
AGENDA

ASTORIA DEVELOPMENT COMMISSION MEETING

July 1, 2013
Immediately Follows City Council Meeting
2nd Floor Council Chambers
1095 Duane Street
Astoria OR 97103

1. CALL TO ORDER
2. ROLL CALL
3. REPORTS OF COMMISSIONERS
4. CHANGES TO AGENDA
5. CONSENT CALENDAR
The items on the Consent Calendar are considered routine and will be adopted by one motion unless a member of the Astoria Development Commission requests to have any item considered separately. Members of the Community may have an item removed if they contact the City Manager by 5:00 p.m. the day of the meeting.
 - (a) ADC Minutes of 6/17/13
 - (b) ADC Budget Committee Minutes of 4/25/13
 - (c) Lease Agreement with Astoria Regatta Association for Use of Property Located at 250 – 21st Street (City Manager)
6. REGULAR AGENDA ITEMS
 - (a) Portway Street Railroad Crossing Improvement Project – Contract for Engineering Design Services (Public Works)

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 LAMPI, CITY MANAGER'S OFFICE, 503-325-5824.



June 28, 2013

MEMORANDUM

TO: ASTORIA DEVELOPMENT COMMISSION (ADC)

FROM: *PB* PAUL BENOIT, CITY MANAGER

SUBJECT: ASTORIA DEVELOPMENT COMMISSION MEETING OF JULY 1, 2013

CONSENT CALENDAR

Item 5(a): ADC Minutes

The minutes of the ADC meeting of June 17, 2013 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

Item 5(b): ADC Budget Committee Minutes

The minutes of the ADC Budget Committee meeting of April 25, 2013 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

Item 5(c): Lease Agreement with Astoria Regatta Association for Use of Property Located at 250 – 21st Street (City Manager)

The Astoria Regatta Association (Association) would like to display vintage boats and motorized vehicles during the Astoria Regatta on Astoria Development Commission (ADC) owned land east of the train depot located at 250 -21st Street. The time frame for the lease would be for Saturday, August 10, 2013, from 8:00 a.m. to 8:00 p.m. In the past, the ADC has leased the site for \$1.00 and that amount is once again proposed for this use. The Association activities provide an opportunity to bring an event to our community that continues to grow in popularity every year. Association will provide liability insurance. Also attached to this memo is a draft Lease Agreement which City Attorney Blair Henningsgaard has reviewed and approved as to form. It is recommended that the Astoria Development Commission approve the Lease Agreement with the Astoria Regatta Association for the display of vintage boats and motorized vehicles on Saturday, August 10, 2013, for a total sum of \$1.00.

REGULAR AGENDA ITEMS

Item 6(a): Portway Street Railroad Crossing Improvement Project – Contract for Engineering Design Services (Public Works)

At the May 6, 2013 Astoria Development Commission meeting, staff was authorized to procure engineering services for design of the Portway Railroad Crossing Improvement Project. This project consists of reconstructing the deteriorated double railroad track crossing at Portway Street. After review of several northwest railroad consulting firms, City Staff coordinated with Wisser Rail Engineering to develop scope and fees for design services.

Engineering Staff will work with Wisser Rail Engineering on road approach and drainage design to reduce engineering costs for the project.

Funding for this project is recommended to come from the Astor-West Urban Renewal District. Section 650.B of the Astor-West Urban Renewal District Plan includes "Street, Curb, Sidewalk and Trolley Track Improvements" as approved activities that can be funded by the Development Commission. It is recommended that the Astoria Development Commission execute a contract in the amount of \$19,450 with Wisser Rail Engineering for the project.

ASTORIA DEVELOPMENT COMMISSION

Liberty Theatre – McTavish Room

June 17, 2013

ADC JOURNAL OF PROCEEDINGS

A regular meeting of the Astoria Development Commission (ADC) was held at the above place at the hour of 7:00 p.m.

Councilors Present: Herzig, Warr, Mellin, LaMear, Mayor Van Dusen

Staff Present: City Manager Benoit, Police Chief Curzon, Parks and Recreation Director Cosby, Finance Director Carlson, Fire Chief Ames, Planner Johnson, Community Development Director Estes, Library Director Tucker, and Public Works Director Cook. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

REPORTS OF COMMISSIONERS:

CHANGES TO AGENDA:

CONSENT CALENDAR:

The following items were submitted on the Consent Calendar:

- 5(a) ADC Minutes of 5/20/13
- 5(b) ADC Minutes of 6/3/13

Commission Action: Motion by Commissioner Warr, seconded by Commissioner Mellin, to approve the Consent Calendar as noted. Motion carried unanimously. Ayes: Commissioners Warr, LaMear, Herzig and Mellin, and Mayor Van Dusen. Nays: None.

REGULAR AGENDA ITEMS:

Item 6(a): Agreement to Transfer 1829 Exchange Street Real Property to Columbia Memorial Hospital (City Manager/Community Development)

In 2008, the Astoria Development Commission (ADC) acquired real property located at 1829 Exchange Street from Clatsop Community College (CCC) for a purchase price of \$187,825. The property had been acquired by CCC in anticipation of the possibility of constructing new campus facilities at John Warren Field. After a lengthy process, CCC refocused their efforts on making improvements to the existing Jerome Street campus.

The ADC acquired the property in order to support future development of John Warren Field. While there were no definitive plans for development, it was known that Columbia Memorial Hospital was exploring opportunities for development and expansion of their campus.

At this time, the City, Astoria School District, and Columbia Memorial Hospital (CMH) are working cooperatively to develop an athletic facility at the former landfill on Williamsport Road. Through this project, CMH will acquire John Warren Field to secure their future and support campus development; the Astoria School District and citizens of Astoria will have a new, all weather sports complex; and the City of Astoria will have effectively met its responsibilities to the Oregon Department of Environmental Quality to cap and close the former Astoria landfill site. It should be noted that the resulting savings to the City are significant. Absent this CMH project, the City would have had full and independent responsibility to construct a cap and water drainage system over the entire landfill site. The cost for this work was estimated at well in excess of \$500,000.

In recognition of the strong and mutually beneficial partnership, the advantages to Astoria relative to landfill closure, and to support and promote the continued development of essential medical services by CMH, it is proposed that the ADC consider a no-cost transfer of the 1829 Exchange Street property to CMH. Upon completion of the sports complex, the School District will transfer title to John Warren Field and to the adjacent bus barn property to CMH.

Currently, the 1829 Exchange property is leased to Clatsop Community Action (CCA) for use as a residential rental property for their clients. Should the ADC approve the transfer, CMH would agree to continue the relationship with CCA until such time that they have need to redevelop the site.

It is recommended that the ADC authorize a no-cost transfer of the real property located at 1829 Exchange Street to Columbia Memorial Hospital. Should the ADC so direct, transfer documents will be drafted by the City Attorney for approval at a future meeting.

Mayor Van Dusen confirmed there were no questions from the Commission. Hearing none, he asked if any member of the audience would like to address the Astoria Development Commission on this land transfer. There were none.

Commissioner Warr encouraged the Astoria Development Commission to recommend that Columbia Memorial Hospital continue to lease the property to CCA until the hospital needs to use the property.

Commission Action: Motion by Commissioner LaMear, seconded by Commissioner Mellin, to authorize a no-cost transfer of the real property located at 1829 Exchange Street to Columbia Memorial Hospital. Motion carried unanimously. Ayes: Commissioners Warr, LaMear, Herzig and Mellin, and Mayor Van Dusen. Nays: None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:07 p.m. to convene the Astoria City Council meeting.

ATTEST:

Secretary

APPROVED:

City Manager

DRAFT

A meeting of the 2013-14 East and West Urban Renewal Districts Budget Committee was held in City Council Chambers at 9:08 p.m.

Committee Members Present: Mayor Van Dusen, City Councilors Mellin, LaMear, Warr, and Herzig, Richard Hurley, Loran Mathews, Kera Huber, Kathleen Sullivan and Laura Leebrick.

Staff Present: City Manager Benoit, Finance Director Carlson, Community Development Director Estes, Public Works Director Ken Cook, Public Works Superintendent Ken Nelson.

The meeting was called to order by Mayor Van Dusen.

Election of Officers

Mayor Van Dusen called for nominations for Chairperson. Motion made by Councilor Warr, seconded by Councilor LaMear to nominate Laura Leebrick as Chair of the East and West Urban Renewal Districts Budget Committee. (Motion carried by unanimous vote.)

Chair Leebrick called for nominations for Secretary. Motion made by Councilor LaMear, seconded by Mayor Van Dusen to nominate Drew Herzig as Secretary of the East and West Urban Renewal Districts Budget Committee. (Motion carried by unanimous vote.)

BUDGET MESSAGE

- a. City Manager's Opening Comments and Budget Message

Councilor Warr declared that he owns property in the Astor West Urban Renewal District.

City Manager Benoit noted his Budget Message was included in the packet. He briefly presented an overview of the East and West Urban Renewal Districts. He noted the Urban Renewal Bond Fund and Urban Renewal Bond Reserve Fund had been retired in the Astoria East District after refinancing the Astor East Liberty Theatre. No specific projects were currently identified in the Astoria West District. Staff would be presenting information regarding City Council's goal regarding rehabilitation work in Uniontown neighborhood. He addressed questions from the Committee about the hospital, Garden of Surging Waves and the impacts to the Astor East District should the Maritime Museum be taken off the tax rolls, which he would also discuss with the City Attorney.

PUBLIC HEARING ON ASTORIA EAST AND ASTORIA WEST URBAN RENEWAL DISTRICT BUDGETS AS PROPOSED

Chair Leebrick opened the public hearing on Astoria East and Astoria West Urban Renewal District Budgets. There being no one in the audience, she closed the public hearing.

INDIVIDUAL BUDGET CONSIDERATION

- a. Astoria East Urban Renewal District General Fund

Committee Action: Motion made by Loran Mathews, seconded by Councilor Warr to tentatively approve the Astor East Urban Renewal District Budget. (Motion carried.) City Councilors Mellin, LaMear, Warr, and Herzig, Richard Hurley, Loran Mathews, Kera Huber, Kathleen Sullivan, Laura Leebrick, and Mayor Van Dusen voted yes.

- b. Astoria West Urban Renewal District General Fund

Committee Action: Motion made by Mayor Van Dusen, seconded by Councilor Mellin to tentatively approve the Astor West Urban Renewal District Budget. (Motion carried.) City Councilors Mellin, LaMear, Warr, and Herzig, Richard Hurley, Loran Mathews, Kera Huber, Kathleen Sullivan, Laura Leebrick, and Mayor Van Dusen voted yes.

MOTION TO APPROVE ASTOR EAST URBAN RENEWAL DISTRICT BUDGETS

a. General Fund

Committee Action: Motion made by Councilor Warr, seconded by Loran Mathews to approve both the Astor East Urban Renewal District Budget. (Motion carried.) City Councilors Mellin, LaMear, Warr, and Herzig, Richard Hurley, Loran Mathews, Kera Huber, Kathleen Sullivan, Laura Leebrick, and Mayor Van Dusen voted yes.

MOTION TO APPROVE MAXIMUM TAX AMOUNT AVAILABLE FOR ASTORIA EAST URBAN RENEWAL DISTRICT

Committee Action: Motion made by Councilor Warr, seconded by Mayor Van Dusen to approve the maximum tax amount available for the Astor East Urban Renewal District. (Motion carried.) City Councilors Mellin, LaMear, Warr, and Herzig, Richard Hurley, Loran Mathews, Kera Huber, Kathleen Sullivan, Laura Leebrick, and Mayor Van Dusen voted yes.

APPROVE ASTOR WEST URBAN RENEWAL DISTRICT BUDGET

a. General Fund

Committee Action: Motion made by Mayor Van Dusen, seconded by Richard Hurley to approve the Astor West Urban Renewal District General Fund. (Motion carried.) City Councilors Mellin, LaMear, Warr, and Herzig, Richard Hurley, Loran Mathews, Kera Huber, Kathleen Sullivan, Laura Leebrick, and Mayor Van Dusen voted yes.

MOTION TO APPROVE MAXIMUM TAX AMOUNT AVAILABLE FOR ASTORIA WEST URBAN RENEWAL DISTRICT

Committee Action: Motion made by Councilor Warr, seconded by Councilor LaMear to approve the maximum tax amount available for the Astor West Urban Renewal District. (Motion carried.) City Councilors Mellin, LaMear, Warr, and Herzig, Richard Hurley, Loran Mathews, Kera Huber, Kathleen Sullivan, Laura Leebrick, and Mayor Van Dusen voted yes.

The Committee confirmed the draft policy regarding festival and event applicants for the \$30,000 in the Promote Astoria Fund would be presented by Staff and discussed in work session at a future date.

MOTION TO ADJOURN THE EAST AND WEST URBAN RENEWAL DISTRICTS BUDGET COMMITTEE MEETING:

Committee Action: Motion made by Councilor Warr, seconded by Unknown to adjourn the East and West Urban Renewal Districts Budget Committee meeting. (Motion carried.) City Councilors Mellin, LaMear, Warr, and Herzig, Richard Hurley, Loran Mathews, Kera Huber, Kathleen Sullivan, Laura Leebrick, and Mayor Van Dusen voted yes.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:24 p.m.

ATTEST:

Secretary



CITY OF ASTORIA

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June 19, 2013

MEMORANDUM

TO: ASTORIA DEVELOPMENT COMMISSION

FROM: *PB* PAUL BENOIT, MANAGER

SUBJECT: LEASE AGREEMENT WITH ASTORIA REGATTA ASSOCIATION FOR
USE OF PROPERTY LOCATED AT 250 -21ST STREET

DISCUSSION/ANALYSIS

The Astoria Regatta Association (Association) would like to display vintage boats and motorized vehicles during the Astoria Regatta on Astoria Development Commission (ADC) owned land east of the train depot located at 250 -21st Street. The time frame for the lease would be for Saturday, August 10, 2013, from 8:00 a.m. to 8:00 p.m.

In the past, the ADC has leased the site for \$1.00 and that amount is once again proposed for this use. The Association activities provide an opportunity to bring an event to our community that continues to grow in popularity every year. Association will provide liability insurance. Also attached to this memo is a draft Lease Agreement which City Attorney Blair Henningsgaard has reviewed and approved as to form.

RECOMMENDATION

It is recommended that the Astoria Development Commission approve the Lease Agreement with the Astoria Regatta Association for the display of vintage boats and motorized vehicles on Saturday, August 10, 2013, for a total sum of \$1.00.

LEASE AGREEMENT

FOR PUBLIC PROPERTY LOCATED AT 250 – 21ST STREET PERMISSION TO USE PUBLIC SPACE AND PERMITS

PARTIES: This Agreement is entered into between the **ASTORIA DEVELOPMENT COMMISSION**, hereinafter referred to as ADC,

And **ASTORIA REGATTA ASSOCIATION** for purposes of providing a display area for vintage boats and motorized vehicles, hereinafter referred to as ASSOCIATION.

PROPERTY: 250 – 21st Street, consisting of Tax Map T8N, R9W, Section 8DA, Tax Lot 203, hereinafter referred to as Property.

WHEREAS:

- A. ASSOCIATION desires to lease space from the ADC to provide a central location for event activities including, but not limited to, the placement of vintage boats and motorized vehicles and other activities associated with the Astoria Regatta for use and enjoyment by patrons of downtown businesses and all citizens of Astoria, and
- B. Assisting ASSOCIATION in securing a central community gathering place will provide economic and community development benefits to the public, and will also enhance the ability of ADC to attract consumers and tourists, and
- C. The use of the Property owned by the ADC can be enhanced through a lease to ASSOCIATION.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and for other good and valuable consideration, it is agreed between the Parties as follows:

1. **LEASE PERIOD AND LEASE PAYMENT:** The lease from the ADC to ASSOCIATION shall run on Saturday, August 10, 2013 at a lease amount of \$1.00 for the entire length of the lease.
2. **ADC'S REPRESENTATIVE:** For purposes hereof, the ADC'S authorized representative will be Brett Estes, Community Development Director, City of Astoria, 1095 Duane Street, Astoria, Oregon, 97103, (503) 338-5183, bestes@astoria.or.us.
3. **ASSOCIATION'S REPRESENTATIVE:** For purposes hereof, ASSOCIATION'S authorized representatives will be Peter Roscoe, P.O. Box 24, Astoria, Oregon, 97103, (503)-440-2805.

4. **SCHEDULED USE:** ADC grants ASSOCIATION the exclusive use of Property for the purpose of providing an activity area from 8:00 a.m. to 8:00 p.m., Saturday, August 10 2013, (changes must be negotiated between the Parties).
5. **PERMITS:** This Agreement constitutes a permit for sound amplification from area from 8:00 a.m. to 8:00 p.m., Saturday, August 10 2013.
6. **OLCC LICENSE:** ASSOCIATION will need to abide by all conditions of your temporary liquor license.
7. **PROHIBITED USES:** No religious symbols or presentations will be used or presented by ASSOCIATION or any participant on the Property during the term of the lease.
8. **CONDITION OF PROPERTY:** ASSOCIATION shall be responsible for all trash removal related to their use of the Property during the lease times and period, and any costs associated with cleaning the Property at the conclusion of any daily use. ASSOCIATION agrees to make an effort to provide recycling opportunities for glass, plastic and metal beverage containers. ASSOCIATION further agrees to keep the Property in as good or better condition than it was at the commencement of this lease.
9. **DAMAGES AND CLEAN-UP COSTS:** If there is damage to the Property or clean-up costs related to the use under this Lease, ASSOCIATION shall pay these damages or costs. Failure to pay said amounts will result in subsequent collection actions, and also will be grounds for termination under Section 12.
10. **SPECIFIC ISSUES:**
 - A. No liquid or other wastes are to be dumped down storm drains.
 - B. Electrical hookup and water hose use must be coordinated with Pacific Power, or alternatively, with the Columbia River Maritime Museum.
 - C. ASSOCIATION is allowed to place temporary signs that must be removed at the conclusion of the lease agreement.
 - 1) All signage is limited to announcing ASSOCIATION'S vintage boats and motorized vehicles display location and/or hours of operation and activities, and for parking control.
 - 2) All signage must comply with City sign codes and the Manual of Uniform Traffic Control Devices.
 - D. ASSOCIATION shall insure that public sidewalks are not encumbered and the free passage of pedestrians on sidewalks is not impeded.

- E. ASSOCIATION will provide sufficient portable toilets, trash receptacles and trash collection services to accommodate need, recycling containers and cleanup for each event.
 - F. The ASSOCIATION will comply with Astoria Code 5.025(11) governing amplified sound.
11. **INSURANCE:** ASSOCIATION shall maintain casualty insurance in an amount of \$100,000 for damages to the Property and liability insurance in the amount of \$1,000,000 for injuries. ASSOCIATION shall provide ADC a Certificate of Insurance naming the City of Astoria and the ADC as additionally insureds.
 12. **TERMINATION:** Notwithstanding that this Agreement contemplates a 5-day period, this lease may be terminated by the ADC at any time should the ASSOCIATION fail to comply with any of the provisions of this agreement. Termination shall be made either in writing by hand delivery or by email to ASSOCIATION'S authorized representative not less than 12 hours prior to the date and hour of termination. Termination will not result in a refund by the ADC to ASSOCIATION for any monies paid.
 13. **NON-ASSIGNABILITY:** This Agreement is personal to ASSOCIATION and the ADC relies on ASSOCIATION to comply with and to receive the benefits of this Agreement.
 14. **COMPLIANCE WITH APPLICABLE LAWS:** ASSOCIATION shall comply with all applicable City, State and Federal laws and regulations, including, but not limited to, license requirements.
 15. **LICENSES:** Any vendor using the Property during the lease agreement shall have on file with City a valid Occupational Tax License.
 16. **SUPERVISION OF PARTICIPANTS:** ASSOCIATION agrees to exercise exclusive control and supervision over its members, ASSOCIATION sponsored activities and organizations, and persons or businesses that sell products on the Property at the time specified for ASSOCIATION occupancy of the premises. ASSOCIATION will publish rules and expectations for these participants.
 17. **HOLD HARMLESS:** ASSOCIATION and its successors and assigns shall completely protect and save, defend and hold harmless the ADC, and its officers, agents and employees, from any liability or obligation of any kind or nature whatsoever arising from injury or injuries, including death, to any person or persons, or damage to any property, real or personal, suffered or alleged to have been suffered all or in part by any person or property arising out of or in connection with the use or occupancy of the Property by ASSOCIATION.
 18. **ATTORNEY FEES:** If suit or action is brought by either Party to enforce any right created by this Agreement, the prevailing Party shall be entitled to recover

in any trial court, and appellate courts, including costs and disbursements and reasonable attorney fees.

IN WITNESS WHEREOF, the Parties have, on this _____ day of _____, 2013 set their hands by and through their duly authorized agents.

ASTORIA DEVELOPMENT COMMISSION

ASTORIA REGATTA ASSOCIATION

By: _____
Willis L. Van Dusen, ADC Chair

By: _____
Peter Roscoe, President

By: _____
Paul Benoit, Manager

APPROVED AS TO FORM:



City Attorney

Digitally signed by Blair Henningsgaard
DN: cn=Blair Henningsgaard, o, ou, email=blair@astorialaw.net, c=US
Date: 2013.06.21 14:41:25 -08'00'



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

June 17, 2013

MEMORANDUM

TO: ASTORIA DEVELOPMENT COMMISSION

FROM:  PAUL BENOIT, CITY MANAGER

SUBJECT: **PORTWAY STREET RAILROAD CROSSING IMPROVEMENT PROJECT –
CONTRACT FOR ENGINEERING DESIGN SERVICES**

DISCUSSION/ANALYSIS

At the May 6, 2013 Astoria Development Commission meeting, the Commission, in order to support existing and future development at the Port of Astoria, authorized staff to procure engineering services for design of the Portway Railroad Crossing Improvement Project. This project consists of reconstructing the deteriorated double railroad track crossing at Portway Street. The deterioration is a result of old age, increased volume of truck traffic to and from the port of Astoria, and the poor condition of underlying railroad ties.

After review of several northwest railroad consulting firms, City Staff coordinated with Wisser Rail Engineering to develop scope and fees to assist with project design services. Wisser Rail Engineering is a small consulting firm that specializes in railroad crossing design for municipal clients, including the Portland and Western Railroad (PWR). PWR currently manages the rail line from Portland to Tongue Point.

City Engineering Division Staff will work with Wisser Rail Engineering on road approach and drainage design to reduce engineering costs for the project. Construction services are not included in the proposal, but will be negotiated upon completion of design. Project construction is tentatively scheduled for late 2013 to minimize disruption to Astoria Riverfront Trolley operations.

Funding for the Portway Railroad Crossing Improvement Project is recommended to come from the Astor-West Urban Renewal District. Section 650.B of the Astor-West Urban Renewal District Plan includes "Street, Curb, Sidewalk and Trolley Track Improvements" as approved activities that can be funded by the Development Commission.

The personal services contract has been approved as to form by the City Attorney.

RECOMMENDATION

It is recommended that the Astoria Development Commission execute a personal services contract with Wisser Rail Engineering for a total not-to-exceed amount of \$19,450 for the Portway Railroad Crossing Improvement Project

Submitted By



Ken P. Cook, Public Works Director

Prepared By



Nathan Crater, Assistant City Engineer

**CITY OF ASTORIA
CONTRACT FOR PERSONAL SERVICES**

CONTRACT:

This Contract, made and entered into this ___ day of _____, 2013 by and between the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and Wisser Rail Engineering, 22750 SW Miami Drive, Tualatin, OR 97062 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 regarding the design of the Portway Rail Crossing Improvement Project.
- 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 October 18, 2013.

2. COMPENSATION

- A. The CITY agrees to pay CONSULTANT a total not to exceed \$19,450 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 Nathan Crater, PE, 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 Tom Wiser, PE.

6. CITY'S OBLIGATIONS

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

7. CONSULTANT IS INDEPENDENT CONSULTANT

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

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

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

8. CANCELLATION FOR CAUSE

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

9. ACCESS TO RECORDS

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

10. FORCE MAJEURE

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

11. NONWAIVER

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

12. ATTORNEY'S FEES

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

13. APPLICABLE LAW

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

14. CONFLICT BETWEEN TERMS

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

15. INDEMNIFICATION

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

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

CITY and CONSULTANT agree that any claim for damages by CITY arising from the negligent performance of CONSULTANT on this Project shall be limited to the proceeds available under CONSULTANT'S professional Errors & Omissions coverage and that damages arising from any alleged breach of contract shall not exceed amounts actually paid to CONSULTANT by CITY.

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:

A. Commercial General Liability. CONSULTANT shall obtain, at CONSULTANT'S expense and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and the annual aggregate not less than \$2,000,000. Coverage shall include consultants, subconsultants and anyone directly or indirectly employed by either. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability, the combined single

limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limited will not be less than 2,000,000.

B. Automobile Liability. CONSULTANT shall obtain, at CONSULTANT'S expense and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.

C. Additional Insured. The liability insurance coverage shall include CITY and its officers and employees as Additional Insured but only with respect to CONSULTANT'S activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance. Prior to starting work under this Contract, CONSULTANT shall furnish a certificate to CITY from each insurance company providing insurance showing that the CITY is an additional insured, the required coverage is in force, stating policy numbers, dates of expiration and limits of liability, and further stating that such coverage is primary and not contributory.

D. Professional Liability Insurance. The CONSULTANT shall have in force a policy of Professional Liability Insurance in an amount not less than \$1,000,000 per claim and \$2,000,000 aggregate. 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. 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.

21. 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).

22. 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.

23. STANDARD OF CARE

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

24. NO THIRD PARTY BENEFICIARIES

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

25. ASSIGNMENT

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

26. SEVERABILITY AND SURVIVAL

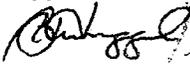
If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability shall survive termination of this Agreement for any cause.

27. COMPLETE CONTRACT

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

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

Approved as to form:



Digitally signed by Blair Henningsgaard
DN: cn=Blair Henningsgaard, o=CL
email=blair@astoriafire.net, ou=US
Date: 2013.06.13 10:26:29 -0800

Attorney

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

BY: _____
Mayor Date

BY: _____
City Manager Date

BY:  6/13/13
Consultant Date