interference, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

15. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR.

16. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is

of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

17. DISPOSITION OF TOWER AND FACILITIES AT END OF TERM. Following (90) days after expiration of the Term or any earlier termination of the Agreement, ownership of the Tower and LESSOR-occupied Facilities shall pass to LESSOR at LESSOR's sole discretion (i) upon at least thirty (30) days prior written notice to LESSEE, (ii) at no cost to LESSOR, and (iii) execution of a bill of sale in form and content reasonably acceptable to LESSEE. If LESSOR elects not to take possession of the aforementioned Tower and Facilities, then LESSEE shall, within forty-five (45) days of receipt of written notice from LESSOR, be responsible for their removal at LESSEE's sole expense.

18. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Section 17 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Section 17 and this Section 18, then the rent then in effect payable from and after the time of the expiration or earlier removal period shall be equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

19. RIGHT OF FIRST REFUSAL. If LESSOR elects, during the Term (i) to sell or otherwise transfer all or any portion of the Property, whether separately or as part of a larger parcel of which the Property is a part, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

20. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall not be released from its obligations to

LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of this Agreement.

21. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

22. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

23. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided by each Party pursuant to Section 26. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

24. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the applicable Laws of the State of Oregon. Venue shall be the Circuit Court of Clatsop County, Oregon.

25. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the advance written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder. LESSEE may sublet the Premises within its sole discretion, upon prior notice to LESSOR; provided, any subtenant that may desire to sublet space at LESSEE's communication facility shall be required to lease separate access rights directly from LESSOR in order that LESSOR may have the opportunity to achieve a separate agreement with that entity related to any associated use of LESSOR's property. Any collocator or subtenant shall pay a one-time fee of \$15,000.00 to LESSOR for road maintenance at the Property. Any sublease that is entered into



by LESSEE shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective Parties hereto.

26. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: City of Astoria  
1095 Duane Street  
Astoria, Oregon 97103  
Attn: City Manager  
Telephone: (503) 325-5821

And to:  
City of Astoria  
1095 Duane Street  
Astoria, Oregon 97103  
Attn: Finance Director

LESSEE: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

27. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

28. SUBORDINATION AND NON-DISTURBANCE. LESSOR shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property or right-of-way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's

("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill LESSOR's obligations under the Agreement, and (3) promptly cure all of the then-existing LESSOR defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Property and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

29. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer in Clatsop County, Oregon. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

30. DEFAULT.

a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Section.

b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Section.

Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Property; provided, however, that if the nature of LESSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

31. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, both Parties shall use reasonable efforts to mitigate their damages in connection with a default. If a non-defaulting Party so performs any of the defaulting Party's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by the non-defaulting Party shall immediately be owing by defaulting Party to the non-defaulting Party, and the defaulting Party shall pay the non-defaulting Party upon demand the full undisputed amount thereof with interest thereon from the date of payment nine (9%) per annum. Notwithstanding the foregoing, if LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from LESSOR, LESSEE may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to LESSOR until the full undisputed amount, including all accrued interest, is fully reimbursed to LESSEE.

32. ENVIRONMENTAL.

a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused or contributed to by the specific activities of LESSEE in the Premises.

b. LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with

any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused or contributed to by LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused or contributed to by LESSEE.

33. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

34. NON-DISCRIMINATION. It is the policy of the City of Astoria that no person shall be denied the benefits of or be subject to unlawful discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity/expression. Contractor, its employees, agents and subcontractors shall comply with this policy.

35. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

36. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply

with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

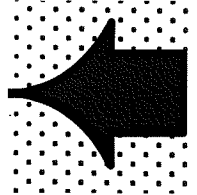
37. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

38. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

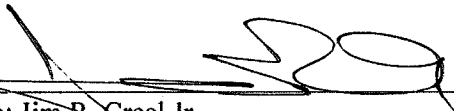
IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

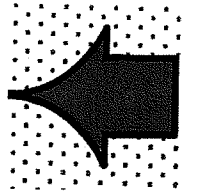
LESSOR: CITY OF ASTORIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



LESSEE: VERIZON WIRELESS (VAW) LLC  
d/b/a Verizon Wireless

By:   
Name: Jim R. Greel Jr.  
Title: Director - Network  
Date: 8/5/16



**EXHIBIT "A" (Page 1 of 3)**

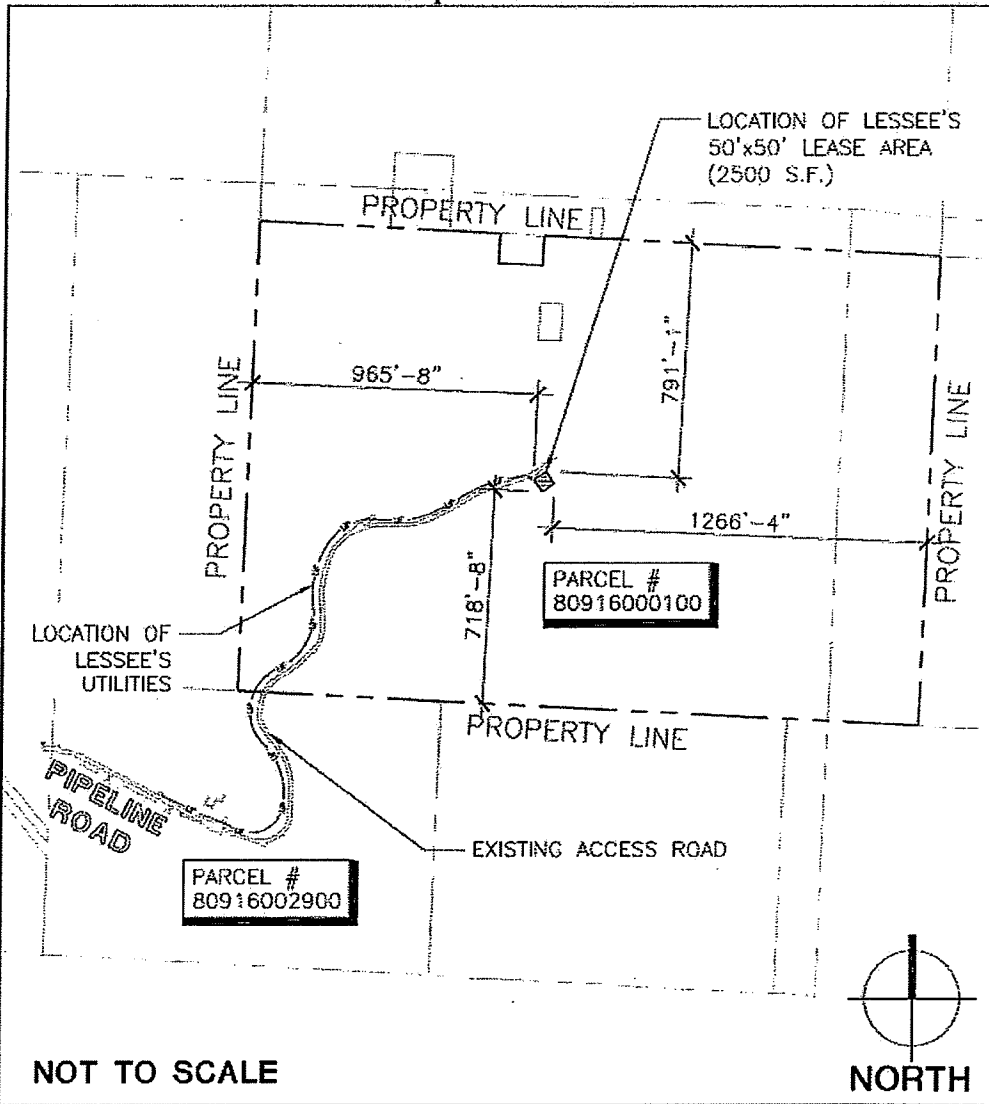
**Legal Description**

All of Blocks 141, 142, 144, 147, 149 through 154, 157 through 164, 167 through 174; Lots 7 through 54 in Block 143; and Lots 1 through 7, and Lots 10 through 54, Block 148, MARY ANN ADAIR'S SOUTH ADDITION TO THE PORT OF UPPER ASTORIA, as laid out and recorded by John Adair and as ratified, confirmed, and recorded by Mary Ann Adair and Mary H. Leinenweber, now vacated, in the City of Astoria, County of Clatsop, State of Oregon.

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Government Lot 2, Section 16, Township 8 North, Range 9 West, Willamette Meridian, City of Astoria, Clatsop County, Oregon.

**EXHIBIT "A" (Page 2 of 3)**  
**Description of Premises**

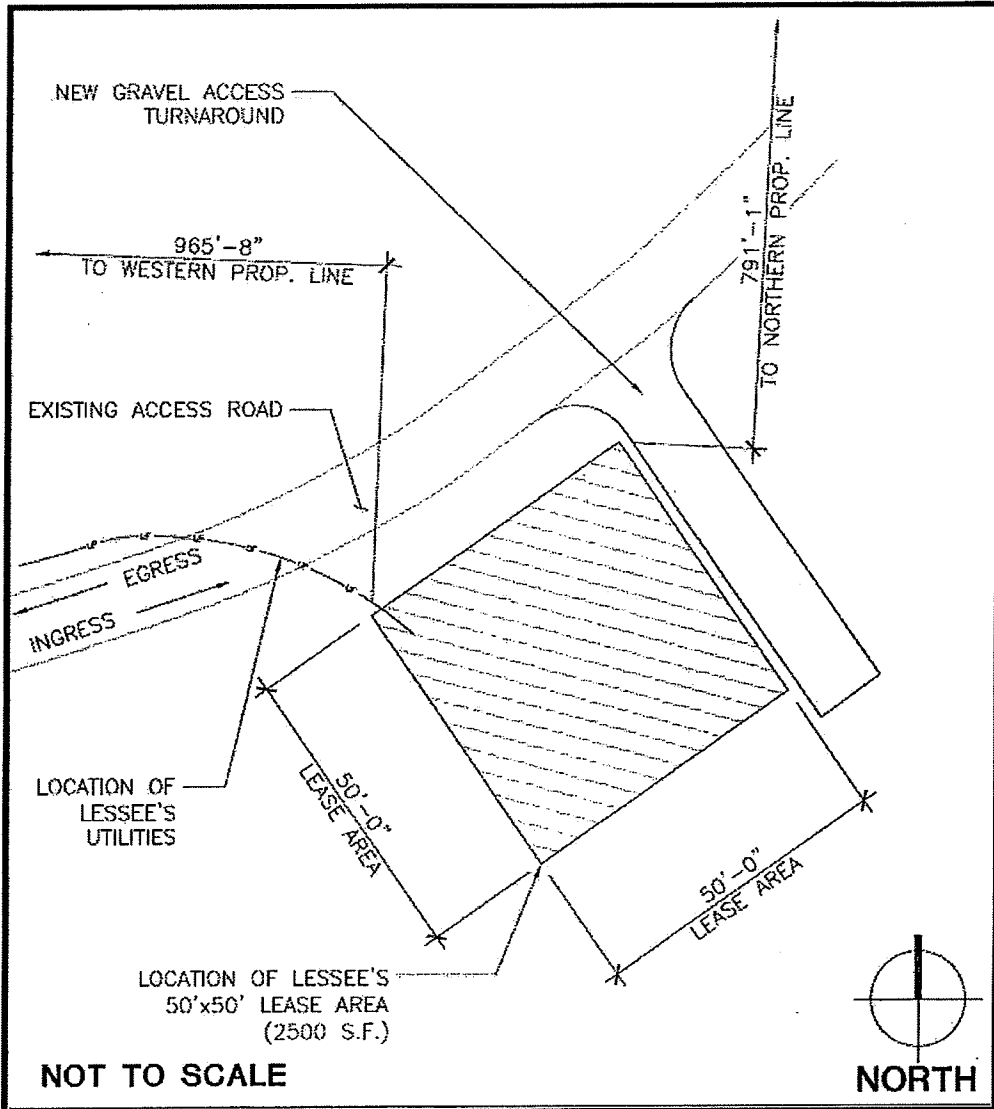


NOT TO SCALE

NORTH

 	PROJECT: OR1-RESERVOIR ADDRESS: PARCEL N OF 3350 PIPELINE RD ASTORIA, OR 97103		DATE: 5-20-15	SHEET # 1
	SHEET TITLE: OVERALL SITE PLAN EAT   5-20-15   ISSUE FOR LEASE EXHIBIT		DRAWN BY: EAT	OF 2

**EXHIBIT "A" (Page 3 of 3)**  
**Description of Premises**



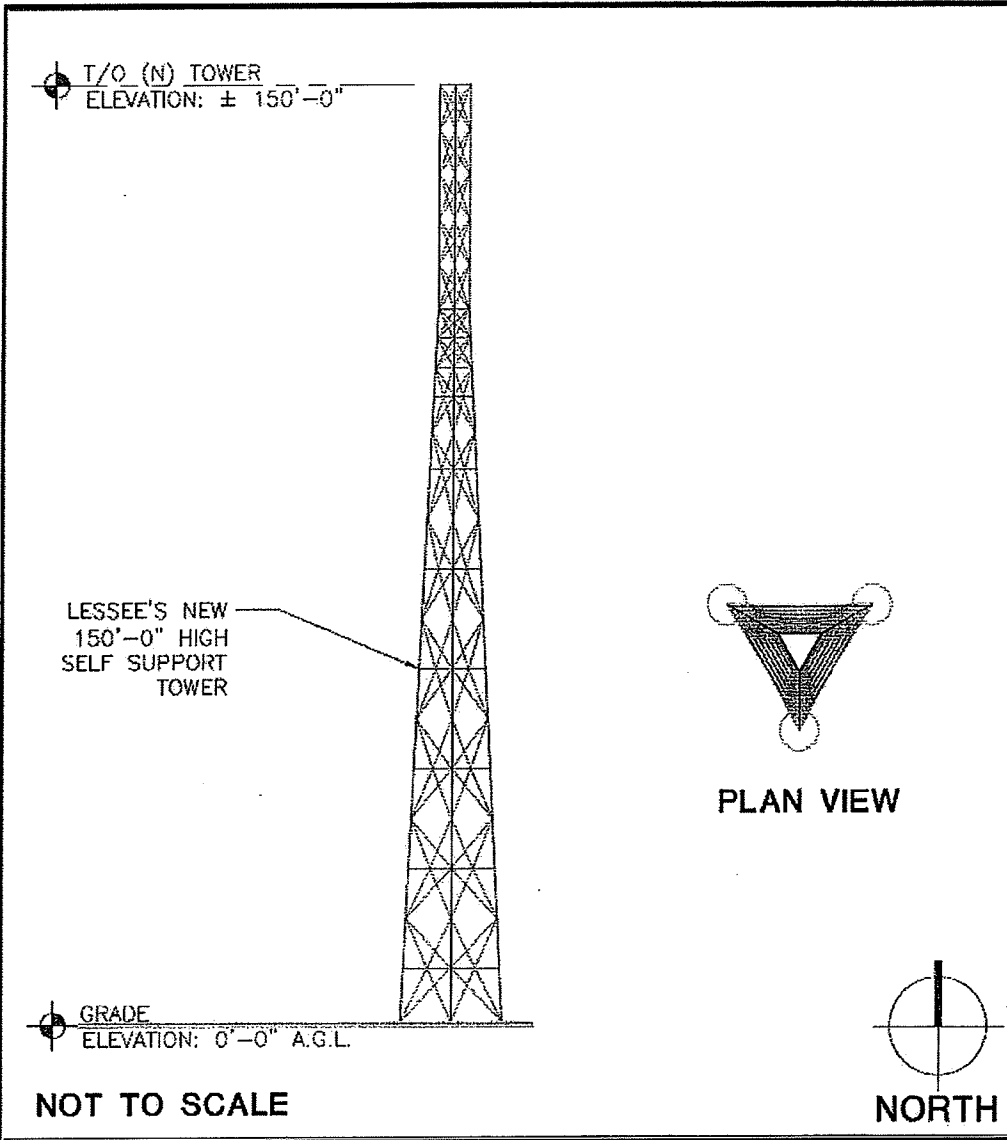
**NOT TO SCALE**






 <b>verizon</b> wireless	PROJECT:	OR1-RESERVOIR	 <b>CAMP+</b> ASSOCIATES			
	ADDRESS:	PARCEL N OF 3350 PIPELINE RD ASTORIA, OR 97103				
	SHEET TITLE:	ENLARGED SITE PLAN	DATE:	5-20-15	SHEET #	2
	EAT	5-20-15	ISSUE FOR LEASE EXHIBIT	DRAWN BY:	EAT	OF 2

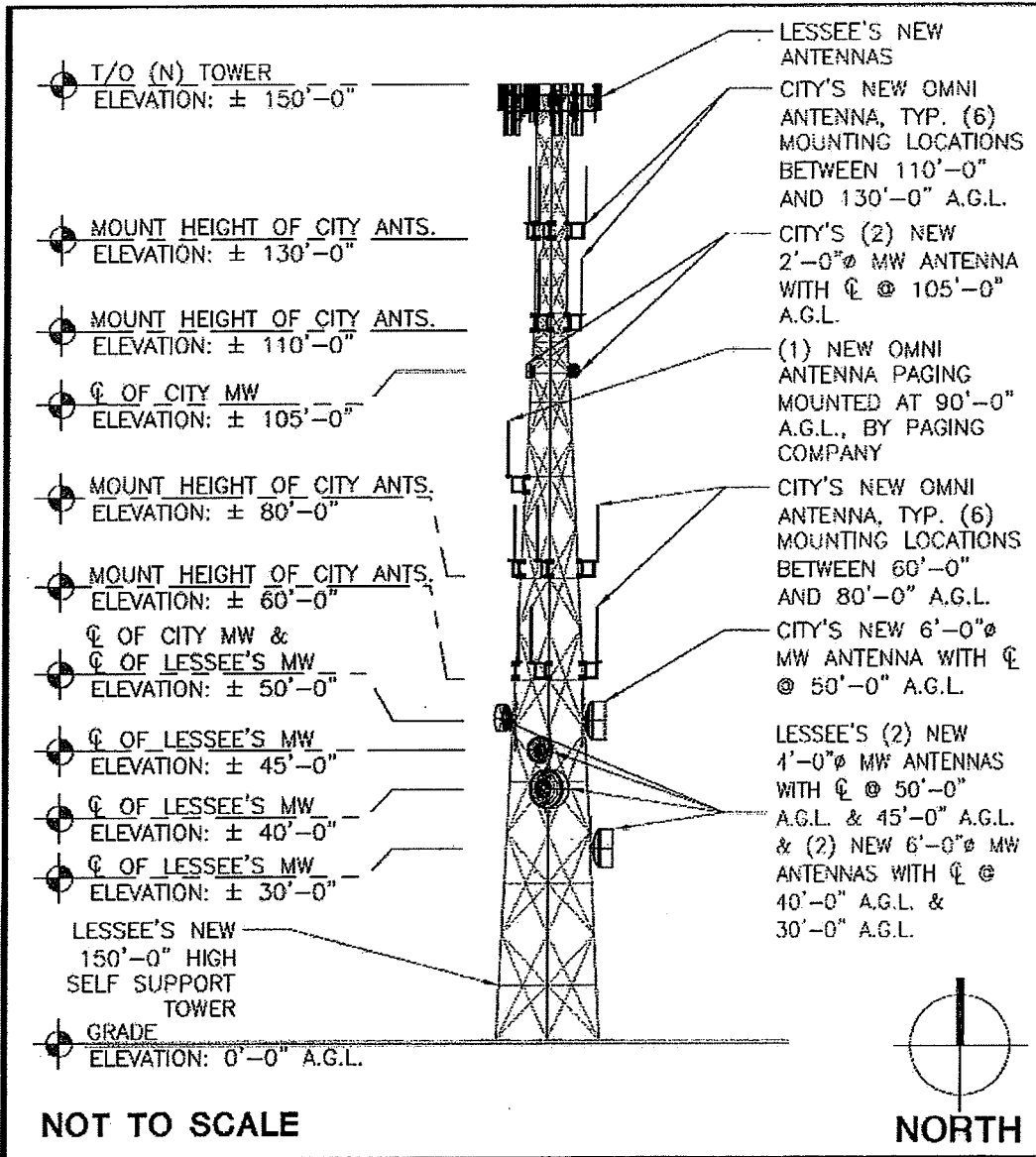


**EXHIBIT "B" (Page 1 of 2)**  
**DEPICTION OF TOWER**



 	PROJECT: OR1-RESERVOIR ADDRESS: PARCEL N OF 3350 PIPELINE RD ASTORIA, OR 97103	 <b>CAMP+</b> ASSOCIATES
	SHEET TITLE: TOWER SCHEMATIC EAT 6-08-15 ISSUE FOR LEASE EXHIBIT	

**EXHIBIT "B" (Page 2 of 2)**  
**DEPICTION OF TOWER**

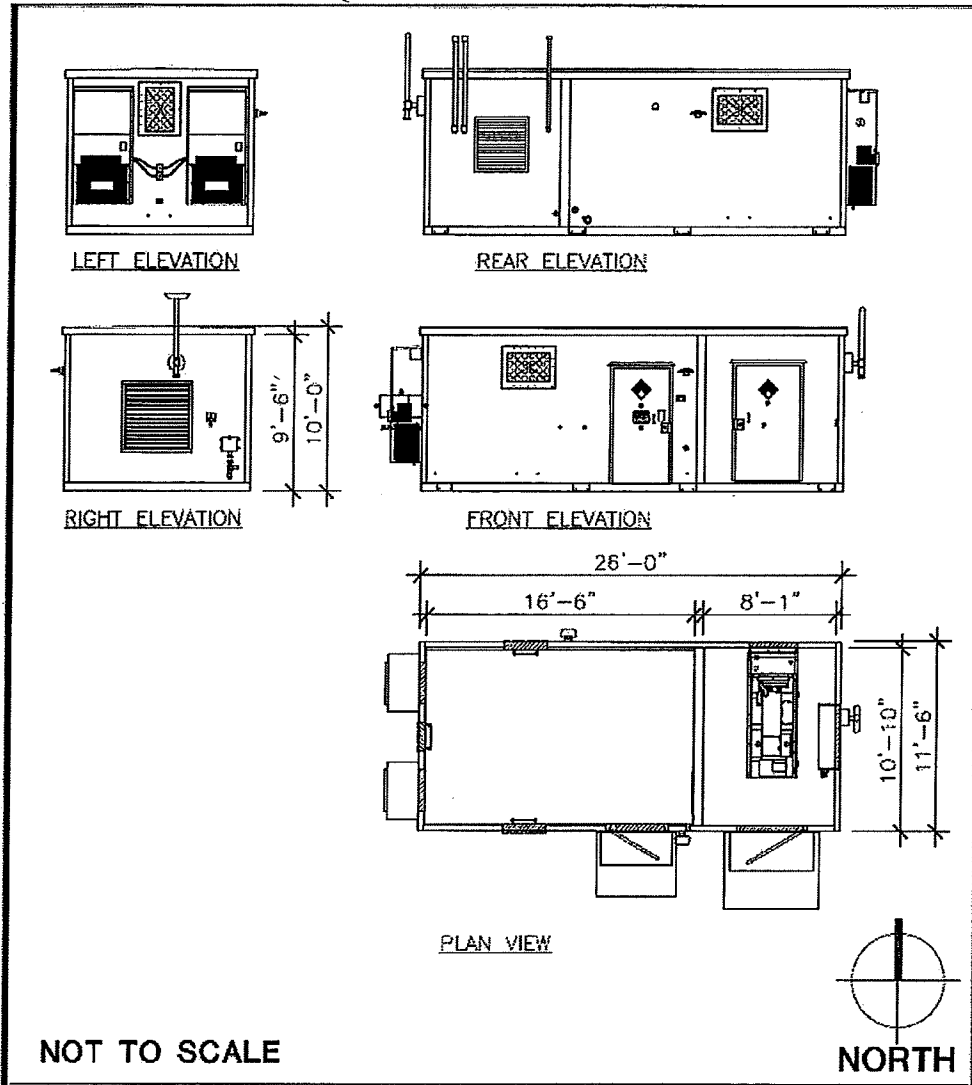


- T/O (N) TOWER  
ELEVATION: ± 150'-0"
- MOUNT HEIGHT OF CITY ANTS.  
ELEVATION: ± 130'-0"
- MOUNT HEIGHT OF CITY ANTS.  
ELEVATION: ± 110'-0"
- C OF CITY MW  
ELEVATION: ± 105'-0"
- MOUNT HEIGHT OF CITY ANTS.  
ELEVATION: ± 80'-0"
- MOUNT HEIGHT OF CITY ANTS.  
ELEVATION: ± 60'-0"
- C OF CITY MW &  
C OF LESSEE'S MW  
ELEVATION: ± 50'-0"
- C OF LESSEE'S MW  
ELEVATION: ± 45'-0"
- C OF LESSEE'S MW  
ELEVATION: ± 40'-0"
- C OF LESSEE'S MW  
ELEVATION: ± 30'-0"
- GRADE  
ELEVATION: 0'-0" A.G.L.

- LESSEE'S NEW ANTENNAS
- CITY'S NEW OMNI ANTENNA, TYP. (6) MOUNTING LOCATIONS BETWEEN 110'-0" AND 130'-0" A.G.L.
- CITY'S (2) NEW 2'-0"Ø MW ANTENNA WITH C @ 105'-0" A.G.L.
- (1) NEW OMNI ANTENNA PAGING MOUNTED AT 90'-0" A.G.L., BY PAGING COMPANY
- CITY'S NEW OMNI ANTENNA, TYP. (6) MOUNTING LOCATIONS BETWEEN 60'-0" AND 80'-0" A.G.L.
- CITY'S NEW 6'-0"Ø MW ANTENNA WITH C @ 50'-0" A.G.L.
- LESSEE'S (2) NEW 4'-0"Ø MW ANTENNAS WITH C @ 50'-0" A.G.L. & 45'-0" A.G.L. & (2) NEW 6'-0"Ø MW ANTENNAS WITH C @ 40'-0" A.G.L. & 30'-0" A.G.L.




 	PROJECT: OR1-RESERVOIR	 <b>CAMP+</b> ASSOCIATES
	ADDRESS: PARCEL N OF 3350 PIPELINE RD ASTORIA, OR 97103	
SHEET TITLE: TOWER ELEVATION	DATE: 7-24-15	SHEET # 1
EAT 7-24-15 ISSUE FOR LEASE EXHIBIT	DRAWN BY: EAT	OF 2

**EXHIBIT "C"**  
**LESSOR'S EQUIPMENT AND SHELTER FACILITY**



NOT TO SCALE



 	PROJECT: OR1-RESERVOIR ADDRESS: PARCEL N OF 3350 PIPELINE RD ASTORIA, OR 97103		DATE: 6-08-15 SHEET # 1
	SHEET TITLE: SHELTER SCHEMATIC EAT 6-08-15 ISSUE FOR LEASE EXHIBIT		DRAWN BY: EAT OF 1

**EXHIBIT "D" (SURVEY)**

*See Attached*



**ATTACHMENT "1"**

**Bill of Sale**

*See attached*

## BILL OF SALE

THIS BILL OF SALE (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, (the "Effective Date") between Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, having its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920 ("Verizon Wireless"), and City of Astoria, whose address is 1095 Duane Street, Astoria, Oregon 97103 ("Buyer").

### RECITALS

A. Verizon Wireless and Buyer are currently parties to a Land Lease Agreement dated \_\_\_\_\_ (the "Current Agreement"), for lease of property located at 3850 Reservoir Road (Assessor's Parcel No. 80916000100), County of Clatsop, State of Oregon, more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. Verizon Wireless is willing to convey to Buyer all of Verizon Wireless' right, title and interest in certain shelter and generator (collectively, the "Personal Property"), and Buyer is willing to acquire from Verizon Wireless all right, title and interest in and to such Personal Property, as set forth below.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants expressed herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Verizon Wireless and Buyer hereby agree as follows:

### AGREEMENT

1. Recitals. The foregoing recitals are incorporated herewith as if fully set forth herein.
2. Conveyance of Personal Property. Effective as of the Effective Date, Verizon Wireless hereby agrees to grant, assign, sell and convey to Buyer all of Verizon Wireless' right, title and interest in and to the certain equipment, said Personal Property listed and more fully described on Exhibit B attached hereto and made a part hereof.
3. Property Conveyed. As of the Effective Date, Buyer hereby acknowledges and agrees that all of the Personal Property herein conveyed is being conveyed by Verizon Wireless and is being accepted by Buyer in "AS IS", "WHERE AS" condition. Buyer further acknowledges that Verizon Wireless hereby expressly disclaims any and all warranties or representations, including the warranty of merchantability and fitness for a particular purpose, whether express or implied, with respect to the Personal Property herein conveyed.
4. Indemnification. As of the Effective Date, Buyer shall indemnify and hold harmless Verizon Wireless, its officers, directors, employees, agents, contractors, principal, affiliates and subsidiaries from and against any and all claims, demands, liability, loss, cost,

damage or expense (including but not limited to reasonable attorney's fees), arising out of, in connection with, or in any way related to the Personal Property conveyed to Buyer pursuant to this Agreement. Buyer hereby releases Verizon Wireless from any liability, loss, cost, damage or expense (including but not limited to reasonable attorney's fees) that Buyer may incur in connection with or arising from the Personal Property herein conveyed.

5. Governing Law. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State in which the Property is located.

6. Successors. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

7. Captions. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of this Agreement.

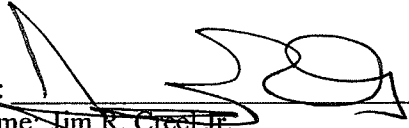
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

VERIZON WIRELESS:

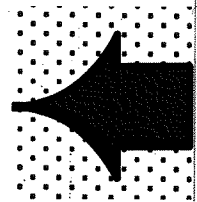
BUYER:

Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless

City of Astoria

By:   
Name: Jim R. Creel Jr.  
Its: Director - Network  
Date: 8/15/16

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_





**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All of Blocks 141, 142, 144, 147, 149 through 154, 157 through 164, 167 through 174; Lots 7 through 54 in Block 143; and Lots 1 through 7, and Lots 10 through 54, Block 148, MARY ANN ADAIR'S SOUTH ADDITION TO THE PORT OF UPPER ASTORIA, as laid out and recorded by John Adair and as ratified, confirmed, and recorded by Mary Ann Adair and Mary H. Leinenweber, now vacated, in the City of Astoria, County of Clatsop, State of Oregon.

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Government Lot 2, Section 16, Township 8 North, Range 9 West, Willamette Meridian, City of Astoria, Clatsop County, Oregon.

**EXHIBIT "B"**  
DESCRIPTION OF PERSONAL PROPERTY TO BE CONVEYE

- Shelter and Generator and any related appurtenances

THIRD AMENDMENT TO  
LAND LEASE AGREEMENT

This THIRD AMENDMENT TO LAND LEASE AGREEMENT ("Amendment") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between City of Astoria ("City") and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless ("Verizon Wireless").

RECITALS

A. This Amendment pertains to that certain Land Lease Agreement dated July 8, 1992, together with all exhibits, extension agreement, amendments and addenda thereto (collectively, the "Agreement") for the lease of certain property (the "Premises") located in Astoria, County of Clatsop, State of Oregon, on property legally described as set forth on Exhibit "A" to the Agreement, and attached hereto as Exhibit "A" and made a part hereof.

B. The parties desire to amend the Agreement to extend the term of the Agreement following the expiration of the Agreement's current term on August 31, 2016, and amend certain other provisions of the Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

AGREEMENT

1. Recitals. The foregoing recitals are incorporated herewith as if fully set forth herein.
2. Extensions. The City and Verizon Wireless agree to extend the term of the Agreement. The Agreement shall automatically be extended for one (1) additional year from September 1, 2016 through August 31, 2017 (the "First Extension"), and the annual sum shall be paid in equal monthly installments in the amount of \$1,969.64, as provided in the Agreement. The Agreement shall automatically extend for one additional extension period from September 1, 2017 through August 31, 2018 (the "Second Extension"), unless Verizon Wireless gives written notice to the City of the intent not to extend prior to the end of the First Extension period. If the Agreement is extended for the Second Extension, the annual sum shall be paid in equal monthly installments in the amount of \$2,028.73, as provided in the Agreement.
3. Tower Removal. The City currently owns an existing communications tower ("Old Tower") located on Coxcomb Hill in the City of Astoria. Verizon Wireless shall at its sole

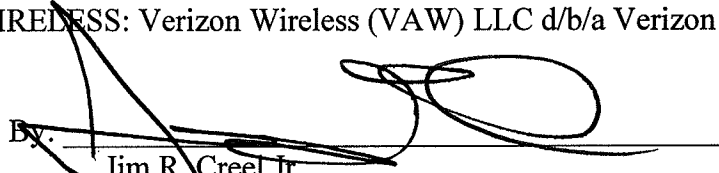
cost and expense and in cooperation with City (i) remove the Old Tower from Coxcomb Hill and dispose of and/or deliver such personal property of City and existing tenants as reasonably directed by City with prior written notice to Verizon Wireless; and (ii) restore the aforementioned premises to a condition approved by City, reasonable wear and tear excepted, and as depicted in Exhibit "D" to be attached hereto following full execution of this Amendment. Footings of the Old Tower and any pads shall be removed 4' below grade.

4. Full Force and Effect. Except as expressly amended herein the Agreement is unmodified and remains in full force and effect. In the event of a conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall be controlling. In addition, except as otherwise stated in this Amendment, all initially capitalized terms will have the same respective defined meaning stated in the Agreement. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment.

CITY: City of Astoria

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

VERIZON WIRELESS: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

By:  \_\_\_\_\_  
Jim R. Creel Jr.  
Director - Network  
Date: 8/2/16 \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Beginning at a point on the South line of Shively's Astoria said point being S 85 ° 32' W 84.61 feet from the Southeast corner of Block 100 Shively's Astoria;  
thence continuing South 85 ° 32' West along the South line of Shively Astoria to a point 19.77' West of the Southeast corner of Block 97 Shively's Astoria;  
thence South 0 ° 14' East to the North line of Pipeline Road to a point South 0 ° 14' East from the point of beginning, said point being West 185 feet more or less, from the Section line between Sections 16 and 17;  
thence North 0 ° 14' West to the point of beginning.

Excepting therefrom Coxcomb Hill Road.

**EXHIBIT "D"**

*See Attached*

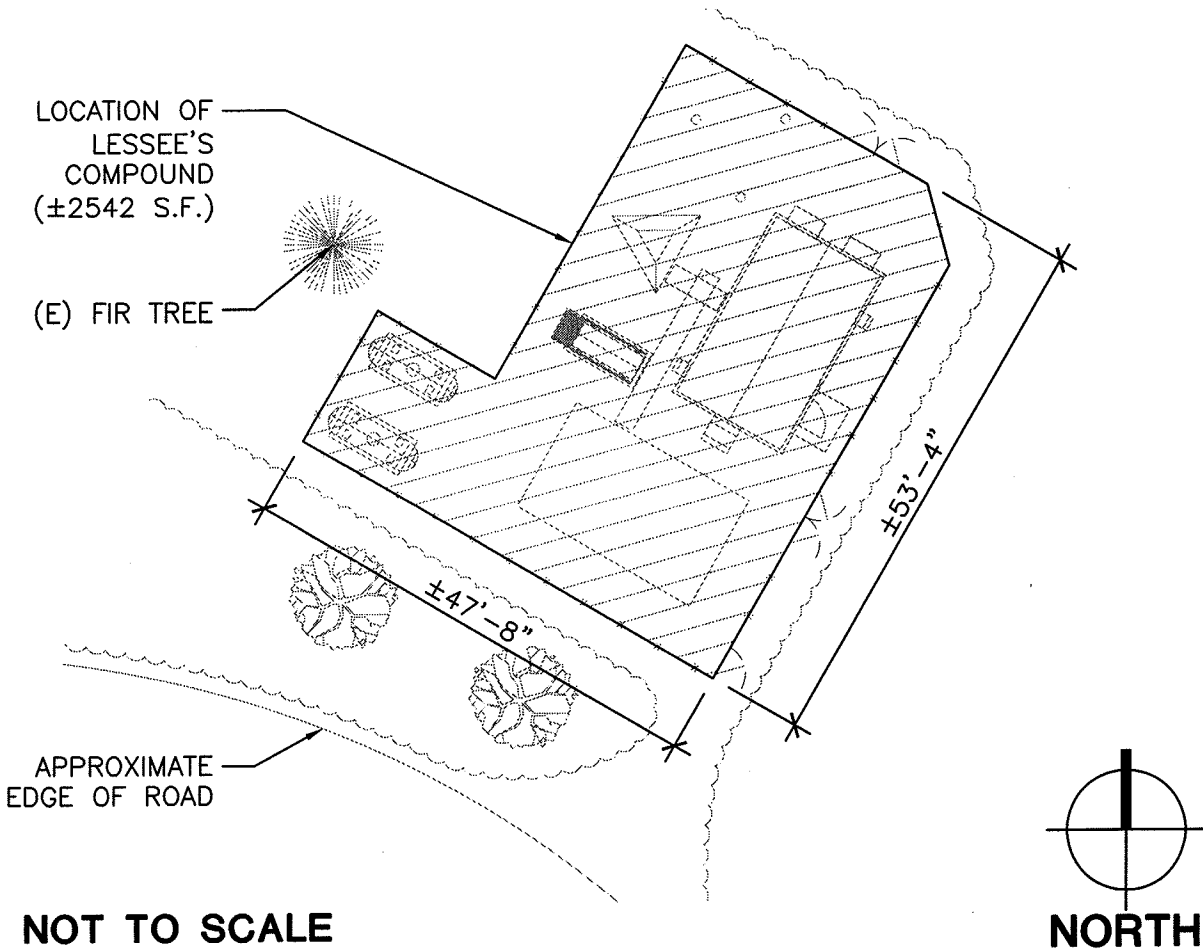
**NOTES:**

ALL STRUCTURES AND IMPROVEMENTS WITHIN OR ADJACENT TO LEASE SPACE TO BE REMOVED IN TOTAL.

FOUNDATIONS TO BE REMOVED TO MIN. 4'-0" BELOW FINISHED GRADE. UTILITIES TO BE ABANDONED BACK TO THEIR SOURCE (IE. TRANSFORMER, TELEPHONE PEDESTAL).

EXISTING VEGETATION TO BE PROTECTED DURING PERFORMANCE OF WORK.

LEASE AREA TO BE FILLED AND FINISH GRADED TO MATCH SURROUNDING CONTOURS. FINISHED WORK AREA TO BE COVERED WITH LANDSCAPE BARK.



PROJECT: OR1-ASTORIA  
 ADDRESS: 1 COXCOMB DRIVE  
 ASTORIA, OR 97103



SHEET TITLE: SITE DEMO PLAN  
 EAT 7-13-16 ISSUE FOR LEASE EXHIBIT

DATE: 7-13-16  
 DRAWN BY: EAT  
 SHEET # 1 OF 1

FILED FOR RECORD AT REQUEST OF  
AND WHEN RECORDED RETURN TO:  
Davis Wright Tremaine LLP  
Attn: C. Eng  
777 108<sup>th</sup> Avenue NE, Suite 2300  
Bellevue, WA 98004-5149

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Space above this line is for Recorder's use.

**Memorandum of Land Lease Agreement**

Grantor: City of Astoria

Grantee: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

Legal Description: **County of Clatsop, State of Oregon**  
**Official legal description as Exhibit A**

Assessor's Tax Parcel ID#: 24823 and 24857

Reference # (if applicable):



MEMORANDUM OF LAND LEASE AGREEMENT


THIS MEMORANDUM OF LAND LEASE AGREEMENT evidences that a Land Lease Agreement ("Agreement") was entered into as of \_\_\_\_\_, 201\_\_\_\_, by and between City of Astoria ("Lessor"), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless ("Lessee"), for certain real property located at Parcel No. 80916000100, County of Clatsop, State of Oregon, within the property of Lessor which is described in Exhibit "A" attached hereto ("Legal Description"), together with a right of access and to install and maintain utilities, for an initial term of five (5) years commencing as provided for in the Agreement, which term is subject to Lessee's rights to extend the term of the Agreement as provided in the Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Memorandum of Land Lease Agreement as of the day and year last below written.

LESSOR: City of Astoria

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

LESSEE: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

By:   
Jim R. Creel Jr.  
Director - Network  
Date: 8/31/16

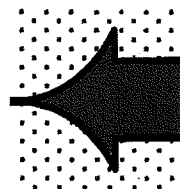


Exhibit A – Legal Description

**LESSOR ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_\_ day of \_\_\_\_\_, 201, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that He/She was authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of City of Astoria, to be the free and voluntary act and deed of said party for the uses and purposes mentioned in the instrument.

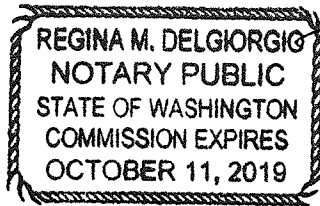
IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.


\_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_  
Print Name \_\_\_\_\_

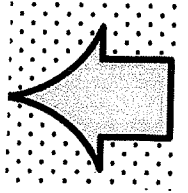
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 5<sup>th</sup> day of August, 2016 before me, a Notary Public in and for the State of Washington, personally appeared Jim R. Creel, Jr., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Director - Network of Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, to be the free and voluntary act and deed of said party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



  
NOTARY PUBLIC in and for the State of \_\_\_\_\_  
residing at King Co  
My appointment expires 10.11.2019  
Print Name Regina DelGiorgio



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All of Blocks 141, 142, 144, 147, 149 through 154, 157 through 164, 167 through 174; Lots 7 through 54 in Block 143; and Lots 1 through 7, and Lots 10 through 54, Block 148, MARY ANN ADAIR'S SOUTH ADDITION TO THE PORT OF UPPER ASTORIA, as laid out and recorded by John Adair and as ratified, confirmed, and recorded by Mary Ann Adair and Mary H. Leinenweber, now vacated, in the City of Astoria, County of Clatsop, State of Oregon.

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Government Lot 2, Section 16, Township 8 North, Range 9 West, Willamette Meridian, City of Astoria, Clatsop County, Oregon.

Return to: Pacific Power  
2340 SE Dolphin Ave  
Warrenton, OR 97146

CC#: 11201 WO#: 6010479

**UNDERGROUND RIGHT OF WAY EASEMENT**

For value received, *City of Astoria, a governmental corporation*, ("Grantor"), hereby grants to PacifiCorp, an Oregon corporation, its successors and assigns ("Grantee"), a perpetual easement for a right of way *10* feet in width and *1900* feet in length, more or less, for the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of Grantee's underground electric distribution and communication lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: wires, fibers, cables and other conductors and conduits therefore; and pads, transformers, switches, cabinets, vaults on, across, or under the surface of the real property of Grantor in *Clatsop* County, State of *Oregon*, as more particularly described as follows and/or shown on Exhibit(s) "*A & B*" attached hereto and by this reference made a part hereof:

A portion of:

*See Exhibit B*

Assessor's Map No.: *8-9-16*

Parcel No.: *100 & 2900*

Together with the right of ingress and egress for Grantee, its contractors, or agents, to the right of way from adjacent lands of Grantor for all activities in connection with the purposes for which this easement has been granted; and together with the present and (without payment therefore) the future right to keep the right of way clear of all brush, trees, timber, structures, buildings and other hazards which might endanger Grantee's facilities or impede Grantee's activities.

At no time shall Grantor place or store any flammable materials or light any fires, on or within the boundaries of the right of way. Subject to the foregoing limitations, the surface of the right of way may be used for other purposes not inconsistent, as determined by the Grantee, with the purposes for which this easement has been granted.

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this easement. Each party further waives any right to consolidate, or to request the consolidation of, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns and shall run with the land.

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

\_\_\_\_\_  
**GRANTOR**

\_\_\_\_\_  
**GRANTOR**

**REPRESENTATIVE ACKNOWLEDGEMENT**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) SS.

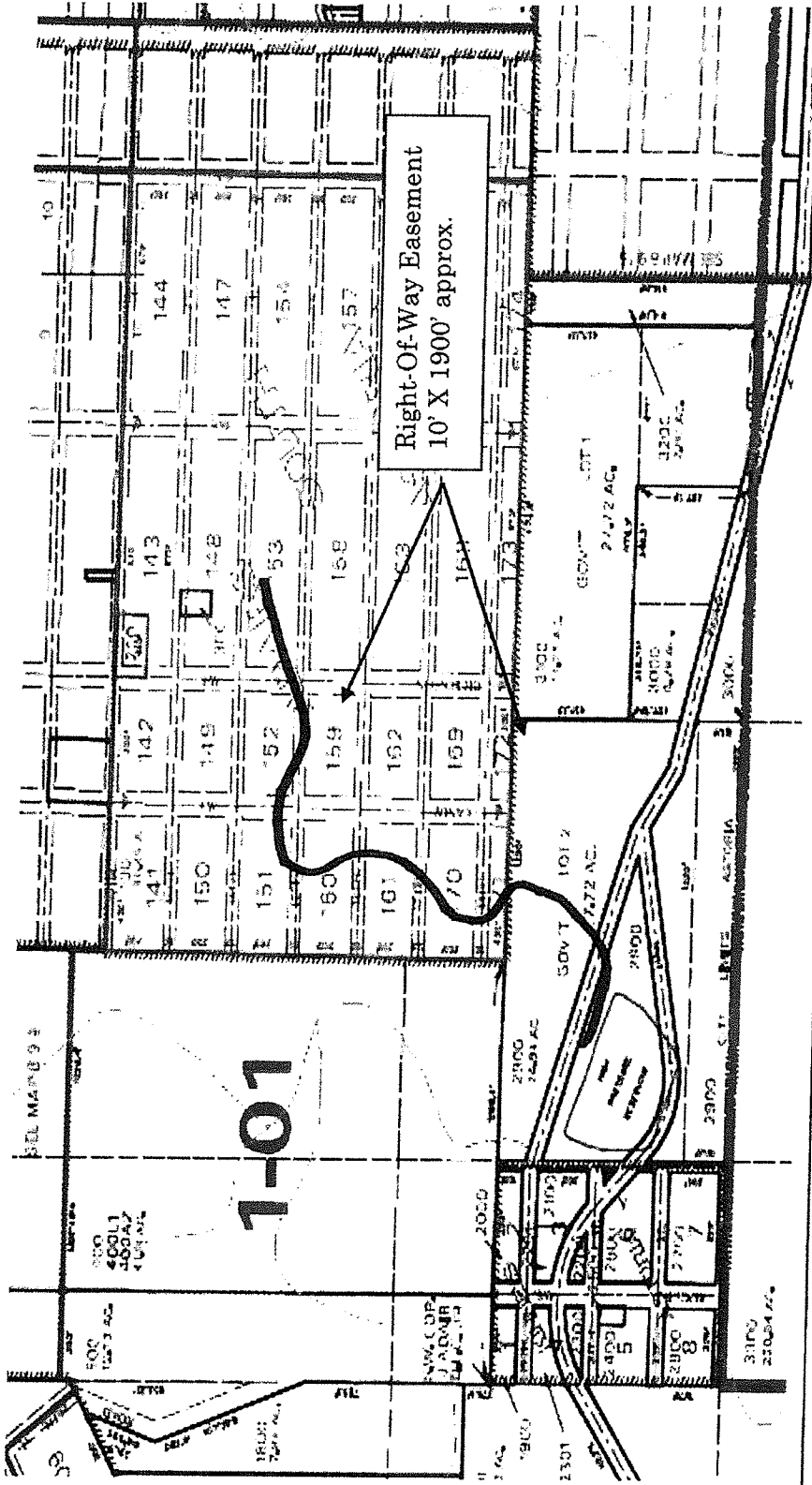
This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, as \_\_\_\_\_,  
Name of representative Title of representative  
of \_\_\_\_\_.  
Name of entity being represented

[SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**PROPERTY DESCRIPTION**

Section: 16, Township: 08 N, Range: 09W, Willamette Meridian, Clatsop County, State of Oregon.  
Map / Tax Lot or Parcel No.:



CC#:11201 WO#: 6010479

Landowner Name: City of Astoria

Drawn by: M Brockey

**EXHIBIT A**  
**PACIFIC POWER**  
A DIVISION OF PACIFICORP

This drawing should be used only as a representation of the location of the easement area. The exact location of all structures, lines and appurtenances is subject to change within the boundaries of the described easement area.

**PROPERTY DESCRIPTION**

A portion of:

**Parcel 1** (8.9.16 00100)

A tract of land in the northeast quarter of Section 16, Township 8 North, Range 9 West Of the Willamette Meridian, Clatsop County, Oregon, more particularly described as follows: All of Blocks 141, 143, 144 to 147 inclusive, 149 to 154 inclusive, 157 to 164 inclusive 167 to 174 inclusive, lots 7 to 54 inclusive in Block 143 and Lots 1 to 7 inclusive and lots 10 to 54 Inclusive in Block 148, all in Mary Ann Adair's South Addition to the Port of Upper Astoria (aka Adairs South Astoria).

**Parcel 2** (8.9.16 02900-Part)

A tract of land in the southwest quarter of the northeast quarter of Section 16, Township 8 North, Range 9 West of the Willamette Meridian, Clatsop County, Oregon, more particularly described As Follows: Government Lot Two (2) of Section Sixteen (16) in Township Eight (8) North, Range Nine (9) West of the Willamette Meridian, Clatsop County, in Oregon except a strip of land 181 ½ feet Off the south side or end of said lot, running throughout the width of said lot East and West.

CC#: 11201 WO#: 6010479

Grantor Name: M Brockey

**EXHIBIT B**

**PACIFIC POWER**  
A DIVISION OF PACIFICORP





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

Date: August 4, 2016

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **2016 STREET END BRIDGE REPAIR PROJECT - CONSTRUCTION CONTRACT AWARD**

**DISCUSSION/ANALYSIS**

The City of Astoria has six timber street end structures at the north ends of 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Streets that are inspected annually by the Oregon Department of Transportation (ODOT) Bridge Department. ODOT inspects the structures and makes recommendations for repairs that will permit the structures to safely remain open. Without the identified repairs, the structures could be recommended for closure to both vehicular and trolley traffic by ODOT staff.

All of the structures are currently limited to a 3 ton vehicle load due to their poor condition (prior to this year's inspection). The repairs recommended to take place are targeting all of these structures. In July 2016, Council awarded a contract to OBEC Consulting Engineers (OBEC) for design services and construction support for the repairs. OBEC is also working on the Waterfront Bridges Replacement Project and has just completed our Trolley Trestle Inspection for 2016. The repairs developed by OBEC are designed to be limited to only what has been deemed absolutely essential in order to minimize the expenditure of funds prior to the upcoming planned replacement of the structures and to assure trolley operations.

The City's compliance with the ODOT recommendations has aided the City in obtaining an \$8.5 million grant from Federal Bridge replacement funds through the State Transportation Improvement Program (STIP). This is the same program that funded at a 90% level the replacement of the Franklin Avenue Bridge, and the replacement of the Irving Avenue Bridge. It is anticipated that construction of the replacement project would commence during the fall of 2017. The replacement project is currently being designed by OBEC and is at the 30 percent design stage.

Staff solicited quotes for the repair work and received two quotes that exceeded \$100,000:

Bergerson Construction, Inc.	\$196,799
Columbia Dockworks, Inc.	\$152,950

The solicitation for quotes required the contractor to be prequalified with ODOT due to the nature and magnitude of the work. Columbia Dockworks is not prequalified with ODOT; therefore, considered a non-responsive quote and removed from consideration. The only responsive quote was received from Bergerson Construction (who is ODOT qualified) in the amount of \$196,799.

At the time of this Council memo preparation, Staff and OBEC are in the processes of negotiating with Bergerson Construction to reduce the total cost of this contract through value engineering and alternative repair approaches at specific locations. The contract with scope of work, including the final contract amount, will be presented at the Council meeting. Staff is recommending a 20% project contingency for additional work that may be required once repairs are underway or for any unforeseen conditions. The total project budget will also be presented at the Council meeting and will include the contingency amount.

Since the received quote is greater than \$100,000 a traditional bid process with public solicitation is required. However, due to the urgency of this project that could potentially risk the closure of the street ends to vehicular traffic, trolley operation and emergency services, it is recommended that the Council adopt a resolution declaring an emergency and authorizing the award of the contract to Bergerson Construction. In this case, a direct appointment will benefit the public and is not expected to encourage favoritism or diminish competition of public contracts in the future as no additional ODOT qualified contractors would be expected to participate in the solicitation process. City Attorney Blair Henningsgaard recommended this process to proceed in a timely manner.

It is recommended that funds be provided for this project by the Capital Improvement Fund, which may require a budget amendment at the end of the fiscal year.

Staff will contact affected businesses and the Trolley Association prior to start of construction. The repair work is expected to take approximately 45 days to complete. City Attorney Henningsgaard has reviewed the draft contract as well as the resolution and will approve the final documents as to form.

### **RECOMMENDATION**

It is recommended that the City Council adopt the Resolution declaring an emergency and award of the contract for Street End Bridge Repair Work to Bergerson Construction, Inc.

Submitted By Ken Cook  
Ken P. Cook, Public Works Director

Prepared By Cindy D. Moore  
Cindy D. Moore, City Support Engineer

# DRAFT

## RESOLUTION 16-

### **A RESOLUTION OF THE CITY OF ASTORIA DECLARING AN EMERGENCY AND AUTHORIZING THE AWARD OF A PUBLIC IMPROVEMENT CONTRACT FOR STREET END BRIDGE REPAIR WORK.**

**WHEREAS**, pursuant to ordinances of the City of Astoria, the City Council may authorize a public improvement contract without public solicitation of bids under emergency circumstances.

**WHEREAS**, The Oregon Department of Transportation (ODOT) will close vehicular access to certain timber street end bridges at the north end of 6th, 7th, 8th, 9th, 10th and 11th Streets over the south bank of the Columbia River unless repair work pursuant to ODOT Bridge Maintenance Standards is promptly made.

**WHEREAS**, the City conducted a solicitation process allowed for contracts with an estimated cost of less than \$100,000, two bids were received, both in excess of \$100,000. Bergerson Construction, Inc. provided the only ODOT qualified bid for \$196,799.

**WHEREAS**, a formal solicitation for this contract could take up to two months and, in that event, it is expected that ODOT would close vehicular access to the street ends. A closure of the street ends would:

- terminate operation of the Riverfront Trolley;
- would prevent automobile access to businesses; and
- would limit the ability of first responders such as ambulance, fire and police to effectively deal with emergency events on the Astoria Waterfront.

**WHEREAS** the utilization of a direct appointment would be a benefit to the public and is not expected to encourage favoritism or diminish competition for public contracts in the future as no additional ODOT qualified contractors would be expected to participate in the solicitation process.

### **NOW, THEREFORE, Be It Resolved by the Astoria City Council:**

**Section 1.** That an emergency requires the prompt repair of the timber street end bridges at the north end of 6th, 7th, 8th, 9th, 10th and 11th Streets over the south bank of the Columbia River.

**Section 2.** The City is authorized to enter into a public improvement contract with

Bergerson Construction, Inc for a sum not to exceed \$XXX,XXX.

**Section 3.** Such contract shall be awarded within the next 30 days.

**Section 4.** This Resolution shall take effect immediately upon its adoption and approval.

**ADOPTED BY THE ASTORIA CITY COUNCIL THIS \_\_\_\_ DAY OF AUGUST 2016.**

**APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF AUGUST 2016.**

\_\_\_\_\_  
Arline LaMear, Mayor

ATTEST:

\_\_\_\_\_  
Brett Estes, City Manager

ROLL CALL ON ADOPTION: YEA NAY ABSENT

Mayor LaMear  
Councilor Herzig  
Councilor Nemlowill  
Councilor Price  
Councilor Warr

APPROVED AS TO FORM: