



CITY COUNCIL REGULAR SESSION AGENDA
Monday, December 02, 2024 - 6:00 PM
Council Chambers- 169 SW Coast Highway Newport, Oregon 97365

All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Erik Glover, City Recorder at 541.574.0613, or e.glover@newportoregon.gov.

All meetings are live-streamed at <https://newportoregon.gov>, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day. To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER AND ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. PUBLIC COMMENT

This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others

4. PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS

Any formal proclamations or recognitions by the Mayor and Council can be placed in this section. Brief presentations to the City Council of five minutes or less are also included in this part of the agenda.

5. CONSENT CALENDAR

The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.

5.A Receipt of Links to Agendas for Minutes to be Approved

[Links to Agendas to be Approved 12-02-2024.pdf](#)

5.B Receipt of Audio/Video Links for Minutes to be Approved

[Video Links for Minutes to be approved 12-02-2024.pdf](#)

5.C Approve City Council Work Session and Regular Meeting Minutes

[11-18-2024 Work Session Minutes.pdf](#)

[11-18-2024 City Council Meeting Minutes.pdf](#)

5.D Receipt of Approved Committee Minutes

[PC_Work_Session_10-28-24_Aproved_11-25-24.pdf](#)

[PC_Reg_Session_10-28-24_Aproved_11-25-24.pdf](#)

[October 17, 2024 PAC Minutes](#)

5.E Acceptance of the Canvass of Ballots for the November 5, 2024 Election

5.F Ratify Mayor's appointment of Sophie Cottrell to the Library Advisory Committee filling the high school representative position

[Staff Report for LAC Board Recommendation_High School Student Representative.pdf](#)

[High School Student Representative Application_November 2024.pdf](#)

5.G Ratify Mayor's Appointment of Dave Thomson and Paul Lask to the Bicycle and Pedestrian Advisory Committee

[Memo to City Council BPAC Position #6.pdf](#)

5.H MOU between the City of Newport and Youth Development Coalition of Lincoln County

[Staff_Report MOU.pdf](#)
[YDC Early Learning Agreement - City of Newport](#)

6. PUBLIC HEARING

This is an opportunity for members of the audience to provide testimony/comments on the specific issue being considered by the City Council. Comments will be limited to three (3) minutes per person.

6.A Public Hearing and Potential Approval of a Purchase and Sale Agreement Setting Out the Terms of Sale of the Abbey Street Pier Building at 669 SW Bay Blvd

[Staff Report.pdf](#)
[Draft Commercial PSA \(Abbey Street Pier Building\) 11-26-24.pdf](#)
[Offer Abbey Street Pier Building 669 Bay Blvd.pdf](#)
[Counter Offer - Abbey Street Pier Building..pdf](#)
[Property Appraisal.pdf](#)
[Public Notice.pdf](#)

7. CITY MANAGER'S REPORT

All matters requiring approval of the City Council originating from the City Manager and departments will be included in this section. This section will also include any status reports for the City Council's information.

7.A Consideration of the Use of Parks System Development Charge (SDC) Fund, Room Tax Fund, and General Fund for the Park Rehabilitation Project of Agate Beach Neighborhood and Dog Park.

[Staff_Report_12-2-24.pdf](#)
[30% Design Estimate of Construction Costs](#)
[30% Design Site Plan](#)

7.B Big Creek Dam Project - Project Update

[Staff Report](#)

8. LOCAL CONTRACT REVIEW BOARD

8.A Approval of Sole Source Purchase Agreement with Xylem for 3 Flygt Model NT-3202.095 4" Submersible Pumps and Installation Kits

[Staff Report Xylem Pumps.pdf](#)
[Intent to Award Xylem.pdf](#)
[Sole Source letter.pdf](#)
[Sole_Source_Memo_Xylem_Formatted.pdf](#)

8.B Goods and Services Agreement with Peterson Power Systems Inc. in the Amount of \$54,970.00 annually for a Period of Three Years, for Generator Preventive Maintenance

[Staff Report - Generator Maintenance Agreement.pdf](#)

[Good and Services Peterson 2024.pdf](#)

8.C Approval of an Amendment to the City of Newport's Personal Service Agreement with Clair Company, Inc. to Provide Building Plan Review and Inspection Services

[Staff_Report_-_Clair_Amendment.pdf](#)

[Amendment to Clair Co Building Service Agreement draft 11.27.24.pdf](#)

[Clair Co Correspondence - 10.23.24.pdf](#)

[Clair Company Agreement 4-6-2020 to 4-6-2025.pdf](#)

9. REPORT FROM MAYOR AND COUNCIL

This section of the agenda is where the Mayor and Council can report any activities or discuss issues of concern.

10. PUBLIC COMMENT

This is an additional opportunity for members of the audience to provide public comment.

Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.

11. ADJOURNMENT

LINKS TO AGENDAS FOR MINUTES TO BE APPROVED

City Council Work Session 11-18-2024

https://thecityofnewport.granicus.com/AgendaViewer.php?view_id=1&clip_id=1364

City Council Regular Session 11-18-2024

https://thecityofnewport.granicus.com/AgendaViewer.php?view_id=1&clip_id=1365

Planning Commission Work Session 10-28-2024

https://thecityofnewport.granicus.com/AgendaViewer.php?view_id=2&clip_id=1352

Planning Commission 10-28-2024

https://thecityofnewport.granicus.com/AgendaViewer.php?view_id=2&clip_id=1353

Public Arts Committee 10-17-2024

https://thecityofnewport.granicus.com/AgendaViewer.php?view_id=12&clip_id=1345

LINKS TO VIDEO/AUDIO FOR MINUTES TO BE APPROVED

City Council Work Session 11-18-2024

<https://thecityofnewport.granicus.com/player/clip/1364>

City Council Regular Session 11-04-2024

<https://thecityofnewport.granicus.com/player/clip/1365>

Planning Commission Work Session 10-28-2024

<https://thecityofnewport.granicus.com/player/clip/1352>

Planning Commission 10-28-2024

<https://thecityofnewport.granicus.com/player/clip/1353>

Public Arts Committee 10-17-2024

<https://thecityofnewport.granicus.com/player/clip/1345>

**City of Newport
City Council Work Session Minutes
November 18, 2024**

**LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY
NEWPORT**

Time Start: 4:41 P.M.

Time End: 4:45 P.M.

MEETING ATTENDANCE LOG

COUNCIL/BOARD MEMBER	STAFF
Mayor Kaplan	Nina Vetter, City Manager
Councilor Emond	Jeanne Tejada, Acting City Recorder
Councilor Botello	Brent Gainer, Police Chief
Councilor Goebel (excused)	Derrick Tokos, Community Development Director
Councilor Hall (Via Zoom)	John Fuller, Communications Specialist
Councilor Parker	David Allen, City Attorney
Councilor Jacobi	Anna Iaukea, Urban Renewal Project Manager

AGENDA TITLE	ACTIONS
CALL TO ORDER AND ROLL CALL	Kaplan called the meeting to order. Glover conducted roll call.
CITY MANAGER REPORT Upcoming City Council Work Session Agenda	Vetter presented the Work Session Calendar that looks ahead from December to May. Allen mentioned there would need to be an Executive Session on January 21, 2025 for Mediation. He would also like Franchise Agreements for Telecommunications added to the January 21 work session agenda. Jacobi mentioned needing an information session on the airport and to discuss the dark sky program. Vetter shared that these would be discussed in the Council goal setting meeting.
DISCUSSION ITEMS	No items to discuss.
EXECUTIVE SESSION Scheduling an Executive Session Pursuant to ORS 192.660(2)(i) to Review and Evaluate the Job Performance of the City Attorney	MOTION was made by Hall, seconded by Botello to move to schedule an Executive Session pursuant to ORS 192.660(2)(i) to review and evaluate the job performance of the City Attorney immediately following the close of the November 18 th Work Session.
ADJOURNMENT	5:45 PM

**City of Newport
City Council Minutes
November 18, 2024**

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY NEWPORT
Time Start: 6:03 P.M. Time End: 7:54 P.M.

ATTENDANCE LOG/ROLLCALL

COUNCIL/BOARD MEMBER	STAFF
Mayor Kaplan	Nina Vetter, City Manager
Councilor Emond	Jeanne Tejada, Acting City Recorder
Councilor Botello	Brent Gainer, Administration Lieutenant
Councilor Goebel (Excused)	Derrick Tokos, Community Development Director
Councilor Hall (via Zoom)	David Allen, City Attorney
Councilor Parker	John Fuller, Communications Specialist
Councilor Jacobi	Steve Baugher, Finance Director
	Cathie Rigby, Grant Manager
	Lance Vanderbeck, Airport Director
	Laura Kimberly, Library and City Community Engagement Director

AGENDA ITEM	ACTIONS
REGULAR MEETING	
CALL TO ORDER AND ROLL CALL	Kaplan called the meeting to order.
Roll Call	Tejada conducted roll call.
Pledge of Allegiance.	Council, staff, and the audience participated in the Pledge of Allegiance.
	MOTION was made by Parker, seconded by Emond to excuse Kaplan from all meetings on December 2, 2024. MOTION carried unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.
PUBLIC COMMENT	
Janice Aldrich Public Comment	Aldrich sent an email to council. It is attached to the agenda.
John Lavrakas, Newport Resident	Lavrakas shared some photos with council regarding some roads he feels need improvement. He requested council prioritize permanent improvement to the road structure.
Melody Lavrakas, Newport Resident	M. Lavrakas recommended council prioritize City funds to pave 2 sections of roadway. If the funds are not in the budget, she suggested making 16 th Street a one-way street and closing it to larger vehicles.
CONSENT CALENDAR	
Receipt of Links to Agendas for Minutes to be Approved	MOTION was made by Hall, seconded by Emond to approve the consent calendar. MOTION carried

<p>Receipt of Audio/Video Links for Minutes to be Approved</p> <p>Approval of City Council Work Session and Regular Meeting Minutes 11-04-2024 Work Session Minutes 11-04-2024 City Council Minutes</p> <p>Receipt of Approved Committee Minutes 9-11-2024 Library Advisory Board 9-10-2024 Airport Committee</p>	<p>unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.</p> <p>*Item 6B will be moved to the December 2, 2024 City Council Meeting.</p>
<p>PUBLIC HEARING</p> <p>Public Hearing and Potential Adoption of Ordinance No. 2227, an Ordinance Amending Section 9.50.020, 9.50.030, and 9.50.050 of the Newport Municipal Code Related to Camping</p> <p>Public Hearing and Possible Adoption of Ordinance No. 2226 and Resolution No. 4044, Relating to the Federal Emergency Management Agency's Requirement that City's Impose Interim Endangered Species Act Compliant Habitat Protection Measures to Maintain Eligibility in the National Flood Insurance Program</p>	<p>Vetter presented the staff report.</p> <p>6:13PM Kaplan opened the Public Hearing.</p> <p>There was no public comment.</p> <p>Allen made a few wording changes.</p> <p>6:18PM Kaplan closed the Public Hearing.</p> <p>MOTION was made by Emond, seconded by Parker to move to place for final passage and read by title only Ordinance No. 2227, an Ordinance Amending Sections 9.50.020, 9.50.030, and 9.50.050 of the Newport Municipal Code Related to Camping, and for Ordinance No. 2227 to take effect on the date of adoption to ensure the continued health and safety of residents of the City of Newport. MOTION carried unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.</p> <p>Tejada read Ordinance No. 2227 by Title Only and conducted a roll call vote, which carried unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.</p> <p>Vetter introduced and turned the time over to Tokos who presented the staff report.</p> <p>6:21PM Kaplan opened the Public Hearing.</p> <p>There was no public comment.</p> <p>6:31PM Kaplan closed the Public Hearing.</p> <p>Motion was made by Jacobi, seconded by Botello to move place for final passage, and read by title only, Ordinance No. 2226, an ordinance asserting City of Newport authority to require permit-by-permit habitat</p>

	<p>assessment and mitigation plans to maintain national flood insurance program eligibility, and declaring an emergency. MOTION carried unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.</p> <p>MOTION was made by Emond, seconded by Jacobi to move to adopt Resolution No. 4044, a resolution selecting one of the Federal Emergency Management Agency's Pre-Implementation Compliance Measures. MOTION carried unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.</p>
CITY MANAGER'S REPORT	
Monthly Department Reports	Vetter presented the City Manager's Report. She reported to council that these will be occurring monthly from now on. This month she highlighted the 7-Year Financial Strategy Project.
MOU Between the City of Newport and Youth Development Coalition of Lincoln County	This item was moved to the December 2, 2024 City Council Meeting.
Authorization to Execute a Grant Contract for Source Water Protection with the Oregon Business Development Department (OBDD) in the Amount of \$50,000. Grant funds to be used to fund The Big Creek Watershed Forest Stewardship Plan (Project No. U25005)	<p>Rigby presented the Staff Report.</p> <p>MOTION was made by Parker, seconded by Botello to move to accept the grant award of \$50,000 from the Oregon Business Development Department (OBDD) and authorize the City Manager to execute the Grant Contract for Source Water Protection with the OBDD on behalf of the City of Newport, subject to City Attorney review. MOTION carried unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.</p>
Committee Structure Work Group Decision	<p>Beth Young, Newport City Employee/Resident came forward to make public comment. She requested the council delay their decision as it relates the Bicycle and Pedestrian Advisory Committee. Their committee has not had a quorum since August and have not been able to give council a report.</p> <p>Vetter presented the topic and turned the time over to Kimberly to walk through the key decisions one-by-one.</p> <p>MOTION was made by Hall, seconded by Botello to move to direct staff to implement the recommendation of the Committee Structure Work Group and that the City Council direct staff to implement these recommendations by February 3, 2025.</p> <p>Jacobi requested they amend the motion to include a 6-month continuation period for Bicycle and Pedestrian Committee. Hall declined amending her</p>

<p>Scheduling a Public Hearing to Consider a Purchase and Sale Agreement Setting Out the Terms of Sale of the Abbey Street Pier Building at 669 SW Bay Blvd.</p>	<p>motion. Kaplan called for a vote on the original motion.</p> <p>MOTION FAILED with Hall and Kaplan voting for, and Emond, Botello, Parker, and Jacobi voting against.</p> <p>MOTION was made by Emond, seconded by Jacobi to move to direct staff to implement the recommendation of the Committee Structure Work Group and that the City Council direct staff to implement these recommendations by February 3, 2025 with the exception that the Bicycle and Pedestrian Advisory Committee be granted a 6-month continuation from now. MOTION carried unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.</p> <p>Vetter introduced this item and turned the time over to Tokos to present the Staff Report.</p> <p>MOTION was made by Emond, seconded by Parker to move to schedule a public hearing for 6:00pm, or soon thereafter, on December 2, 2024 for the City Council to consider and potentially approve a purchase and sale agreement for the Abbey Street Pier Building at 669 SW Bay Blvd. MOTION carried unanimously with Emond, Botello, Kaplan, Hall, Parker, and Jacobi all voting in favor.</p>
<p>REPORT FROM MAYOR AND COUNCIL</p>	<p>Emond reported attending the new Public Meeting Law training. One thing they brought up is that each council members name should be recorded under each vote and how they voted.</p> <p>Parker wonders about investing in some precast metal storm drain screens. He also mentioned the dried mud around the storm drains causing a drainage problem. Parker also mentioned the Nye Beach Turn Around and how there are a lot of tourists in the street, he is wondering how the city could change that?</p> <p>Jacobi reported on attending the Solid Waste Advisory Committee.</p> <p>Kaplan reported on meeting with the Audit Committee. The auditors reported no findings.</p> <p>Botello reported on attending the City Center Revitalization Committee.</p>
<p>PUBLIC COMMENT</p>	<p>None.</p>
<p>ADJOURN</p>	<p>7:54PM</p>

**City of Newport
Planning Commission Work Session Minutes
October 28, 2024**

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL, 169 SW COAST HIGHWAY, NEWPORT
Time Start: 6:01 P.M. Time End: 7:05 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan (by video)	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	
Commissioner Gary East (absent, excused)	
Commissioner Braulio Escobar (absent)	
Commissioner John Updike	
Citizen Advisory Member Dustin Capri (absent)	
Citizen Advisory Member Greg Sutton (absent)	

AGENDA ITEM	ACTIONS
WORK SESSION MEETING	
CALL TO ORDER AND ROLL CALL a. Roll Call	None.
EVENT PLAN FOR CITY CENTER REVITALIZATION PLANNING PROJECT.	<p>Mr. Tokos gave an overview of the event plan for the City Center Revitalization Project. He covered the dates of events; types of focus group meetings; online open house for the public who can't attend workshops; adding a blurb to utility e-bills reminders to notify the public of the project; postcard notice being mailed to all properties in Newport; advertising for the events; updates to the city website for the project; workshop format and setup; online open house; survey questions for the public; how the Philomath process for their couplet was done; business façade grants; commercial revitalization; needed housing considerations; giving more emphasis to 9th Street on the questionnaire; questioning how relevant the demographic questions were for the decisions for the project; concerns on displacement of businesses in the City Center; and focus group meetings that would be held for underrepresented groups.</p>
UPDATE ON COMPREHENSIVE PLAN STREAMLINING PROJECT (BETH YOUNG).	<p>Ms. Young gave her progress report on the Comprehensive Plan streamlining project.</p> <p>The Commission asked questions about the photos that were used in the chapter examples; goals, policies and implementation measures; and</p>

	discussing how the updates to the Plan would look like on the web.
PLANNING COMMISSION WORK PROGRAM UPDATE.	None.

Submitted by: _____
 Sherri Marineau, Executive Assistant

**City of Newport
Planning Commission Regular Session Minutes
October 28, 2024**

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY NEWPORT
Time Start: 7:06 P.M. Time End: 7:13 P.M.

ATTENDANCE LOG/ROLLCALL

COMMISSIONER/ ADVISORY MEMBER	STAFF
Chair Bill Branigan (by video)	Derrick Tokos, Community Development Director
Commissioner Bob Berman	Sherri Marineau, Community Development Dept.
Commissioner Jim Hanselman	
Commissioner Gary East (absent, excused)	
Commissioner Braulio Escobar (absent)	PUBLIC MEMBERS PRESENT
Commissioner John Updike	

AGENDA ITEM	ACTIONS
REGULAR MEETING	
CALL TO ORDER AND ROLL CALL	
a. Roll Call	None.
APPROVAL OF THE MINUTES	
a. Meeting minutes of Regular Session Meeting on October 14, 2024	Motion by Updike, seconded by Hanselman, to approve the regular session meeting minutes of October 14, 2024 with minor edits. Motion carried unanimously in a voice vote.
CITIZEN/PUBLIC COMMENT	None.
ACTION ITEMS	
File #3-NCU-24: Final Order and Findings of Fact for Nonconforming Use Permit to Install a New Cold Box System to More Effectively Convert Natural Gas to a Liquid at the NW Natural LNG Plant.	Motion was made by Branigan, seconded by Hanselman, to approve the Final Order and Findings of Fact for File #3-NCU-24 with conditions. Motion carried unanimously in a voice vote.
File #2-SUB-24: Final Order and Findings of Fact for 4-Lot Townhouse Subdivision on Nye Street.	Motion was made by Updike, seconded by Branigan, to approve the Final Order and Findings of Fact for File #2-SUB-24 with conditions. Motion carried unanimously in a voice vote.
File #1 & 2-PD-24 / 1-SUB-24 / 2-TIA-24: Wilder Remainder Phase (Planned	Motion was made by Hanselman, seconded by Updike, to approve the Final Order and Findings of Fact for File #1 & 2-PD-24 / 1-SUB-24 / 2-TIA-24 with conditions. Motion carried unanimously in a voice vote.

Development, Final Development, Preliminary Subdivision Plat, and Traffic Impact Analysis).	
DIRECTORS COMMENTS	Tokos reported a candidate would be interviewed for the open Commission position.

Submitted by: _____

Sherri Marineau, Executive Assistant

**City of Newport
Public Arts Council Meeting Minutes
October 17, 2024**

LOCATION: CITY COUNCIL CHAMBERS, NEWPORT CITY HALL 169 SW COAST HIGHWAY NEWPORT
Time Start: 8:33 A.M. Time End: 10:06 A.M.

ATTENDANCE LOG/ROLLCALL

COUNCIL/BOARD MEMBER	STAFF
Anita Albrecht	Jeanne Tejada, Deputy City Recorder
Chasse Davidson	
Scott Knox	
Mary Peterson (Excused)	
Bill Posner	
Susan Tissot (Excused)	
Frances Van Wert	
Jan Kaplan (Council Liaison)	

AGENDA ITEM	ACTIONS
REGULAR MEETING	
CALL TO ORDER	Knox called the meeting to order. Roll call followed, with those in attendance stating their names.
APPROVAL OF MINUTES	MOTION was made by Van Wert, seconded by Posner to approve the minutes of the September 19, 2024 Public Arts Committee Meeting. MOTION carried unanimously in a voice vote.
DISCUSSION ITEMS	
Staff Report	Tejada provided the Staff Report.
Art Seen Rotating Sculpture Bases and City Hall Landscaping Plans	<p>Albrecht shared the landscape plan drawing for the City Hall Landscaping project. It is being requested that the Public Arts Committee provide the funds to place 4 new bases at City Hall.</p> <p>MOTION was made by Davidson, seconded by Posner to move to fund four new bases at City Hall for the Art Seen project. MOTION carried unanimously in a voice vote.</p>
Discussion/Action on Recognition for Catherine Rickbone	<p>There was a brief discussion on how to recognize Rickbone for all of her years of service.</p> <p>MOTION was made by Knox, seconded by Posner to move to create a proclamation to recognize Rickbone at a City Council Meeting, and to get a plaque made to place on the Mother and Child sculpture in recognition of Rickbone. MOTION carried unanimously in a voice vote.</p>

Public Art Podcast Update	This item will be revisited down the road. At this time, it is not something that can be focused on.
Discussion on the Next Round of Art Seen Sites, Timeline, and Proposals	Further discussion on this topic will happen once the first round of Art Seen has been finalized.
Discussion/Action on LatinX Youth Mural Welcoming Visitors to Newport	Davidson reported she has walked through the stairwell with Syrop. They have had a muralist drop out and the spot that has opened up is perfect for the LatinX Mural. This spot will be designated for the LatinX Mural.
Continuation of Discussion on Mural Welcoming Visitors to Newport	Knox mentioned this is something he thought of when he saw a small mural by his dentist office. The committee thinks it is a good idea, but they have too much on their plates right now. It will be tabled for further discussion down the road.
Discussion/Overview of the 2024-2025 Fiscal Year Budget for the Public Arts Committee	A request has been placed for the supplemental budget for the PAC. The committee discussed some options for the 2024-2025 budget.
Estimate and Possible Approval of Plaques for Two New Pieces of Art	MOTION was made by Albrecht, seconded by VanWert to move to approve funding in the amount not to exceed \$1500 to go towards plaques for Ambassador's Portal, Pegasus by the Sea, and a recognition plaque for Rickbone. MOTION carried unanimously in a voice vote. Tejada will coordinate getting the plaques ordered.
PUBLIC COMMENT	None was heard.
COMMITTEE COMMENT	None.
ESTABLISH NEXT AGENDA	For future Agendas: Rick Bartow Sculpture; Art Podcast
CONFIRM NEXT MEETING DATE	November 21, 2024 at 8:30 AM.
ADJOURNMENT	10:06 AM



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Meeting Date: December 2, 2024

Title: Library Advisory Committee Board Recommendation for Appointment

Prepared by: Laura Kimberly, Newport Public Library Director and City Community Engagement Director

Recommended Motion: I move to ratify the Mayor's appointment of Sophia Cottrell to the Library Advisory Committee Board as the High School Student Representative.

Background Information:

The Library Advisory Committee Board is pleased to recommend Sophia Cottrell for appointment as the High School Student Representative on the Library Advisory Committee. Sophia's term would expire on June 30, 2026.

The Board seeks applicants who reflect the diversity of the community and bring unique skills and perspectives. Previously, Tasha Hazdra served as the High School Student Representative, a role she held until graduating in June 2024. Following her resignation in July 2024, the position has been vacant. Tasha was the second high school student to serve in this capacity.

Sophia Cottrell, a junior at Newport High School, is an exemplary candidate for this role. She is also enrolled at Oregon Coast Community College, currently taking her first online college course. A dedicated teen volunteer at Newport Public Library for nearly five years, Sophia has a deep connection to the library, inspired in part by her mother, who serves as the Lincoln County School District Librarian. Beyond her contributions to the public library, Sophia volunteers in school libraries and actively participates in community theater, performing arts programs, and the Newport High School Dance Team, of which she is a founding member. She has also balanced two part-time jobs while excelling academically and in her community engagements.

Sophia's passion for libraries and her strong commitment to community service make her a stellar candidate. We are confident she will bring enthusiasm, dedication, and valuable insights to the Library Advisory Committee. We respectfully submit her for the Mayor and Council's consideration for appointment.

Fiscal Notes: None

Alternatives:

Attachments: Application

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[General Public Meetings](#)

Committee Application

Thank you for your interest in serving on a committee for the City of Newport. Please complete the form below and click the "Submit" button at the bottom of the page. Someone from the City Manager's office will be in touch with you. Submitted applications become a public record of the City of Newport, and may become a part of a committee and/or City Council packet.

Date: 11/12/2024

List the Commission/
Committee of interest: Library Board

Name: Sophie Cottrell

Address:

Work Telephone
Number:

Home Telephone
Number:

Email Address:

Occupation: Student/Retail/Dance Teacher

Employer: NHS/WindDrift Gallery/Dance! And All That Jazz!

(1) Why do you think
you are qualified to be
a Committee member?*

I have volunteered for many years in our Newport Public Library and I love being able to help in a place that has meant so much to me. I grew up at the public library and my mom is the LCSD Librarian so I spend volunteering in school libraries as well. I am great at multi tasking. I am a full time student, have held two jobs for years, am active in my community theater and performing arts programs, and I am a founding member of the NHS Dance Team. I am driven and when I feel passionately about something as I do the library I give it my all.

(2) State your educational background.*

I am a high school student but I am also enrolled at OCCC and am currently taking my first online college course during my free period at the high school.

No I have not.

(3) Have you ever served on a community committee? If so, what kind?*

Yes I do.

(4) Do you agree with consensus decision making?*

Yes.

(5) Are you willing to attend regularly scheduled meetings for your term of office?*

Yes, democracy is the key to any good decision making.

(6) Would you make decisions based on the facts and standards even though you may not agree with the ultimate decision?*

(7) Do you anticipate having many conflicts of interest that may disqualify you in making decisions, due to personal and/or business relationships? *

No I do not. When in a role where I need to be a part of a community and a decision maker or in leadership roles I am able to distance myself from personal opinions and look at things objectively. Most recently, I experienced this when working with our NHS Dance Team as my current role of Fall Captain includes the responsibility of making the best decisions for the team and not for myself.

(8) List all other pertinent information/background for this position.*

I have grown up in the library and feel that it has helped me to grow in many ways. I would love to be able to support the library so that other kids, families, teens, and older community members can continue to find the library a place where everyone is welcome and knowledge is encouraged.

Thank you in advance for your community spirit in offering to serve!

Clear the whole form

Send in Application



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Date Prepared: November 14, 2024

For Meeting: December 2, 2024

Prepared by: BPAC Staff Liaison, Associate Planner Beth Young AICP

Title: Appointment of two new members to the Bicycle and Pedestrian Advisory Committee

Recommended Motions:

I move that the Mayor's appoint to the Bicycle and Pedestrian Advisory Committee Dave Thomson to the position vacated by Pete Dunphy for the remainder of his term; and Paul Lask to the position vacated by Alan Cobb for the remainder of his term. Both terms end December 31, 2025.

I move that the Council Approve the Mayor's appointment to the Bicycle and Pedestrian Advisory Committee Dave Thomson to the position vacated by Pete Dunphy for the remainder of his term; and Paul Lask to the position vacated by Alan Cobb for the remainder of his term. Both terms end December 31, 2025.

Background Information:

The BPAC consists of seven regular members and up to three alternate members.¹ Currently there are only five members, which makes it difficult for to reach quorum.

In August the BPAC received word of the recommendation to disband. At that meeting they decided to discuss, then offer options for the City Council to consider at their next meeting. They have not been able meet since August, however, because meetings have been cancelled due to lack of quorum.

BPAC Chairperson Michael Rioux and Vice-Chair Minda Stiles, acting as individuals, have reviewed both applications and have requested that I submit this request to City Council.

I have talked to both Dave and Paul and they are very interested in serving their community as members of BPAC, and will bring energy and expertise to the BPAC. They are both aware the BPAC may be disbanded.

Fiscal Notes: None

Alternative: Do not appoint or approve applicant.

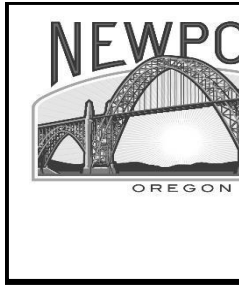
Attachments:

Emails from Chair Rioux and Vice-Chair Stiles

BPAC Application Dave Thomson

BPAC Application Paul Lask

¹ Newport Municipal Code 2.05.055(A)



STAFF REPORT CITY
COUNCIL AGENDA ITEM

Subject: MOU between the City of Newport and Youth Development Coalition of Lincoln County

Date: December 2, 2024

Prepared by: Mike Cavanaugh, Parks and Recreation Director
Laura Kimberly, Library and City Community Engagement Director

Background

The Newport Public Library and Parks & Recreation, in partnership with the Youth Development Coalition of Lincoln County (YDC), seeks approval for a Memorandum of Understanding (MOU) to establish and clarify the collaboration for a literacy-focused program called “Super Readers.” This initiative supports students in grades K-5 who are reading below grade level and need individual tutoring. The program aims to enhance literacy skills through structured interventions and assessments.

Purpose and Project Overview

The “Super Readers” program, funded by an Early Learning Literacy Grant from the Oregon Department of Education (ODE), will run from January 3, 2025, to June 30, 2027. Operating in Newport, this program provides afterschool tutoring from Monday to Friday, concluding at 5:30 PM at various locations including the Newport Recreation Center, Clubhouse, Siletz Library, and ABC Learning Center. Approximately 10-15 students will be served at each session.

Roles and Responsibilities

The YDC will provide staff, including a Site Coordinator to manage daily operations and organize events like Family Nights in collaboration with Newport Public Library staff. Additional roles funded by the grant include:

- Program Manager: Responsible for data collection and reading compliance.
- Reading Coordinator: A retired, certified reading instructor who will train site staff and guide student assessments.
- Activity Support Staff: Ensures engagement of students awaiting their tutoring sessions.

YDC's grant will cover costs related to instructional staff, materials, student support (e.g., snacks), and rental fees. Family Nights will occur quarterly to review student progress, with activities and refreshments funded by YDC. Newport Public Library staff may support by providing enrollment information and activity materials for families. Newport Parks and Recreation will provide Clubhouse space and additional space for tutoring at the recreation center.

Program Services

Each participating student will receive:

1. An initial reading assessment.
2. Tailored reading protocols and interventions.
3. Monthly progress monitoring and ongoing assessment.
4. Support until individual reading goals are achieved.
5. Transition to program graduation upon reaching grade-level proficiency, with new students filling vacated spots.

Financial Terms

No funds will be exchanged between the Newport Public Library and YDC. YDC will cover the rental costs for the Clubhouse and/or Recreation Center space as needed for this program.

Termination Clause

Either party may terminate the MOU with a 60-day written notice.

Recommended Motion

I move to approve the MOU between the City of Newport and the Youth Development Coalition of Lincoln County to support the "Super Readers" program and contribute to the advancement of youth literacy in the Newport community.

Attachments:

MOU between the City of Newport and Youth Development Coalition of Lincoln County

MEMORANDUM OF UNDERSTANDING

This agreement is between the Youth Development Coalition of Lincoln County (YDC) and City of Newport through the Newport Library and Parks & Recreation Departments. The purpose of this agreement is to provide clarification regarding the partnership developed between the two organizations. The project serves youth in grades K-5th who are reading below grade level and are seeking individual tutoring assistance.

The ODE Early Learning Literacy grant funding this project begins January 3, 2025 and ends June 30, 2027. Program operates afterschool to 6PM Closed legal holidays. Open during summer months and some no school days. The location of the program in Newport Recreation Center and Clubhouse in Newport, Monday – Friday, afterschool – 5:30 PM. In addition, there is a site at Siletz Library and ABC Learning Center.

YDC will fund one staff member as Site Coordinator who will work with community partners and Rec Center Staff to establish events or open house Family Nights. Other staff of the project include: the Program Manager to collect data for the project and the Reading Coordination compliance, a retired Title 1 reading endorsed teacher will train site staff and oversee student assessments and reading interventions to be implemented by the Site Coordinator. An additional staff member will be provided to work with students not receiving interventions but will be engaged at activity stations while waiting. It is anticipated that 10-15 students will be served at any one time.

Students will be referred to the program “Super Readers” from various sources including the Confederated Tribes of the Siletz Indians, schools, libraries, community members, and parents/guardians. Each student will receive:

1. Reading Assessment – Easy CBM.
2. Reading Protocols specific to the needs of each student.
3. Comprehensive and intentional interventions to improve reading over time.
4. Monthly monitoring and assessments to chart progress.
5. Students will stay in the program until their goals are achieved.
6. Students testing at grade level will graduate from the program, a child on the waiting list will be offered this spot.

IT IS AGREED:

- YDC’s grant will cover cost of instructors, supplies, snacks, teaching materials, etc. associated with the student reading program at no cost to the student.
- YDC sites will provide once a quarter Family Night to share student progress with parents/guardians. Any related activities, prizes, and refreshments will be provided by grant funds and supervised by the YDC funded Site Coordinator in coordination with Parks and Recreation staff. If needed, Family Night’s will be coordinate with Newport Library staff and ask the library to provide library enrollment and activity newsletters to the program. There are no funds exchanged between parties in this agreement.
- Newport Parks and Recreation will provide Clubhouse space and additional space for tutoring at Newport Rec Cetner. Hours are afterschool and no holidays. Rent will be agreed to at a later date.

Should this agreement be terminated for a reason, 60-days' notice will be served by either party to the other in writing. Reasonable rent funds to be paid by YDC for Clubhouse for this project.

City of Newport Representative

YDC Representative

City Contact Email and Phone Number

newportdebbie52@outlook.com
YDC Contact Email and phone Number



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Date: December 2, 2024

Title: Public Hearing and Potential Approval of a Purchase and Sale Agreement Setting Out the Terms of Sale of the Abbey Street Pier Building at 669 SW Bay Blvd

Prepared by: Derrick I. Tokos, AICP, Community Development Director

Recommended Motions: I move to approve the purchase and sale agreement for the Abbey Street Pier Building at 669 SW Bay Blvd, and authorize the City Manager Christina Vetter to sign the agreement.

Motion #2: I further move, and ask that the meeting minutes reflect, that City Manager Christina Vetter is authorized to sign any and all documents necessary to complete the real estate transaction.

Background Information: At its June 20, 2023 meeting, the City Council determined that the Abbey Street Pier Building at 669 SW Bay Blvd is no longer needed for public use, and that it is in the public interest to sell the building. The City Council further directed the City Manager to seek proposals from qualified real estate brokers to market the property for sale. At its August 7, 2023 meeting, the City Council selected Freddy Saxton, Advantage Real Estate, to market the property for sale on behalf of the City. The property was advertised for sale, and an offer was received from Ocean Bento, LLC. The City Council held a public hearing on December 4, 2023 to consider Ocean Bento, LLC's offer and, after providing an opportunity for public testimony, the Council elected to enter into the agreement.

Ocean Bento, LLC was unable to perform and the Abbey Street Pier Building went back on the market. On October 16, 2024, Freddy Saxton forwarded a \$615,000 cash offer to purchase the property received from an individual named Arthur N. Hoppe. The City Council expressed interest in the proposal, and staff prepared a draft purchase and sale agreement (enclosed) that has been reviewed by Mr. Hoppe and the City Attorney. This purchase and sales agreement is structured as an addendum to a conventional commercial real estate agreement and counter-offer, both of which are attached.

Newport Municipal Code (NMC) Section 2.25.040(F) sets out the process the City must follow for the direct sale of property to an interested party. Notice of the proposed sale must be published in a newspaper of general circulation at least five days prior to the hearing. The proposed purchase and sale agreement and a copy of the property appraisal must also be available at the hearing.

With this sale, an easement will need to be put in place to provide access to the public dock which the City will be retaining since the real property in front of the dock would be sold with the Abbey Street Pier Building. Additionally, a second easement will be needed to allow the City to continue to use the mechanical room in the building. The mechanical room contains the controls for the fire suppression system installed to protect the dock. Draft language for both easements

is included as exhibits to the purchase and sale agreement. The Department of State Lands lease for the commercial building will also need to be assigned. A copy of the existing lease, and the legal description for the new lease are also exhibits to the purchase and sale agreement.

Fiscal Notes: Proceeds from the sale would be directed to the City land account for future land purchases, unless an alternative use of the funds is identified by Council.

Alternatives: Schedule a hearing to consider and potentially approve the sale, hold off on pursuing the sale, or as suggested by Council.

Attachments:

Draft Purchase and Sale Agreement
Offer to Purchase the Abbey Street Pier Building
Signed Counter Offer
Property Appraisal by Powell Banz Valuation
Public Hearing Notice

ADDENDUM A to the
Commercial Real Estate Purchase & Sale Agreement
dated 10/31/24
by and between
the City of Newport and Arthur N. Hoppe

THIS PURCHASE AND SALE AGREEMENT ("Agreement" or "Addendum A") is made as of [REDACTED] (the "Effective Date") by and between Arthur N. Hoppe ("Buyer") and the City of Newport, an Oregon municipal corporation ("Seller").

A. Seller owns fee title to certain real property located in Lincoln County, Oregon, commonly known as the Abbey Street Pier Building at 669 SW Bay Boulevard Street in Newport, Oregon and more particularly described in **Exhibit A** which is incorporated by reference herein (the "Real Property"), leases certain submerged and submersible land (the "Leased Land") pursuant to that certain State of Oregon Division of State Lands Submerged and Submersible Land Lease Number ML-10492/APP#11546 attached hereto as **Exhibit B** with the Oregon State Land Board and the Division of State Lands as lessor (the "State") (the "State Lease") and owns the improvements located on the Leased Land (the "Leased Land Improvements"). The Real Property, the State Lease and the Leased Land Improvements are collectively referred to herein as the ("Property").

B. Subject to the terms and conditions contained in this Agreement, Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller.

C. Capitalized terms shall have the meanings ascribed to them herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller, together with all of Seller's right, title and interest in and to any improvements, buildings, structures or fixtures located on or comprising the Property, all rights, licenses, privileges, reversions and easements appurtenant to the Property, including, without limitation, all development rights, air rights, mineral and oil and gas rights, water rights, water and water stock relating to the Property and any other easements, rights of way or appurtenances used in connection with the beneficial use and enjoyment of the Property.

2. Purchase Price; Conveyance.

2.1 The purchase price for the Property is Six Hundred Fifteen Thousand and No/100 Dollars (\$615,000) (the "Purchase Price"). The Purchase Price is payable as follows:

2.1.1 Within five (5) business days after the Effective Date, Buyer shall deposit Six Thousand One Hundred and Fifty Dollars (\$6,150.00) as earnest money with Escrow Holder (as defined below). All earnest money deposited pursuant to this Section 2.1.1 shall be referred to herein as "Earnest Money." Upon closing of the transaction contemplated by this Agreement, all Earnest Money shall be credited towards the Purchase Price.

2.1.2 The remaining purchase price shall be paid at closing in cash or other immediately available funds.

2.1.3 Title to the Real Property and the Leased Land Improvements shall be conveyed by Statutory Warranty Deed (the "Deed"), subject only to the Permitted Exceptions (defined in Section 3 below).

2.1.4 The State Lease shall be assigned to Buyer in a form acceptable to the State (the "Assignment"). The boundary description of all state-owned submerged lands shall substantially subject to the State Lease shall substantially conform to the legal description attached as **Exhibit C**.

3. Title. Upon execution of this Agreement, Buyer shall obtain or cause the Escrow Holder (as defined below) to obtain a commitment for title insurance ("Title Report") with instructions that the original Title Report together with copies of documents creating exceptions thereon be delivered to Buyer with copy to Seller. The Title Report shall include both the Real Property, the Leased Land Improvements and the Leased Land. Buyer may also order, at its sole cost and expense, a survey of the Property (the "Survey"), prepared by a surveyor selected by Buyer, and certified to Buyer (and/or its assignee), any lender specified by Buyer and the Escrow Holder. Buyer shall have sixty (60) days after receipt of the Title Report and copies of documents creating exceptions thereon or sixty (60) days after the Effective Date, whichever is later (the "Objection Deadline"), to review the condition of title set forth in the Title Report and to deliver notice to Seller in writing of any objections Buyer may have, with reasons specified, of anything contained in the Title Report ("Buyer's Title Objections"). Any such item which Buyer shall not object to within the time period set forth above shall be conclusively deemed as approved by Buyer as Permitted Exceptions. If Buyer objects to any item contained in the Title Report, Seller shall have the option, but not the obligation, to satisfy such objection prior to closing. In the event Seller is unable or unwilling to satisfy such objections, for any reason, Seller shall give Buyer notice of such inability or unwillingness ("Seller's Title Notice") within ten (10) days of receipt of the Buyer's Title Objections. Buyer may either waive such objections or terminate this Agreement by delivering written notice to Seller within ten (10) days after receipt of Seller's Title Notice. Failure of Buyer to deliver such notice to Seller within such ten (10) day period shall be conclusively deemed Buyer's termination of this Agreement, in which case the Earnest Money will be returned to Buyer and the parties will have no further obligations under this Agreement except for return of the Earnest Money and any obligations that expressly survive the termination of this Agreement.

If Buyer does not terminate this Agreement following receipt of Seller's Title Notice, Seller agrees to preserve the condition of title to the Property so it can convey title to Buyer at Closing in the same condition existing at the time of Seller's Title Notice. The Property shall be sold and conveyed subject to (i) the lien of taxes not yet due and payable, (ii) reservation of an access easement to the adjacent public recreational pier as described in **Exhibit D**, (iii) recording of an easement or equivalent instrument setting out the terms of use of the fire suppression system that serves the Leased Land Improvements and adjacent public recreational pier as described in **Exhibit E** and (iv) such encumbrances, liens and title defects as are approved by Buyer pursuant to this Section 3. Such acceptable matters affecting title shall be collectively referred to as the "Permitted Exceptions."

Notwithstanding anything herein to the contrary, if the Title Report is updated after the Buyer Objection Deadline, Buyer shall have the right to object (each, a "New Buyer Objection") to any additional matter disclosed or contained (each, a "New Title Document Matter") in any such update of the Title Report. If Seller is unable or unwilling to cure any such New Title Document Matter to the sole satisfaction of Buyer (in Buyer's sole and absolute discretion) within the lesser of seven (7) days following receipt by Seller of a New Buyer Objection or the Closing Date, Buyer shall have the right either to (i) waive such New Title Document Matter and proceed to Closing without any adjustment in the Purchase Price, or (ii) terminate this Agreement and receive a return of the Earnest Money (in addition to any other remedies that Buyer may have under this Agreement if the New Title Document Matter was caused by a breach of a covenant or representation of Seller under this Agreement).

On the Closing Date, Seller shall cause the Escrow Holder (as defined below) to issue to Buyer its ALTA Standard Form Owner's Policy of Title Insurance, or if the Buyer has elected to obtain a Survey, its ALTA Extended Form Owner's Policy of Title Insurance in the amount of that portion of the Purchase

Price allocated to the Real Property and the Leased Land Improvements insuring fee simple title to the Real Property and the Leased Land Improvements to be vested in Buyer and its ALTA Standard Form Leasehold Owner's Policy of Title Insurance, or if the Buyer has elected to obtain a Survey, its ALTA Extended Form Leasehold Owner's Policy of Title Insurance in the amount of that portion of the Purchase Price allocated to the State Lease that the leasehold created by the State Lease is vested in Buyer (the "Title Policies"), which Title Policies shall show no exceptions or matters of record except the Permitted Exceptions as described herein.

4. Inspection. Within sixty (60) days after the Execution Date ("Inspection Period"), Buyer shall have approved in Buyer's sole discretion the physical condition of the Property and other matters affecting the suitability of the Property for Buyer's intended use. Within ten (10) days after the Execution Date, Seller shall provide Buyer with copies of all files, records, governmental permits, appraisals, plans, drawings, surveys and soil, engineering and environmental reports and all leases, maintenance contracts and other agreements relating to the Property that are in Seller's possession. At reasonable times and upon reasonable prior notice to Seller, Buyer and its representatives, agents, and contractors shall have the right to enter upon the Property, at Buyer's own cost and expense, with the right to conduct engineering studies, surveys, building inspections and other investigations, tests and studies in order to attempt to satisfy the condition set forth in this Section 4; provided, however, Buyer shall not undertake any invasive testing of the building or soil without Seller's prior written consent, which shall not be unreasonably withheld so long as Buyer submits a written plan to Seller describing the testing to be done and provides adequate insurance covering the of personal injury or property damage in coverage amounts reasonably acceptable to Seller. In the event of any damage to the Property resulting from Buyer's entry and inspection, Buyer shall promptly repair such damage and restore the Property. Buyer shall indemnify, defend and hold harmless Seller, its officers, directors, shareholders, employees, partners, members, successors and assigns from and against all claims, liens, liabilities, damages, losses, costs or expenses (including, without limitation, attorneys' fees) arising from or relating to the entry on or inspection of the Property by Buyer, its representatives, agents, contractors or invitees. Buyer's obligation to restore the Property and to indemnify, defend and hold harmless shall survive the termination of this Agreement and/or Closing. If, during the Inspection Period, Buyer does not approve the condition of the Property and other matters affecting the suitability of the Property for Buyer's intended use, Buyer may terminate this Agreement by written notice to Seller given no later than the expiration of the Inspection Period, in which case the Deposit shall be refunded to Buyer. In the event Buyer does not provide such termination notice to Seller on or before the expiration of the Inspection Period, Buyer shall have been deemed to have waived this condition.

5. Warranties.

5.1 Representations and Warranties of Seller. Seller hereby represents and warrants as of the date hereof and as of the Closing:

5.1.1 Contracts; Leases. There are no contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion thereof, including without limitation options to purchase or rights of first refusal. Except for the State Lease, no leases or other contracts for use of Property will be in effect as of the Closing. The State Lease has been properly executed by Seller as tenant and the State as lessor and is in full force and effect and has not been subleased, assigned, modified, supplemented or amended in any way. The State Lease commenced on November 1, 2018 and shall terminate on October 31, 2033. Subject to the terms of the State Lease, the tenant under the State Lease has the right to renew or extend the State Lease for successive fifteen (15) year periods. The State has not provided any notice, whether written or oral, to Seller of its intent to not renew the State Lease. The amount of annual rent under the State Lease is [REDACTED] which is due on November 1st of each year of the State Lease. No rent under the State Lease has been paid in advance of its due date. The State

is not in default under the State Lease and no event has occurred which, with the giving of notice or passage of time, or both, could result in a default by the State as lessor under the State Lease. There are no existing claims, defenses, or offsets which the Seller as tenant under the State Lease has against the enforcement of the State Lease by the State as lessor under the State Lease. The Seller is not in default under the State Lease and no event has occurred which, with the giving of notice or passage of time, or both, could result in a default by the Seller as tenant under the State Lease. There are no existing claims, defenses, or offsets which the State as landlord under the State Lease has against the enforcement of the State Lease by the Seller as tenant under the State Lease.

5.1.2 *Authority.* Seller is an Oregon municipal corporation duly organized, validly existing and in good standing under the laws of Oregon. Seller has made all filings necessary in the state in which the Property is located to own and operate the Property. Seller has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and consummate the transaction contemplated by this Agreement. All requisite action has been taken by Seller in connection with entering into this Agreement, and will be taken by Seller prior to the Closing in connection with the execution and delivery of the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons and entities signing this Agreement and the other documents contemplated by this Agreement on behalf of Seller has the legal right, power and authority to bind Seller.

5.1.3 *No Conflicts.* The execution, delivery and performance by Seller of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, federal, state or local laws, statutes, codes, regulations, rules, ordinances, orders, policy directives, judgments or decrees (including common law), including those of judicial and administrative bodies to which Seller or any portion of the Property is bound.

5.1.4 *Consents; Binding Obligations.* Except to the extent the State's approval is needed for the assignment of the State Lease, no approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Seller to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Seller to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

5.1.5 *Condemnation.* There is no pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has received no written notice and has no knowledge that any such proceeding is contemplated;

5.1.6 *Mechanic's Liens.* There are no known claims for labor performed for or materials furnished to or with respect to the Property which could give rise to a mechanic's lien on the Property;

5.1.7 *Environmental.* Except as disclosed in writing to Buyer, (i) Seller has complied with all material federal, state and local environmental laws, rules and regulations applicable to the Property and the use of the Property has complied with all material federal, state and local environmental laws, rules and regulations applicable to the Property and Seller's use of the Property; (ii) Seller has obtained and complied with all necessary environmental permits; (iii) the Property has not been used to generate, use, store, transport or dispose of any hazardous materials, as defined by applicable laws, except in each case in compliance with all applicable environmental laws, rules and regulations; (iv) there has not occurred any material spills, releases or threatened releases of hazardous materials on the Property,

including releases or threatened releases that affected any adjacent parcels of land; (v) all garbage, wastes, refuse, byproducts and other potential contaminants produced, used or stored on the Property have been disposed of by properly licensed waste removal companies, or other third parties or governmental authorities, in compliance with all requirements applicable to Seller under environmental laws, rules and regulations regulating such activities; (vi) to the knowledge of the Seller the Property (including the soil, subsoil and groundwater at or under the Property) does not contain any hazardous materials in amounts which could require any clean-up or remediation expenses or liabilities not covered by insurance; (vii) to the knowledge of the Seller there are no unregistered underground storage tanks located under the Property that are required to be registered under any applicable environmental laws, rules or regulations; (viii) no notice has been received by Seller identifying Seller as a "potentially responsible party" or requesting information under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) or any other environmental law, rule or regulation, with respect to any current investigation, suit, proceeding or other regulatory activity of any applicable federal, state or local environmental agency concerning the Property; (ix) there are no investigations, suits, administrative actions, demands, claims, hearings or proceedings concerning the Property alleging the violation of any environmental laws, rules or regulations; and (x) there are no consent decrees, orders, judgments or agreements with any federal, state or local environmental agencies in effect that materially restrict the use of the Property, except in each case for violations of or exceptions to the foregoing which in the aggregate do not or would not reasonably be expected to cause a material adverse effect on the Property.

5.1.8 *Title to Property.* Seller has good, marketable and insurable title to all of the Property free and clear of all mortgages, liens, pledges, encroachments, encumbrances, charges, agreements, claims, restrictions, and rights of parties in possession except the Permitted Exceptions (as defined in Section 3) and except as approved in writing by Buyer.

5.1.9 *Litigation.* There are no suits pending and there are no suits or proceedings threatened or contemplated with respect to the ownership, possession, use, development or condemnation of all or any part of the Property, and Seller knows of no pending, threatened, or contemplated governmental action which will adversely affect all or any part of the Property or the use of the Property.

5.1.10 *Access.* The Property has legal access to all streets adjoining the Property.

5.1.11 *No Adverse Claimants.* There are no claims, defects or boundary disputes affecting the Property; and no person claims any right to possession of the Property or any portion thereof adverse to Seller.

5.1.12 *Accuracy of Statements.* Neither this Agreement nor any of the exhibits, schedules, written statements, documents, certificates or other items furnished to Buyer by or on behalf of Seller with respect to this Agreement and the transactions contemplated hereby contains any untrue statement of a material fact or omits a material fact necessary to make each statement contained herein or therein not misleading.

5.2 Representations and Warranties of Buyer. Buyer hereby represents and warrants as of the date hereof and as of the Closing:

5.2.1 *Authority.* Buyer has the full right, power and authority to enter into this Agreement and all documents contemplated hereby, and consummate the transaction contemplated by this Agreement. All requisite action has been taken by Buyer in connection with entering into this Agreement, and will be taken by Buyer prior to the Closing in connection with the execution and delivery of the instruments referenced herein, and the consummation of the transaction contemplated hereby.

5.2.2 *No Conflicts.* The execution, delivery and performance by Buyer of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement, operating agreement, indenture, deed of trust, mortgage, contract, agreement (oral or written), judicial or administrative order, federal, state or local laws, statutes, codes, regulations, rules, ordinances, orders, policy directives, judgments or decrees (including common law), including those of judicial and administrative bodies to which Buyer is bound.

5.2.3 *Consents; Binding Obligations.* No approval or consent from any person (including any partners, shareholder, member, creditor, investor or governmental body) is required for Buyer to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Buyer to consummate the transaction at Closing contemplated hereby. This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms.

6. State Lease Covenants.

6.1 Seller agrees that it will take commercially reasonable steps to and will cooperate with Buyer in the following:

6.1.1 Prior to Closing, obtaining from the State an estoppel certificate confirming the following: the current term of the State Lease and any options to extend; that the State has not provided Buyer with any notice, whether written or oral, to Seller of its intent to not renew or allow renewal of the State Lease; the rent owed under the State Lease and the date through which rent has been paid; that the Seller as tenant under the State Lease is not in default under the State Lease and that no event has occurred, which, with the giving of notice or passage of time, or both, could result in a default by Seller as tenant under the State Lease (the "State Estoppel"); and

6.1.2 For the avoidance of doubt, it shall not be a condition to Buyer's obligation to close that the State provide the State Estoppel.

7. Conditions to Closing.

7.1 Buyer's Conditions. Buyer's obligation to consummate the transaction contemplated in this Agreement shall be subject to the satisfaction of the following conditions precedent on and as of the Closing Date, or as otherwise specified below, to the reasonable satisfaction of Buyer or the waiver thereof by Buyer, which waiver shall be binding upon Buyer only to the extent made in writing:

7.1.1 Possession of all of Seller's right, title, and interest in and to the Property free and clear of any and all liens, encumbrances, claims, easements, restrictions, covenants, and conditions other than the Permitted Exceptions.

7.1.2 Seller shall execute, acknowledge (if necessary), and deliver in escrow to the Escrow Holder (as defined below), for delivery to Buyer at the Closing, the documents set forth in Section 8.2.

7.1.3 Buyer shall receive the Title Policy, from the Escrow Holder (as defined below) in form satisfactory to Buyer and showing no liens on title, other than the Permitted Exceptions.

7.1.4 The State as lessor under the State Lease shall have consented in writing to the

assignment to Buyer of all rights of the lessee under the State Lease and in granting such consent the State shall have agreed in writing to the renewal of the State Lease for an additional 15 year period (the "Landlord Consent") and no notice shall have been given by the State to the effect that the Seller as lessee is in default under the State Lease or that the State will not renew or not allow renewal of the State Lease.

7.1.5 The representations and warranties of Seller contained in this Agreement shall be true and complete in all material respects as of the Closing Date and Seller shall comply in all material respects with the terms and provisions of this Agreement, in each case subject only to exceptions permitted by this Agreement.

7.1.6 Seller shall have performed all of its obligations which are required to be performed by Seller under this Agreement prior to the Closing Date.

7.2 Seller's Conditions. Seller's obligation to consummate the transactions contemplated in this Agreement and deliver or cause to be delivered title to the Property shall be subject to the satisfaction of the following conditions precedent on and as of the Closing Date, or as otherwise specified below, to the reasonable satisfaction of Seller or the waiver thereof by Seller, which waiver shall be binding upon Seller only to the extent made in writing:

7.2.1 Buyer shall deliver to Escrow Holder (as defined below) the Purchase Price due pursuant to Section 2.1 hereof.

7.2.2 Buyer shall deliver to Seller or, if applicable, to Escrow Holder (as defined below) to be held in Escrow in accordance with the terms of this Agreement, on or before the Closing Date the documents set forth in Section 8.3.

7.2.3 The representations and warranties of Buyer contained in this Agreement shall be true and complete in all material respects as of the Closing Date and Buyer shall comply in all material respects with the terms and provisions of this Agreement, in each case subject only to exceptions permitted by this Agreement.

7.2.4 Buyer shall have performed all of its obligations which are required to be performed by Buyer under this Agreement prior to the Closing Date.

7.3 Conditions Generally. The foregoing conditions are for the benefit only of the party for whom they are specified to be conditions precedent and such party may, in its sole discretion, waive any or all of such conditions and proceed with the Closing under this Agreement without any increase in, abatement of or credit against the Purchase Price.

8. Closing.

8.1 Time and Place of Closing; Escrow Holder. Subject to the satisfaction or waiver by Buyer or Seller, as applicable, in the exercise of their sole discretion, of the closing conditions set forth in Section 7 above, the closing of the transaction contemplated hereby (the "Closing") shall take place on or before [REDACTED]. The date on which the Closing occurs shall be referred to herein as the "Closing Date." Within five (5) business days of the Effective Date, Buyer shall open escrow with Western Title and Escrow, whose address is 255 SW Coast Hwy, Suite 100, Newport, Oregon ("Escrow Holder").

8.2 Seller's Deliveries. On or before the Closing Date, Seller shall deposit with Escrow Holder the following:

8.2.1 the Deed conveying the Property to Buyer duly executed by Seller and acknowledged;

8.2.2 the Assignment duly executed by Seller and acknowledged;

8.2.3 the Termination of Lease duly executed by Seller and acknowledged;

8.2.4 an easement reserving public access across the Real Property to the adjacent public recreational pier duly executed by Seller and acknowledged;

8.2.5 an easement or equivalent instrument setting out the terms of use of the fire suppression system that serves the Leased Land Improvements and adjacent public recreational pier duly executed by Seller and acknowledged;

8.2.6 the Landlord Consent duly executed by the State and acknowledged (unless the terms of such Landlord Consent are included within the Assignment);

8.2.7 a certificate, in form and substance reasonably acceptable to Buyer, of Seller to the effect that the representations and warranties of Seller set forth in this Agreement are true and complete in all material respects on and as of the Closing Date and that Seller has complied in all material respects with all covenants of Seller set forth herein, which have not been waived by Buyer, as applicable;

8.2.8 such agreements or statements as may be reasonably required by the Escrow Holder in order to issue the Title Policy as described in Section 3, including as may be required by the Escrow Holder in order to issue a gap endorsement and, if Buyer elected to obtain the Survey and receive an ALTA Extended Form Owner's Policy of Title Insurance, delete all standard exceptions to the Title Policy, including, without limitation, the exceptions related to the parties in possession and mechanic's lien, provided that Seller shall not be required to execute and deliver to the Escrow Holder any agreements or statements to facilitate the issuance of any other endorsements unless Seller specifically agrees to provide such endorsements.

8.2.9 such proof of authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any documents or certificates on behalf of Seller as may be reasonably required by Escrow Holder.

8.2.10 an affidavit of non-foreign status pursuant to Section 1445 of the Internal Revenue Code;

8.2.11 funds to pay all closing costs and expenses to be paid by Seller; and

8.2.12 such other instruments and documents reasonably required to close the transaction and consummate the purchase and sale of the Property.

8.3 Buyer's Deliveries. On or before the Closing Date, Buyer shall deposit with Escrow Holder the following:

8.3.1 the Purchase Price;

8.3.2 the Assignment duly executed by Buyer and acknowledged;

8.3.3 the Termination of Lease duly executed by Buyer and acknowledged;

8.3.4 an easement reserving public access across the Real Property to the adjacent public recreational pier duly executed by Buyer and acknowledged;

8.3.5 an easement or equivalent instrument setting out the terms of use of the fire suppression system that serves the Leased Land Improvements and adjacent public recreational pier duly executed by Buyer and acknowledged;

8.3.6 a certificate, in form and substance reasonably acceptable to Seller, of Buyer to the effect that the representations and warranties of Buyer set forth in this Agreement are true and complete in all material respects on and as of the Closing Date and that Buyer has complied in all material respects with all covenants of Buyer set forth herein, which have not been waived by Seller, as applicable;

8.3.7 such proof of authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any documents or certificates on behalf of Buyer as may be reasonably required by Escrow Holder;

8.3.8 funds to pay all closing costs and expenses to be paid by Buyer; and

8.3.9 such other instruments and documents reasonably required to close the transaction and consummate the purchase and sale of the Property.

9. Closing Costs and Prorations.

9.1 Closing Costs. Each party shall pay its own costs and expenses arising in connection with the Closing (including its own attorneys' and advisors' fees, charges and disbursements), except the costs set forth in this paragraph which shall be allocated between the parties as set forth herein. Seller shall pay (i) a real estate commission in the amount of 5.0% of the Purchase Price to be split evenly between Buyer and Seller agents, (ii) the premium for the Title Policy (excluding any extended coverage premium and any endorsements to such Title Policy), (iii) any documentary, transfer, stamp, sales, use, gross receipts or similar taxes related to the transfer of the Property and the recording costs for the Deed, (iv) all costs associated with obtaining releases of any debt and any other liens encumbering the Property (including without limitation any prepayment premiums or penalties) and removing any and all title exceptions, which are not Permitted Exceptions, and (v) one-half of the customary closing costs and escrow fees of the Escrow Holder related to the transfer of the Property. Buyer shall pay for the extended coverage portion of the Title Policy, if any, and one-half of the customary closing costs and escrow fees of the Escrow Holder related to the transfer of the Property.

9.2 Prorations. Taxes, assessments, and utilities shall be prorated as of the Closing Date.

10. Attorneys' Fees. If it shall be necessary for either Seller or Buyer to employ an attorney to enforce their rights pursuant to this Agreement because of the default of the other party, the defaulting party shall reimburse the non-defaulting party for reasonable attorneys' fees and expenses. This Section 10 shall survive the Closing or termination of this Agreement.

11. Default. Time is of the essence of this Agreement. Upon the expiration of ten (10) days' written notice from either party stating the other party has failed to perform their obligations hereunder, such party shall be deemed to be in default. Upon a default occurring, the non-defaulting party may at its/their election:

11.1 Default by Seller. If the Seller is the defaulting party, Buyer may terminate this Agreement and seek return of the Earnest Money; as its sole and exclusive remedy;

11.2 Default by Buyer. If the Buyer is the defaulting party, Seller may terminate this Agreement and retain all Earnest Money deposited hereunder as liquidated damages as its sole and exclusive remedy. **Buyer and Seller have considered carefully the loss to Seller occasioned by taking the Property off the market as a consequence of the negotiation and execution of this Agreement, the expenses of Seller incurred in connection with the preparation of this Agreement and Seller's performance hereunder, and the other damages, general and special, which Buyer and Seller realize and recognize Seller will sustain but which Buyer and Seller agree would be impracticable or extremely difficult to calculate at this time if Buyer so defaults. Based on all those considerations, Buyer and Seller agree that the Earnest Money represents a reasonable estimate of Seller's damages. Seller agrees to accept the Earnest Money as Seller's total damages and relief hereunder if Buyer defaults in its obligations to close hereunder, Seller waiving all other rights and remedies.**

INITIALS Buyer: _____ Seller: _____

12. Notices. All notices, consents, reports, demands, requests and other communications required or permitted hereunder ("Notices") shall be in writing, and shall be: (a) personally delivered with a written receipt of delivery; (b) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; or (c) sent by PDF or email with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) or (b). All Notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery; and provided further, however, that Notices given by PDF or email shall be deemed given when received. Each party shall be entitled to change its address for Notices from time to time by delivering to the other party Notice thereof in the manner herein provided for the delivery of Notices. All Notices shall be sent to the addressee at its address set forth below:

To Seller: Derrick Tokos, Director
Community Development Department
City of Newport
169 SW Coast Hwy
Newport, OR 97365
Email: d.tokos@newportoregon.gov

With copy to: David Allen, City Attorney
169 SW Coast Hwy
Newport, OR 97365
Email: d.allen@newportoregon.gov

To Buyer: Arthur N. Hoppe

With copy to:

13. Condemnation or Casualty. If, prior to the Closing Date, all or a part of the Property is taken by eminent domain, or if Seller receives notice that proceedings for such a taking have been threatened or commenced by a governmental authority with power to condemn, or if prior to the Closing Date, all or a part of the Property is damaged by fire or other casualty, then within ten (10) days of the Seller learning of such occurrence, the Seller shall give written notice thereof to the Buyer and to any broker(s) in this transaction ("Damage Notice").

The Damage Notice shall describe such occurrence and whether such occurrence has been reasonably determined by the Seller to be Substantial or Insubstantial. The term "Substantial" means an occurrence with a dollar value, as reasonably determined by Seller, which is equal to or greater than one percent (1%) of the Purchase Price. The term "Insubstantial" means an occurrence with a dollar value, as reasonably determined by Seller, which is less than one percent (1%) of the Purchase Price.

If the occurrence described in the Damage Notice has been reasonably determined and described by Seller as Insubstantial, then neither Party shall have the right to terminate this Agreement due to such occurrence.

If the occurrence described in the Damage Notice has been reasonably determined and described by Seller as Substantial, then on or prior to the Closing Date, either Seller or Buyer may terminate this Agreement, by written notice given by the terminating Party to the other Party and to any Broker(s) in this transaction ("Substantial Damage Termination Notice"), in which case this Agreement shall immediately terminate without obligation or liability of Seller or Buyer to each other or to any such Broker(s); provided, however, that Buyer shall have the right to elect, within ten (10) days of its initial receipt of a Damage Notice from Seller, to proceed to Closing ("Buyer's Election to Proceed") notwithstanding such occurrence. A timely Buyer's Election to Proceed shall override any Substantial Damage Termination Notice issued by the Seller.

In the event that Buyer proceeds to Closing because the Damage Notice describes an occurrence which is Insubstantial, or if Buyer elects to proceed to Closing notwithstanding that the Damage Notice describes a Substantial occurrence, then the Purchase Price payable by Buyer at Closing shall remain the same without any reduction or adjustment, and the Seller shall have no liability whatsoever to the Buyer in respect to the taking, threatened taking or casualty damage, but the Seller shall deliver to the Buyer, on the Closing Date, the amount of any applicable condemnation or insurance proceeds received by Seller before Closing (except for insurance proceeds, if any, already expended on repairs to the Property), and Seller shall also deliver at Closing such other documents as the Buyer may reasonably request to substitute itself for the Seller in any pending eminent domain proceedings or as claimant for any applicable casualty insurance coverage, if any. The Buyer shall bear all risk of loss from any inadequately compensated taking or threatened taking, or from any uninsured or under-insured casualty loss, including, without limitation, any applicable insurance limits or exclusions, and/or any applicable insurance deductibles or self-insured retentions.

In the event that the scheduled Closing Date does not allow sufficient time for the Seller or Buyer to exchange the Notices contemplated by this Section in the event of a condemnation or casualty occurrence as described herein, the Closing Date will be extended by a sufficient number of days to allow such time.

14. Assignment. Buyer shall have the right to assign this Agreement and all of its rights hereunder with prior approval of Seller, which approval shall not be unreasonably withheld. Upon such an assignment, Buyer shall be relieved of all obligations under this Agreement from and after the date of such assignment and upon the assignee thereunder assuming all of Buyer's obligations hereunder.

15. Entire Agreement; Conflicts. To the extent there are any inconsistencies or conflicts between provisions in this Addendum A and the Commercial Real Estate Purchase and Sale Agreement dated 10/31/2024, this Addendum A shall control and prevail.

16. Successors and Assigns. The provisions of this Agreement shall apply to and bind the executors, administrators, and successors and permitted assigns of the respective parties hereto.

17. Survival. All representations, warranties and covenants of any party hereto contained in this Agreement shall survive the Closing.

18. Governing Law; Venue. The laws of the state of Oregon shall govern the validity, enforcement, and interpretation of this Agreement, without regard to conflict of law principles. Any dispute or cause of action under this Agreement shall be resolved in a court of competent jurisdiction in Lincoln County, Oregon.

19. Integration; Modification; Waiver. This Agreement constitutes the complete and final expression of the agreement of the parties relating to the Property, and supersedes all previous Agreements, agreements and understandings of the parties, either oral or written, relating to the Property. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) executed by the party against whom enforcement of the modification or waiver is sought.

20. Time. Time is of the essence of this Agreement.

21. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event on which the designated period of time begins to run shall not be included and the last day of the period so computed shall be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the next day which is not a Saturday, Sunday or a legal holiday. Further, unless otherwise specified, any reference to a specified number of days shall be deemed to refer to calendar days. This obligation shall survive the termination of this Agreement.

22. Facsimile/Email Transmission. Signatures delivered by facsimile transmission or scanned email attachment shall be as valid and binding as original signatures personally delivered to the parties themselves. At the request of either party, the parties will confirm facsimile transmitted signatures by signing an original document.

23. Statutory Disclaimer ORS 93.040(2). THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS

30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

24. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

BUYER:

Arthur N. Hoppe

By:

SELLER:

The City of Newport, an Oregon municipal corporation

By: Christina Vetter

Its: City Manager

Attached Exhibits

Exhibit A - Legal Description of Real Property

Exhibit B - State of Oregon Submerged and Submersible Land Lease No. ML-10492/APP#11546

Exhibit C - Updated Legal Description for Lease No. ML-10492/APP#11546

Exhibit D - Draft Access Easement to the Adjacent Public Recreational Pier

Exhibit E - Draft Easement Setting Out Terms of Use of the Shared Fire Suppression System

LEGAL DESCRIPTION

All that certain parcel of ground lying and being between the United States harbor line and the easterly line of Bay Boulevard of the City of Newport, described as follows:

Beginning at a point on the southeast line of Bay Boulevard that is duly opposite the southeast corner of Lot 1 in Block 3 in the original TOWN OF NEWPORT, OREGON; thence along the southeast line of Bay Boulevard in a southwesterly direction a distance of 80 feet; thence in a southeasterly direction and at right angles with said Bay Boulevard to the United States harbor line; thence northwesterly along the said United States harbor line 80 feet; thence at right angles to the point of beginning.

**STATE OF OREGON
DEPARTMENT OF STATE LANDS
AMENDED AND RESTATED
SUBMERGED AND SUBMERSIBLE LAND LEASE**

11546-ML

This Lease is an amendment to and restatement of that certain submerged and submersible lands lease, ML-10492/APP#11546, dated the 4th day of January, 2001, by and between the State of Oregon, by and through the Oregon State Land Board and the Department of State Lands, and City of Newport, as Lessee:

The State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("State"), hereby leases to the person(s) herein named ("Lessee"), the following described lands on the terms and conditions stated herein (the "Lease"):

NAME of LESSEE:
City of Newport

ADDRESS:
169 SW Coast Highway
Newport OR 97365

Legal classification of Lessee is a Municipal Corporation,

Lands situated in Lincoln County more fully described as follows:

All state-owned submerged lands in the Yaquina Bay in Section 8, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon, more particularly described as follows:

Commencing at a point at the Southwestern corner of Lincoln County Tax Lot 01300, map number 111108CA, (44.62834426°, -124.05516052°) thence riverward along the Southerly line of said tax lot a distance of 15 feet, more or less, to the line of pre-fill Mean Low Tide and the TRUE POINT OF THE BEGINNING;

thence riverward along a line perpendicular to the thread of the stream a distance of 75 feet;

thence upstream and parallel to the line of pre-fill Mean Low Tide a distance of 50 feet;

thence shoreward along a line perpendicular to the thread of the stream a distance of 75 feet to the line of pre-fill Mean Low Tide;

thence downstream along said line of pre-fill Mean Low Tide a distance of 509 feet, more or less, to the TRUE POINT OF BEGINNING,

containing 3,750 square feet, more or less, and as shown on the attached Exhibit "A".

Total number of acres: 0.09 acres, more or less.

This description is used to establish the approximate location and extent of the area subject to this Department of State Lands authorized use and was not prepared by a licensed surveyor. All locations, bearings, and distances were developed in the Oregon Coordinate Reference System Standard; Oregon Statewide Lambert Conformal Conic, NAD 1983, International Feet, GRS 1980 Spheroid.

Hereinafter referred to as the "Leasehold".

SECTION 1 - LEASE TERM; RENEWAL; TERMINATION

- 1.1 **Term:** This Lease will continue for a period of 15 years commencing on November 1, 2018, the month and date of which will be known as the "Lease Anniversary Date," and expiring on October 31, 2033, unless terminated earlier as provided under Section 1.4 or Section 7.2 below.
- 1.2 **Renewal:** Lessee may apply to renew this Lease for successive 15 year terms by submitting a completed lease renewal application form to State not less than 180 days prior to the expiration of the current term. Upon receipt of the application, State shall renew this Lease unless:
 - 1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes or Oregon Administrative Rules; or
 - 1.2.2 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0260.
- 1.3 **Notice of Intent Not to Renew:** Except as otherwise provided in this Lease, State shall provide written Notice to Lessee two years in advance if State intends not to renew this Lease for all or any portion of the Leasehold. If State determines not to renew this Lease, but less than two years remain in the Lease term, State shall, at Lessee's request, extend the term of this Lease to complete the two year Notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.
- 1.4 **Termination Upon Mutual Consent:** This Lease may be terminated by mutual written consent of Lessee and State.
- 1.5 **Holdover:** If Lessee does not vacate the Leasehold at the expiration or upon termination of the Lease, State may treat Lessee as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and Rent. State may unilaterally establish a new Rent for the month-to-month tenancy, payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this Section, the tenancy will be

terminable at the end of any monthly rental period upon Notice from State given not less than 30 days prior to the termination date specified in the Notice.

SECTION 2 – RENT; OTHER ASSESSMENTS

- 2.1 **Initial Annual Rent:** The rental payment to be paid by Lessee to State (the "Rent") for the first year of the Lease is \$2,304.75, based on the following Flat Rate. Receipt of the first year's Rent is hereby acknowledged.

Use Class	Area (square ft.)	Rate Choice	Annual Rent
Non-Marine Use	3,750 square feet	Flat Rate	\$2,304.75
		TOTAL	\$2,304.75

- 2.2 **Annual Rent Adjustment:** The Rent will be adjusted annually in accordance with the provisions of OAR 141-082-0305 in effect at the time. Each payment is due on the Lease Anniversary Date established in Section 1.1.
- 2.3 **Address for Rent Payments:** Until State provides Notice of a change in address (using a method described in Section 10.4), Lessee shall deliver all Rent payments to the following address:
- Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 97301-1279
- 2.4 **Assessments:** Lessee shall pay all taxes or assessments, or both, that are levied against the Leasehold, whether or not such taxes or assessments, or both, have been levied in the past against the Leasehold or State by the assessing agency.
- 2.5 **Liens:** With the exception of mortgages or other security interests authorized by State under Section 6, Lessee shall immediately cause to be discharged any lien or other charge placed on the Leasehold or its Improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Lease if Lessee fails to discharge any lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten days Notice to do so by State. Lessee shall pay and indemnify State for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether the costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 2.6 **Late Charges and Interest:** Late payments by Lessee of Rent and other charges due under the Lease will cause State to incur costs and other damages not otherwise addressed in this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. In recognition of the foregoing, the parties agree that, notwithstanding other remedies permitted under the Lease and in addition to

these remedies, if Lessee has not made full payment of amounts due within 20 days of the date payment is due, Lessee shall pay an additional charge equal to five percent of the amount of the late Rent or other charge. In addition, all amounts due and owing under this Lease, including late charges, will bear interest at the lower of: (a) the highest interest rate allowable by law, or (b) 12% per year.

SECTION 3 - USE AND RESTRICTIONS ON USE

- 3.1 Authorized Use: This Lease grants to Lessee the right to use the Leasehold for the specific purpose(s) described below in accordance with the Lease terms and conditions, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Non-Marine Use

- 3.2 Restrictions on Use: Lessee shall:

3.2.1 comply with all applicable local, state and federal laws and regulations affecting the Leasehold and its use, including local comprehensive land use planning and zoning ordinances, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use;

3.2.2 dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the Leasehold, and, if Lessee allows debris, garbage or other refuse to accumulate within the Leasehold, allow State to remove the debris, garbage and other refuse, and collect the cost of such removal from Lessee;

3.2.3 not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the Leasehold except with written permission of State, and promptly report to State the cutting or removal of vegetation by other persons;

3.2.4 conduct all operations within the Leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or the growth of noxious weeds;

3.2.5 maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements (each an "Improvement") in a good state of repair; and

3.2.6 not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.

- 3.3 Condition of Leasehold and Improvements: Lessee represents that it has inspected the Leasehold and Improvements, if any, and accepts the Leasehold and all Improvements in their present condition, AS IS. State has made no oral or written representations concerning the condition of the Leasehold or its Improvements, if any, nor their fitness or suitability for any purpose.
- 3.4 Limitation on Improvements: Lessee may not construct or place upon the Leasehold any Improvement that exceeds \$15,000 in cost or value unless Lessee has first obtained the prior written authorization of State or the Improvement is exempt under OAR 141-082-0265. State shall not unreasonably withhold or delay its approval for Improvements consistent with the purposes of this Lease. All Improvements must be consistent with the authorized use(s) of this Lease stated in Section 3.1 and in compliance with all applicable laws, regulations, and ordinances as stated in Section 3.2.1.
- 3.5 Disposition of Unauthorized Improvements or Structures: Lessee shall remove all unauthorized Improvements from the Leasehold upon receiving Notice from State, unless State elects to remove the Improvements at Lessee's cost and expense.
- 3.6 Removal of Authorized Improvements: Lessee shall remove all authorized Improvements within 90 days after the termination or expiration of the Lease or modification of the Lease under Section 4.2, unless otherwise agreed by the parties or the Improvement is exempt under OAR 141-082-0265. Lessee is responsible for any damage done to the Leasehold as a result of the removal of any Improvement. Any Improvement remaining on the Leasehold after the 90 days will at the option of State become the property of State, unless otherwise agreed by the parties.
- 3.7 Liability: Lessee shall defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses, including expert witness fees and costs and attorney's fees in an administrative proceeding, at trial, or on appeal ("Claims") arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold. As used in this Section 3.7 only, "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents. Lessee shall have control of the defense and settlement of any Claim; however, neither Lessee nor any attorney engaged by Lessee shall defend the Claim in the name of the State, nor purport to act as legal representative of State, without the approval of the Attorney General, nor shall Lessee settle any Claim on behalf of State without the approval of the Attorney General. State may, at its election and expense, assume its own defense and settlement in the event that State determines that Lessee is prohibited from defending State, that Lessee is not adequately defending the State's interests, or that an important governmental principle is at issue and the State desires to assume its own defense.

3.8 Waste Water Disposal: In addition to any other applicable laws and regulations, Lessee shall obtain any permits required by state or local authorities and shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and waste water disposal for boats and floating structures.

3.9 Hazardous Substances:

3.9.1 Lessee shall not use, store, or dispose of, or allow the use, storage, or disposal within the Leasehold of any material that may pose a threat to human health or the environment, including without limitation, hazardous substances, pesticides, herbicides, or petroleum products (a "Hazardous Substance") except in strict compliance with applicable laws, regulations and manufacturer's instructions, and Lessee shall take all necessary precautions to protect human health and the environment and to prevent the release of any Hazardous Substance on or from the Leasehold.

3.9.2 Lessee shall keep and maintain accurate and complete records of the amount of all Hazardous Substances stored or used on the Leasehold, and shall immediately notify State of any release or threatened release of any Hazardous Substance on or from the Leasehold or otherwise attributable to operations or activities on the Leasehold.

3.9.3 If any Hazardous Substance is released, and the release arises from or is attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold, Lessee shall promptly and fully remediate the release in accordance with state and federal regulations and requirements. If Lessee fails to so remediate, State may remove and remediate any release of a Hazardous Substance on or from the Leasehold or attributable to operations or activities conducted or allowed by Lessee on the Leasehold and collect the cost of removal or remediation from Lessee either as additional Rent or as damages.

3.9.4 In addition to any duty to indemnify specified elsewhere in this Lease, Lessee shall indemnify State to the fullest extent allowed by Oregon law against any claim or costs arising from or related to a release of a Hazardous Substance arising from or attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold.

3.10 Weed Control: Lessee shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the Leasehold as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests or diseases, or as may be authorized or directed by State.

SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 Change of Leasehold Area or Use: Lessee may request that State amend the Lease to expand or reduce the size, or change the authorized use, of the Leasehold using a form provided by State. However, no such amendment will be effective unless authorized in writing by State. State shall process and review requests to amend the Lease in the same manner as a new lease application.
- 4.2 Special Conditions Applicable to Reductions in Leasehold Area. This Lease may be amended to reduce the Leasehold area only if the portion of the Leasehold to be removed from the Lease does not contain any Improvement. If the amendment results in a reduction of Rent due under the Lease, the reduction will be effective commencing on the Lease Anniversary Date that falls at least 12 months after the later of: (a) the date of the reduction in the Leasehold area; or (b) the date on which the amendment is fully executed.
- 4.3 Lessee Liable for Violations. Notwithstanding any reduction in the Leasehold area under this section, Lessee shall remain liable for any violation of Section 3.8 or 3.9 occurring on lands removed from the Leasehold prior to the amendment removing such lands.

SECTION 5 – RESERVATIONS

- 5.1 Access: State reserves a right of access to the Leasehold, which, subject to any applicable provisions of the Oregon Residential Landlord and Tenant Act, ORS chapter 90, the State may exercise at all reasonable times to inspect and manage the State's interest in the Leasehold and to evaluate and ensure compliance with the terms and conditions of this Lease. State may examine pertinent records of Lessee for the purpose of ensuring compliance with the Lease.
- 5.2 Minerals: State reserves all rights to coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes including, without limitation, the right to explore, mine, develop, produce and remove such minerals and other deposits, along with the right of ingress and egress for these purposes, and to terminate this Lease as to all or any portion of the Leasehold when required for these purposes with 120 days prior written Notice to Lessee or as otherwise provided by law.
- 5.3 Easements: State reserves the right at any time to grant easements across the Leasehold for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, along with the right of ingress and egress for these purposes, subject to the inclusion in any such grant of easement of a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in the Lease.

- 5.4 Public Access and Recreational Use: All state-owned submerged and submersible land must remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by State to public entry pursuant to the provisions of applicable Oregon Administrative Rules. Lessee may request State, but State is not obligated, to close the Leasehold to public entry or restrict recreational use by the public on all or portions of the Leasehold to protect persons or property from harm arising from or in connection with Lessee's activities.

This reservation does not grant the public any right to use or occupy, without Lessee's permission, Lessee-owned property or structures authorized under this Lease.

- 5.5 Other: State reserves all other rights not expressly granted to Lessee under this Lease.

SECTION 6 – ASSIGNMENTS; SUBLEASES

- 6.1 Assignment and Sublease:

6.1.1 Except as provided in Section 6.2, Lessee may not assign this Lease or sublease the Leasehold or any portion of the Leasehold nor enter into any third party agreement respecting the Lease or the Leasehold without first obtaining the prior written consent of State pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing using an application form prescribed by State. The application must be received by State at least 30 calendar days prior to the proposed effective date of the sublease or assignment. State shall make a good faith effort to complete its review of Lessee's application within 30 days following receipt. If the application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications may be extended and the proposed sublease or assignment may be delayed pending the completion of such review.

6.1.2 State reserves the right to condition its consent to an assignment or sublease as State deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest will be required to comply with all of Lessee's obligations under this Lease, and the applicable Oregon Administrative Rules. Lessee will remain liable for the performance of all obligations under this Lease unless State's written consent expressly releases Lessee from further liability.

6.1.3 For the purposes of this section, if Lessee is a corporation or partnership or limited liability company, the transfer of any corporate stock or partnership or membership interest (including by operation of law) will be deemed an assignment subject to the provisions of this section if the result of the transfer is a change of management control or controlling interest in Lessee.

6.1.4 Lessee may not grant a mortgage or security interest in this Lease without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the creditor will require the prior written approval of State.

6.2 Permitted Assignments and Subleases: Notwithstanding Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of Lessee's interest in the Leasehold are permitted and written Notice to State is not required:

6.2.1 subleases of portions of Lessee's interest in the Leasehold area in the ordinary course of Lessee's business for the purposes approved under Section 3.1;

6.2.2 the sublease of the entire Leasehold for a term that is less than one year for a purpose specified in Section 3.1; or

6.2.3 the transfer of Lessee's interest in the Lease to a surviving spouse or immediate family member following the death of Lessee; except that, any other transfer of ownership following the death of Lessee is considered an assignment requiring State's approval.

SECTION 7 – DEFAULT

7.1 Default: The following are events of default:

7.1.1 Failure of Lessee to pay any rent, tax, reimbursement or other charge or payment due under the Lease within 20 days after the date payment is due. For the purposes of this subsection, if the due date for payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, payment is due on the date set forth in the Notice from State to Lessee informing Lessee of its obligation to pay the charge or payment.

7.1.2 Failure of Lessee to comply with any non-payment-related term or condition or obligation of the Lease within 30 days after Notice by State specifying the nature of the deficiency, or, in the event of an emergency, within the time specified by State to resolve the emergency. Upon timely request from Lessee, State may in its good faith discretion permit the deadline for curing non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the 30 day period; (2) the interests of State will not be harmed by an extension; (3) default was not due to the willful act or gross negligence of Lessee; and (4) State and Lessee mutually agree upon a written plan and timeline for curing the non-compliance.

7.1.3 Any of the following:

- a) insolvency of Lessee;
- b) the filing by Lessee of a voluntary petition in bankruptcy;

- c) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee;
- d) the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 days after filing; or
- e) attachment of or the levying of execution on the Leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

If Lessee consists of two or more individuals or business entities, the events of default specified in this paragraph apply to each individual or entity unless within ten days after an event of default occurs the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned under Section 6 of this Lease, the events of default specified in this subsection apply only with respect to the one then exercising the rights of Lessee under the Lease.

7.1.4 Notwithstanding the above, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or the discharge of its Constitutional obligations with respect to the land, State may declare an immediate default without any right of Lessee to cure the deficiency.

- 7.2 Termination of Occupancy Upon Default: State may terminate Lessee's right to occupy the Leasehold for any default by Lessee that remains uncured past the time provided in Section 7.1. State shall exercise its right to terminate Lessee's occupancy under this section by providing Notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under the Lease upon the date provided in the Notice. State may recover from Lessee all costs arising out of State's re-entry and, if State and Lessee mutually agree to terminate the Lease as provided in Section 1.4, all costs of re-letting the Leasehold. If State and Lessee mutually agree to terminate the Lease, State may recover the amount of unpaid rent that otherwise would have been required to be paid under the Lease from the date of default until a new Lease has been secured or, if State and Lessee do not agree to terminate the Lease and State is unable to secure another lessee for the Leasehold, until such time as the Lease expires. Lessee shall dispose of all Improvements as specified in Section 3.6 of this Lease. If Lessee owns a floating home and has placed the home on the Leasehold pursuant to the provisions of Section 3.1 of this Lease, the lease termination provisions of ORS chapter 90 will apply to the extent the provisions of this Lease are inconsistent with this chapter.

- 7.3 State's Right to Cure Defaults:

7.3.1 If Lessee fails to perform any obligation under this Lease, State may perform the obligation of the Lease 30 days after providing Notice to Lessee. All of State's expenditures to carry out the obligation must be reimbursed by Lessee on demand with interest at the rate of one percent per month accrued from the date of expenditure by State.

7.3.2 Notwithstanding Section 7.3.1, but subject to ORS chapter 90 if applicable, if any violation of a term or condition of this Lease, including without limitation use of the Leasehold in a manner not permitted under the Lease, is causing or threatens to cause personal injury or damage to the Leasehold or other property, or if damage to the Leasehold arises from some other cause, State may immediately enter upon the Leasehold and take such action as it deems necessary to stop the use or mitigate the injury or damage. If the injury or damage is due to a violation of the terms or conditions of this Lease, Lessee will be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate the injury or damage. State, at its option, may send Notice to Lessee of the violation and, upon receipt of the Notice, Lessee shall immediately cease the violation and repair the injury or correct all damage caused by the violation. State's failure to provide Notice of a violation may not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

SECTION 8 – INSURANCE; BONDS

- 8.1 LESSEE shall maintain during the term of this Lease, the required insurance coverages described in attached Exhibit B.
- 8.2 Bond: State reserves the right to require Lessee to furnish to State a surety bond or an equivalent cash deposit or certificate of deposit, in an amount to be determined by State in the exercise of its reasonable discretion, which names the State of Oregon as co-owner to ensure that Lessee will perform in accordance with all terms and conditions of the Lease.

SECTION 9 - ADDITIONAL CONDITIONS AND STIPULATIONS

- 9.1 None.

SECTION 10 - MISCELLANEOUS

- 10.1 Entire agreement: This Lease, together with the attached exhibits and attachments, constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Lease will bind either party unless in writing. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given, and will be valid and binding only if it is signed by each party. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Lease. This Lease supersedes all prior or existing lease or rental agreements between the parties with respect to the Leasehold described in this Lease.

- 10.2 **No Partnership:** State is not a partner nor in a joint venture with Lessee in connection with any business carried on in connection with this Lease or the Leasehold and has no obligation for Lessee's debts or other liabilities.
- 10.3 **Non-Waiver:** Waiver by either party of strict performance of any provisions of this Lease will not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

10.4 **Notices:**

10.4.1 Any communication required by the terms of this Lease to be given in writing (hereafter, a "Notice") must be given or be served by:

- a) depositing the same in the United States mail, postage prepaid; registered or certified mail, with return receipt requested; or
- b) personal delivery service with all charges billed to shipper; or
- c) expedited delivery service with all charges billed to shipper; or
- d) prepaid telegram, telex or facsimile;

addressed to the party for whom the Notice is intended at the address set forth below or at such other address as the party may designate from time to time.

For Notices to Tenant:

City of Newport
169 SW Coast Highway
Newport, OR 97365

For Notices to Landlord:

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279

10.4.2 Notice is deemed received:

- a) upon receipt if sent by telegram, telex or facsimile or if personally delivered (as long as delivery is confirmed by the receiving telex or facsimile operator, including electronic confirmation of receipt, or by the courier delivery service, as the case may be); or
- b) three business days after the date of deposit in a post office or other official depository under the care and custody of the United States Postal Service, if sent by United States mail; or
- c) on the date of delivery by any expedited delivery service, or
- d) on the date any party declines to accept any Notice given as provided in this section.

10.4.3 Each party shall have an address, for Notice purposes, that is within the continental United States and, if any party resides outside the continental United States, the party shall designate an agent for the purpose of receiving Notices whose address is within the continental United States. Any party may change its address for the purpose of receiving Notices by delivering a Notice of the change of address to the other party as described in this section 7.3.

10.4.4 Communications between the parties that are not required by this Lease to be in writing may be by any mutually acceptable method.

- 10.5 Governing Law; Venue: This Lease and all matters related to the rights and responsibilities of the parties under it are governed by and subject to the laws of the State of Oregon and the administrative rules of the Department of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties under this Lease, and all such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease. Any claim, action, suit or proceeding (collectively, a "Claim") between State and Lessee that arises from or relates to the Lease must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; except that, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. However, in no way is this section or any other provision of this Lease to be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of all such courts.
- 10.6 Binding on Successors: This Lease is binding on and will inure to the benefit of the successors and assigns of the parties to it, but nothing in this section may be construed as a consent by State to any disposition or transfer of the Lease or any interest in it by Lessee except as otherwise expressly provided in this Lease.
- 10.7 Nondiscrimination: The Leasehold must be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 10.8 Right To Sue More Than Once: State may sue periodically to recover damages accrued to date and no action for damages will bar later actions for damages subsequently accruing.
- 10.9 Remedies Cumulative: The remedies contained in this Lease are in addition to, and do not exclude, any other remedy available at law or in equity, and the exercise by either party of any one or more of its remedies does not preclude the exercise by it at the same or different times of any other remedies for the same default or breach by the other party.
- 10.10 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party is entitled to recover all costs and disbursements incurred, including such sums as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or

action, and in any bankruptcy case or proceedings. State's obligation under this section is subject to the limitations of Article XI, section 7 of the Oregon Constitution.

- 10.11 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 10.12 Survival. Termination or expiration of the Lease will not extinguish or prejudice State's right to enforce the provisions of this Lease relating to indemnification, access to records, governing law, venue and consent to jurisdiction.

[remainder of page intentionally left blank]

Lessee, by the signature below of its authorized representative, hereby acknowledges that Lessee has read this Lease, understands it and agrees to be bound by its terms and conditions.

STATE:

The State of Oregon, acting by
and through the Oregon State
Land Board and the
Department of State Lands
775 Summer ST NE, STE 100
Salem, OR 97301-1270

Kirle Savie
DSL Authorized Signature/ Printed Name

5/22/19
Date

LESSEE:

City of Newport
A Municipal Corporation
169 SW Coast Highway
Newport, OR 97365

[Signature]
Signature/Title
(Note requirement below)

02/11/19
Date

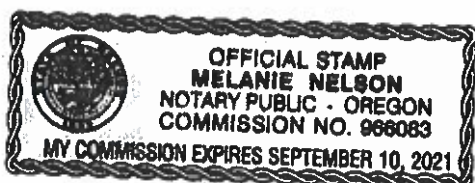
Note: If Lessee is a corporation, partnership, limited liability company or other form of business entity, signer warrants that s/he has the authority to sign the Lease on behalf of such entity by resolution of its Board of Directors or equivalent, or through delegation of authority to the signer.

STATE OF _____)
County of _____)ss

The foregoing instrument was acknowledged before me this 11 day

of February, 2019, by Spencer Nebel
(name of officer or agent of political entity)

the City Manager of City of Newport
(title of officer or agent) (name of political entity)



Melanie Nelson
Signature
My commission expires 9/10/21

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

By signature on this Lease for Lessee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Lessee and that Lessee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

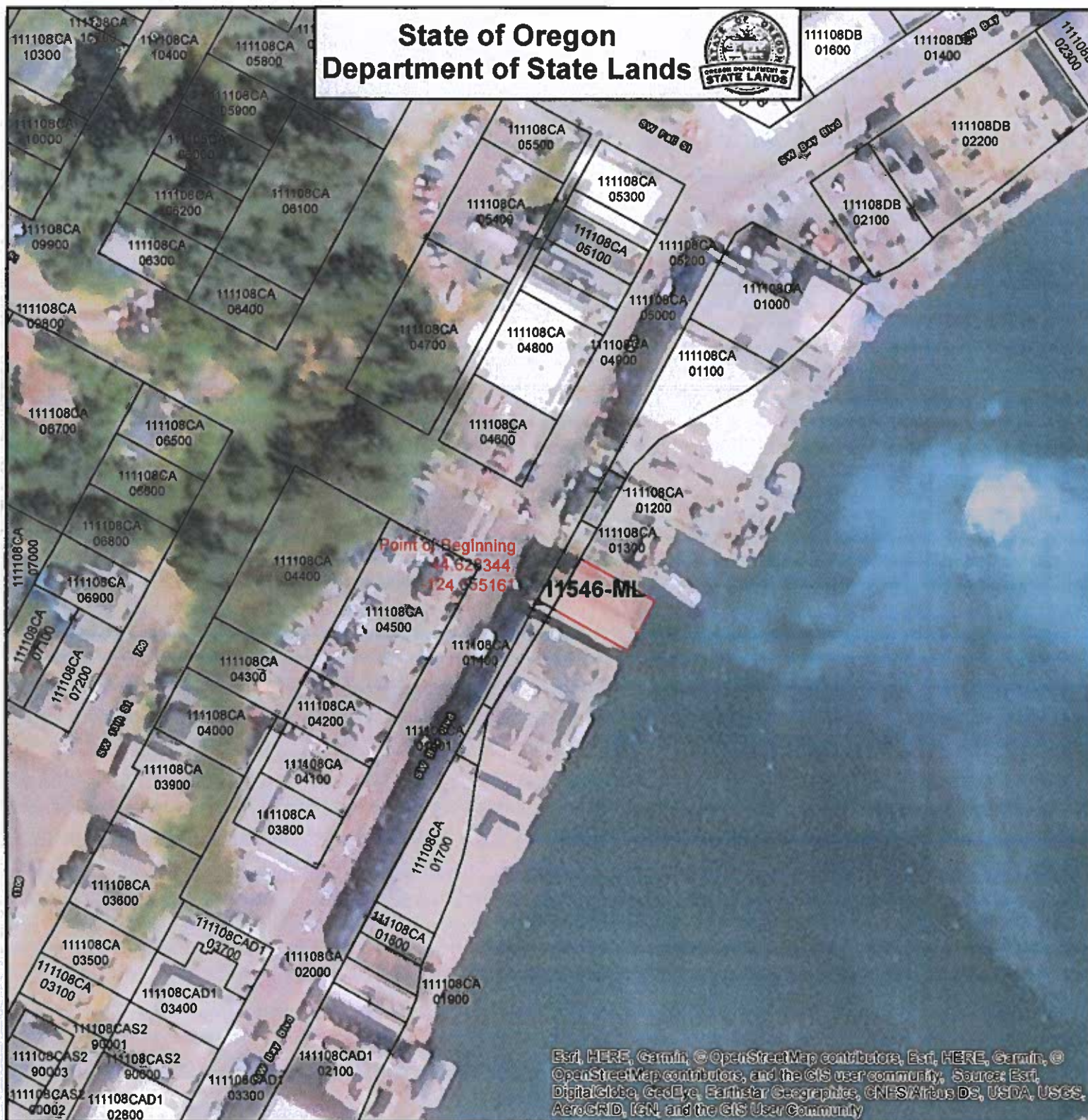
Signature: _____

Date: _____

Printed Name: _____

Title: _____

State of Oregon Department of State Lands



Esri, HERE, Garmin, ©OpenStreetMap contributors, Esri, HERE, Garmin, ©OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

EXHIBIT A

**11546-ML Waterway Lease
T11S, R11W Section 8
3,750 Square Feet
LINCOLN County**

- ▲ Points of Beginning
- Description lines
- Use Area

This map depicts the approximate location and extent of a Department of State Lands. Proprietary authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

0 60 120

Feet



Map Projection:
Oregon Statewide Lambert
Datum NAD83
International Feet
State of Oregon
Department of State Lands
775 Summer St NE, Suite 100
Salem, OR 97301
503-988-5200
www.oregon.gov/DSL
Date: 11/20/2018



Exhibit B INSURANCE REQUIREMENTS

During the term of the Lease, Lessee shall maintain in force at its own expense, each insurance item noted below: **(State must check boxes for #2, #3, and #4 to indicate whether insurance is required or not.)**

1. **Required by State of lessee with one or more workers, as defined by ORS 656.027.**

Workers' Compensation. All employers, including Lessee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Lessee shall require and ensure that each of its sublessees (if permitted) complies with these requirements.

2. ☒ **Required by State** ☐ **Not required by State.**

(Commercial/General) Liability coverage, insuring against claims for bodily injury, death and property damage. Coverage must include contractual liability coverage for the indemnity provided under this Lease. **The commercial/general liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds. See Number 7 below.**

Lessee shall provide proof of liability or commercial general liability insurance in not less than the following amounts:

Bodily Injury/Death:

☒ \$1,000,000/\$2,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

☐ \$2,000,000/\$4,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

☐ \$ _____

3. ☐ Required by State ☒ Not required by State.

Marine Protection and Indemnity Coverage. Lessee shall obtain, at Lessee's expense, and keep in effect during the term of the Lease, marine protection and indemnity coverage. Shall not be less than \$ ____.

4. ☐ Required by State ☒ Not required by State.

Pollution Liability: Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, pollution liability insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Leasehold. Shall not be less than \$ ____

5. **"Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis, Lessee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Lease, for a minimum of 24 months following the termination or expiration of the Lease.

6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Lease, the Lessee shall furnish acceptable insurance certificates to State prior to commencing any work to be performed under the Lease. The certificate must specify all of the parties who are additional insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to State. Lessee shall pay for all deductibles, self-insured retention and self-insurance

7. **Additional Insured.** The commercial general liability and automobile liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds but only with respect to Lessee's activities to be performed under this Lease. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

8. **Change in coverage or cancellation.** Lessee shall notify Lessor when a change in coverage or cancellation occurs. Lessee shall provide Lessor copies of new coverage upon effect of change. As stated in section 2, Lessee shall ensure required insurance coverage is maintained over the term of the lease.

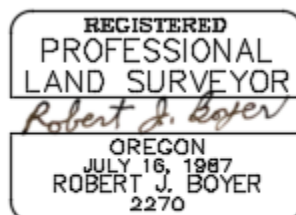
Department of State Lands Private Pier Lease - Tract A

A Department of State Lands Private Pier Lease in a portion of Lincoln County Tax Lot 01300, map number 111108CA more particularly described as follows:

Commencing at a point, called the "initial point" that is located at the northeast corner of Lot 6 of Block 2 in the original town of Newport Oregon, at the most easterly corner of Lincoln County Tax Lot 4500; thence South $64^{\circ} 00' 50''$ East, a distance of 60.00 feet to the most westerly corner of Lincoln County tax lot 1300; thence South $64^{\circ} 00' 50''$ East, a distance of 15.00 feet to the line of pre-fill mean low tide being the **True Point of Beginning**; thence North $25^{\circ} 59' 10''$ East, a distance of 52.00 feet; thence South $64^{\circ} 00' 50''$ East, a distance of 50.50; thence South $17^{\circ} 32' 03''$ East, 35.58 feet; thence South $25^{\circ} 59' 10''$ West, for a distance of 26.20 feet; thence North $64^{\circ} 00' 50''$ West, a distance of 75.00 feet to said true point of beginning of said described tract. Containing 3584 square feet more or less.

Date: February 8, 2023

Robert Boyer, PLS No.2270
Civil West Engineering Services Inc.
609 SW Hurbert St.
Newport, OR 97365
Phone: (503) 706-2790



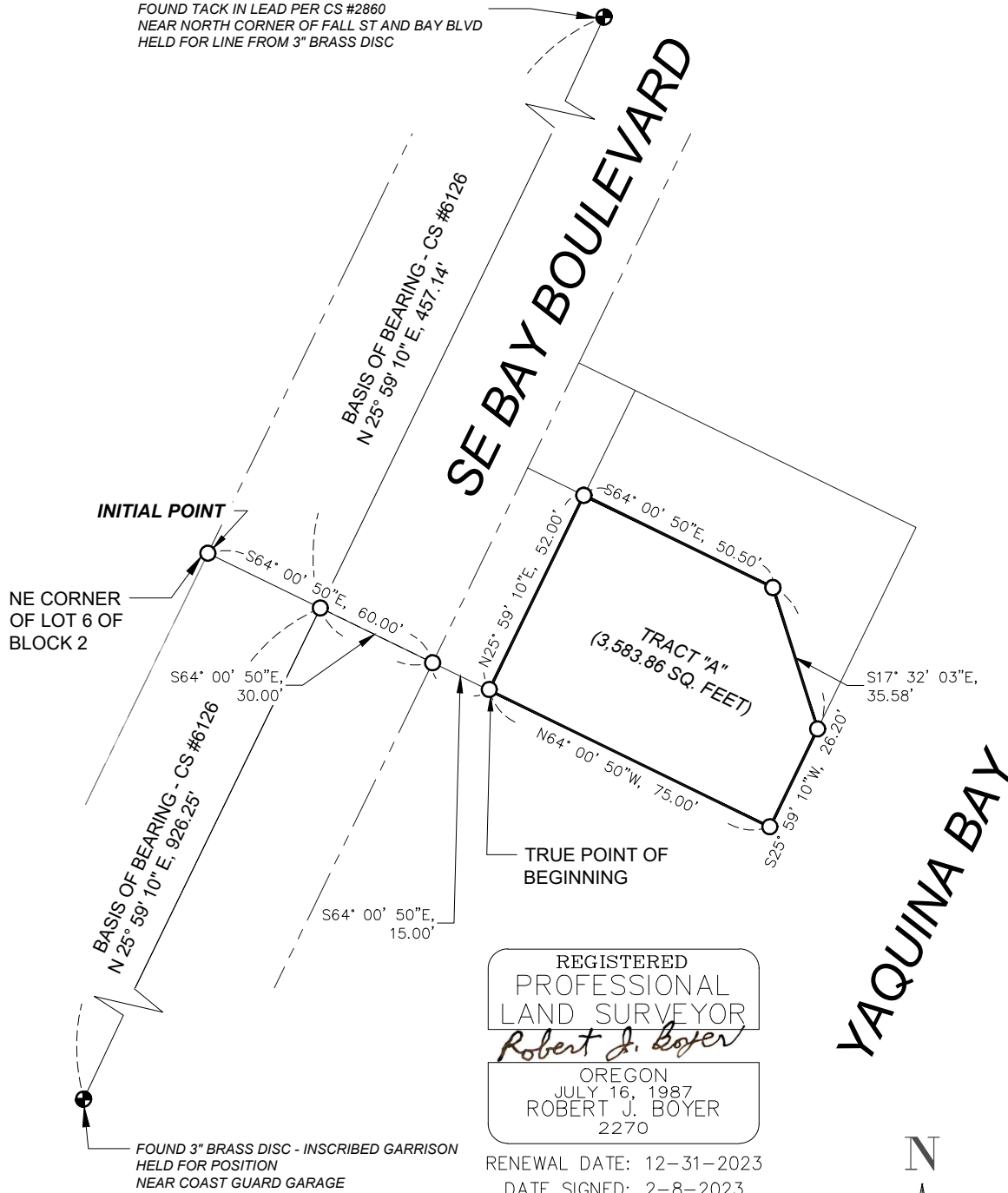
RENEWAL DATE: 12-31-2023
DATE SIGNED: 2-8-2023

EXHIBIT A

ABBY ST PIER - TAX LOT 01300

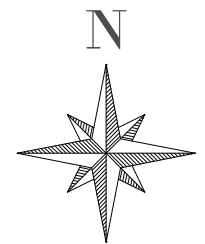
DEPARTMENT OF STATE LANDS PRIVATE PIER LEASE - TRACT A

FOUND TACK IN LEAD PER CS #2860
NEAR NORTH CORNER OF FALL ST AND BAY BLVD
HELD FOR LINE FROM 3" BRASS DISC



REGISTERED
PROFESSIONAL
LAND SURVEYOR
Robert J. Boyer
OREGON
JULY 16, 1987
ROBERT J. BOYER
2270

RENEWAL DATE: 12-31-2023
DATE SIGNED: 2-8-2023



SCALE: 1" = 40'

- FOUND MONUMENT
- CALCULATED POSITION

DRAWN BY: CMJ/RJB DATE: FEBRUARY, 2023	EXHIBIT FOR TRACT "A"	NEWPORT LINCOLN COUNTY, OREGON	Civil West Engineering Services, Inc.
CITY OF NEWPORT			

After recording return to:

City of Newport
Attn: City Recorder
169 SW Coast Hwy.
Newport, OR 97365

EASEMENT

_____, hereinafter called "Grantor," hereby gives, grants and conveys to the City of Newport, an Oregon Municipal Corporation in Lincoln County, Oregon, hereinafter called "Grantee," an easement over certain real property owned by Grantor, said easement being more particularly described below and illustrated on the schematic drawing attached as Exhibit A:

AN EASEMENT OVER A PORTION OF REAL PROPERTY IDENTIFIED IN BOOK 245, PAGES 2077-2083 OF THE DEED RECORDS OF LINCOLN COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT, CALLED THE "INITIAL POINT" THAT IS LOCATED AT THE NORTHEAST CORNER OF LOT 6 BLOCK 2 IN THE ORIGINAL TOWN OF NEWPORT OREGON, AT THE MOST EASTERLY CORNER OF LINCOLN COUNTY TAX LOT 4500; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 60.00 FEET TO THE MOST WESTERLY CORNER OF LINCOLN COUNTY TAX LOT 1300; THENCE NORTH 25° 59' 10" EAST, A DISTANCE OF 52.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 15.00 FEET; THENCE NORTH 25° 59' 10" EAST, A DISTANCE OF 28.00 FEET; THENCE NORTH 64° 00' 50" WEST, A DISTANCE OF 15.00 FEET; THENCE SOUTH 25° 59' 10" WEST, FOR A DISTANCE OF 28.00 FEET TO SAID TRUE POINT OF BEGINNING. CONTAINING 420.00 SQUARE FEET MORE OR LESS.

PURPOSE; USE: The easement encompasses a portion of an existing public access dock owned and maintained by Grantee, and subject to a public recreation facility license with the Oregon Department of State Lands. Its purpose is to facilitate continued use of the dock by the public once the adjacent commercial building is sold and no longer in public ownership. Grantee, its employees, contractors, agents, invitees and the public shall have a right of access over, under, and above the real property described herein, including the right of Grantee to construct, maintain, inspect, repair, replace, renovate or remove material related to maintaining and improving the dock and appurtenant utilities.

TYPE OF EASEMENT: The easement granted by Grantor to Grantee is perpetual.

GRANTOR RESERVATION: Grantor, its heirs, successors, and assigns retain all water, mineral and other rights not specifically granted herein, so long as Grantor, its heirs, successors, and assigns do not interfere with the uses allowed by this Easement when exercising such rights.

CONSTRUCTION, MAINTENANCE AND REPAIRS: Grantee, its employees, contractors, agents and invitees shall have the right to enter upon the easement to construct, maintain, inspect, repair, replace, renovate or remove material as needed to accomplish the purposes of the easement. Grantee shall be responsible for all maintenance and repairs of the dock and any appurtenant improvements constructed within the easement. In the event damage is caused to Grantor's property by Grantee's employees, contractors, agents or invitees, Grantee shall promptly, at Grantee's expense, make necessary repairs to restore the property to the condition existing prior to the damage. If Grantee fails to make such repairs promptly, Grantor may make such repairs and shall have a claim against Grantee for the cost of such repairs.

INDEMNIFICATION: Grantee shall, to the extent permitted by the Oregon Constitution and applicable Oregon law, hold Grantor harmless, and to indemnify and defend Grantor from any loss, claim or liability arising out of Grantee's use of the easement after the date of the execution and acceptance of this easement, including reimbursement for Grantor's attorney fees in defending any such claim.

ATTORNEY FEES: In the event any suit or action is filed to enforce any of the terms or conditions or omissions under this agreement, the losing party shall pay to the prevailing party the prevailing party's costs and attorney fees, including attorney fees on any appeal.

SUBJECT TO ENCUMBERANCES: This easement is granted subject to easements and encumbrances of record, provided, however, that this provision shall not relieve the Grantee from any of Grantee's obligations and responsibilities under this easement.

CONSIDERATION: The true and actual consideration for this easement is other than a monetary payment.

BINDING EFFECT: This easement and the covenants contained herein shall run with the property described herein and be binding on the heirs, successors and assigns of the parties. This easement will not be considered abandoned until Grantee has declared the easement abandoned and no longer in use, and releases this easement in a duly executed and recorded Release of Easement.

MODIFICATION: Any agreement or modification which affects or modifies the terms of the easement, including its use or obligations herein, shall be binding on the parties only if evidenced in writing, duly signed by Grantor, Grantee, their heirs, successors, or assigns, in a document the form of which would be received and recorded by Lincoln County, Oregon.

IN WITNESS whereof the parties have executed this instrument as of the date opposite their names.

Grantor:

(Name) _____, dated _____

Grantee:

Christina Vetter, City Manager, dated _____

STATE OF OREGON)
) ss
County of Lincoln)

This instrument was acknowledged before me on the _____ day of _____, 2024
by _____ (Grantor Name) _____.

Notary Public for Oregon
My commission expires: _____

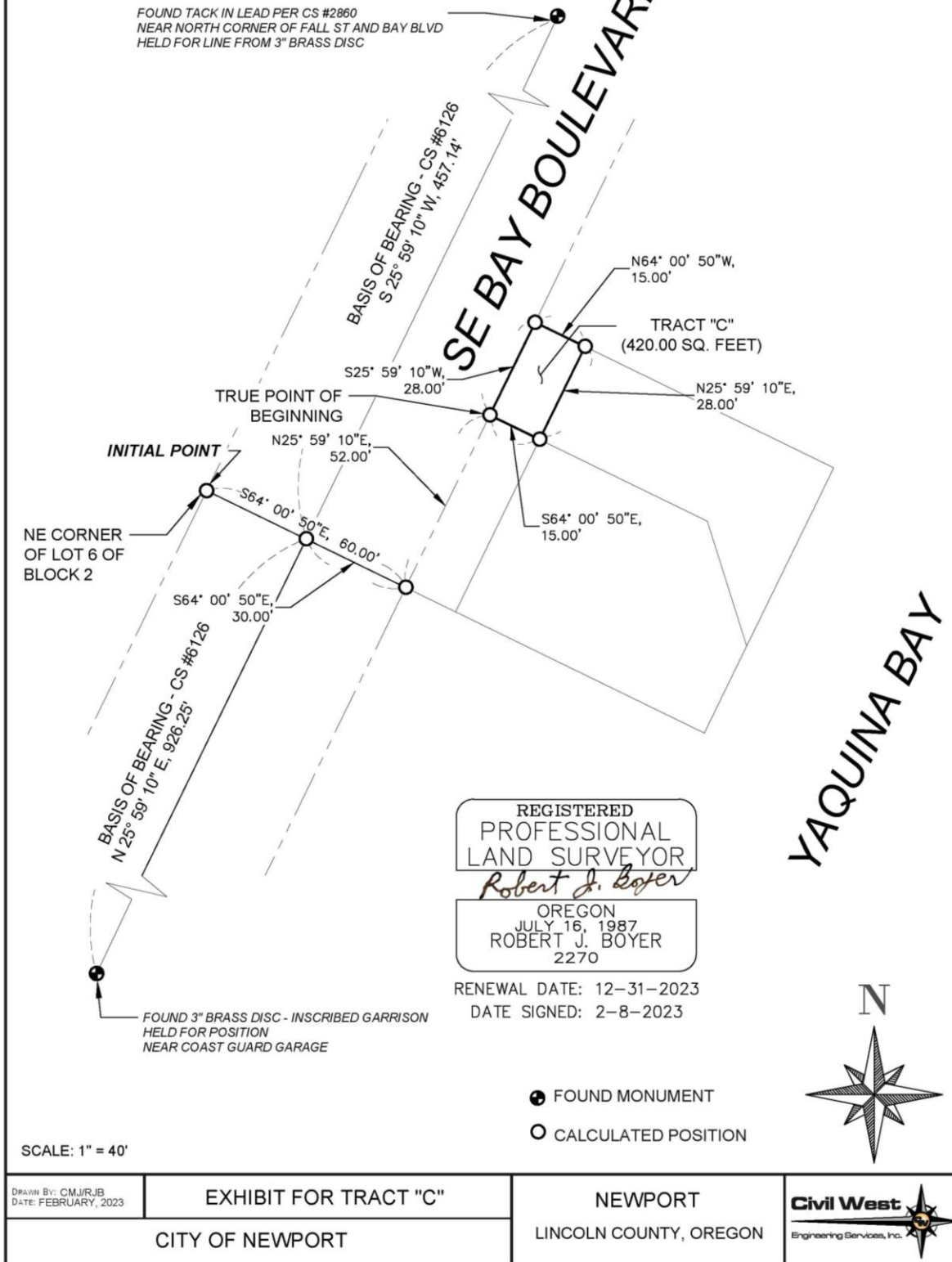
STATE OF OREGON)
) ss
County of Lincoln)

This instrument was acknowledged before me on the _____ day of _____, 2024
by Christina Vetter as City Manager of the City of Newport.

Notary Public for Oregon
My commission expires: _____

EXHIBIT A

ABBY ST PIER - TAX LOT 01300
CROSS ACCESS EASEMENT - TRACT C



After recording return to:

City of Newport
Attn: City Recorder
169 SW Coast Hwy.
Newport, OR 97365

EASEMENT

_____, hereinafter called "Grantor," hereby gives, grants and conveys to the City of Newport, an Oregon Municipal Corporation in Lincoln County, Oregon, hereinafter called "Grantee," an easement over certain real property owned by Grantor, said easement being more particularly described below and illustrated on the schematic drawing attached as Exhibit A:

AN EASEMENT OVER REAL PROPERTY IDENTIFIED IN BOOK 245, PAGES 2077-2083 OF THE DEED RECORDS OF LINCOLN COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS ALL OF THAT CERTAIN PARCEL OF GROUND LYING AND BEING BETWEEN THE UNITED STATES HARBOR LINE AND THE EASTERLY LINE OF BAY BOULEVARD OF THE CITY OF NEWPORT, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEAST LINE OF BAY BOULEVARD THAT IS DULY OPPOSITE THE SOUTHEAST CORNER OF LOT 1 IN BLOCK 3 IN THE ORIGINAL TOWN OF NEWPORT, OREGON; THENCE ALONG THE SOUTHEAST LINE OF BAY BOULEVARD IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 80 FEET; THENCE IN A SOUTHEASTERLY DIRECTION AND AT RIGHT ANGLES WITH SAID BAY BOULEVARD TO THE UNITED STATES HARBOR LINE; THENCE NORTHWESTERLY ALONG THE SAID UNITED STATES HARBOR LINE 80 FEET; THENCE AT RIGHT ANGLES TO THE POINT OF BEGINNING.

TOGETHER WITH:

BUILDING AND DOCK IMPROVEMENTS SUBJECT TO A SUBMERSIBLE LAND LEASE WITH THE OREGON DEPARTMENT OF STATE LANDS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT, CALLED THE "INITIAL POINT" THAT IS LOCATED AT THE NORTHEAST CORNER OF LOT 6 OF BLOCK 2 IN THE ORIGINAL TOWN OF NEWPORT OREGON, AT THE MOST EASTERLY CORNER OF LINCOLN COUNTY TAX LOT 4500; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 60.00 FEET TO THE MOST WESTERLY CORNER OF LINCOLN COUNTY TAX LOT 1300; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 15.00 FEET TO THE LINE OF PRE-FILL MEAN LOW TIDE BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 25° 59' 10" EAST, A DISTANCE OF 52.00 FEET; THENCE SOUTH 64° 00' 50" EAST, A DISTANCE OF 50.50; THENCE SOUTH 17° 32' 03" EAST, 35.58 FEET; THENCE SOUTH 25° 59' 10" WEST, FOR A DISTANCE OF 26.20 FEET; THENCE NORTH 64° 00' 50" WEST, A DISTANCE OF 75.00 FEET TO SAID TRUE POINT OF BEGINNING OF SAID DESCRIBED TRACT. CONTAINING 3584 SQUARE FEET MORE OR LESS, AND IDENTIFIED AS TRACT "A" OF EXHIBIT A.

PURPOSE; USE: The easement encompasses portions of the Abbey Street Pier Building at 669 SW Bay Boulevard situated above and below the harbor line. A fire suppression system for the adjacent public access dock is contained inside a mechanical room located on the main floor of the building. The purpose of this easement is to provide Grantee, its employees, contractors, agents, and invitees, access to the mechanical room and other components of the premises to construct, maintain, inspect, repair, replace, renovate or remove material related to operation of the fire suppression system for the benefit of the public access dock once the Abbey Street Pier Building is sold and no longer in public ownership.

TYPE OF EASEMENT: The easement granted by Grantor to Grantee is perpetual.

GRANTOR RESERVATION: Grantor, its heirs, successors, and assigns retain all water, mineral and other rights not specifically granted herein, so long as Grantor, its heirs, successors, and assigns do not interfere with the uses allowed by this Easement when exercising such rights.

CONSTRUCTION, MAINTENANCE AND REPAIRS: Grantee, its employees, contractors, agents and invitees shall have the right to enter upon the easement to construct, maintain, inspect, repair, replace, renovate or remove material as needed to accomplish the purposes of the easement. Grantee shall be responsible for all maintenance and repairs of the components of the fire suppression system within the easement that serve the public access dock. In the event damage is caused to Grantor's property by Grantee's employees, contractors, agents or invitees, Grantee shall promptly, at Grantee's expense, make necessary repairs to restore the property to the condition existing prior to the damage. If Grantee fails to make such repairs promptly, Grantor may make such repairs and shall have a claim against Grantee for the cost of such repairs.

INDEMNIFICATION: Grantee shall, to the extent permitted by the Oregon Constitution and applicable Oregon law, hold Grantor harmless, and to indemnify and defend Grantor from any loss, claim or liability arising out of Grantee's use of the easement after the date of the execution and acceptance of this easement, including reimbursement for Grantor's attorney fees in defending any such claim.

ATTORNEY FEES: In the event any suit or action is filed to enforce any of the terms or conditions or omissions under this agreement, the losing party shall pay to the prevailing party the prevailing party's costs and attorney fees, including attorney fees on any appeal.

SUBJECT TO ENCUMBERANCES: This easement is granted subject to easements and encumbrances of record, provided, however, that this provision shall not relieve the Grantee from any of Grantee's obligations and responsibilities under this easement.

CONSIDERATION: The true and actual consideration for this easement is other than a monetary payment.

BINDING EFFECT: This easement and the covenants contained herein shall run with the property described herein and be binding on the heirs, successors and assigns of the parties. This easement will not be considered abandoned until Grantee has declared the easement abandoned and no longer in use, and releases this easement in a duly executed and recorded Release of Easement.

MODIFICATION: Any agreement or modification which affects or modifies the terms of the easement, including its use or obligations herein, shall be binding on the parties only if evidenced in writing, duly signed by Grantor, Grantee, their heirs, successors, or assigns, in a document the form of which would be received and recorded by Lincoln County, Oregon.

IN WITNESS whereof the parties have executed this instrument as of the date opposite their names.

Grantor:

_____(Name)_____, dated _____

Grantee:

Christina Vetter, City Manager, dated _____

STATE OF OREGON)
) ss
County of Lincoln)

This instrument was acknowledged before me on the _____ day of _____, 2024
by _____(Grantor Name)_____.

Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss
County of Lincoln)

This instrument was acknowledged before me on the _____ day of _____, 2024
by Christina Vetter as City Manager of the City of Newport.

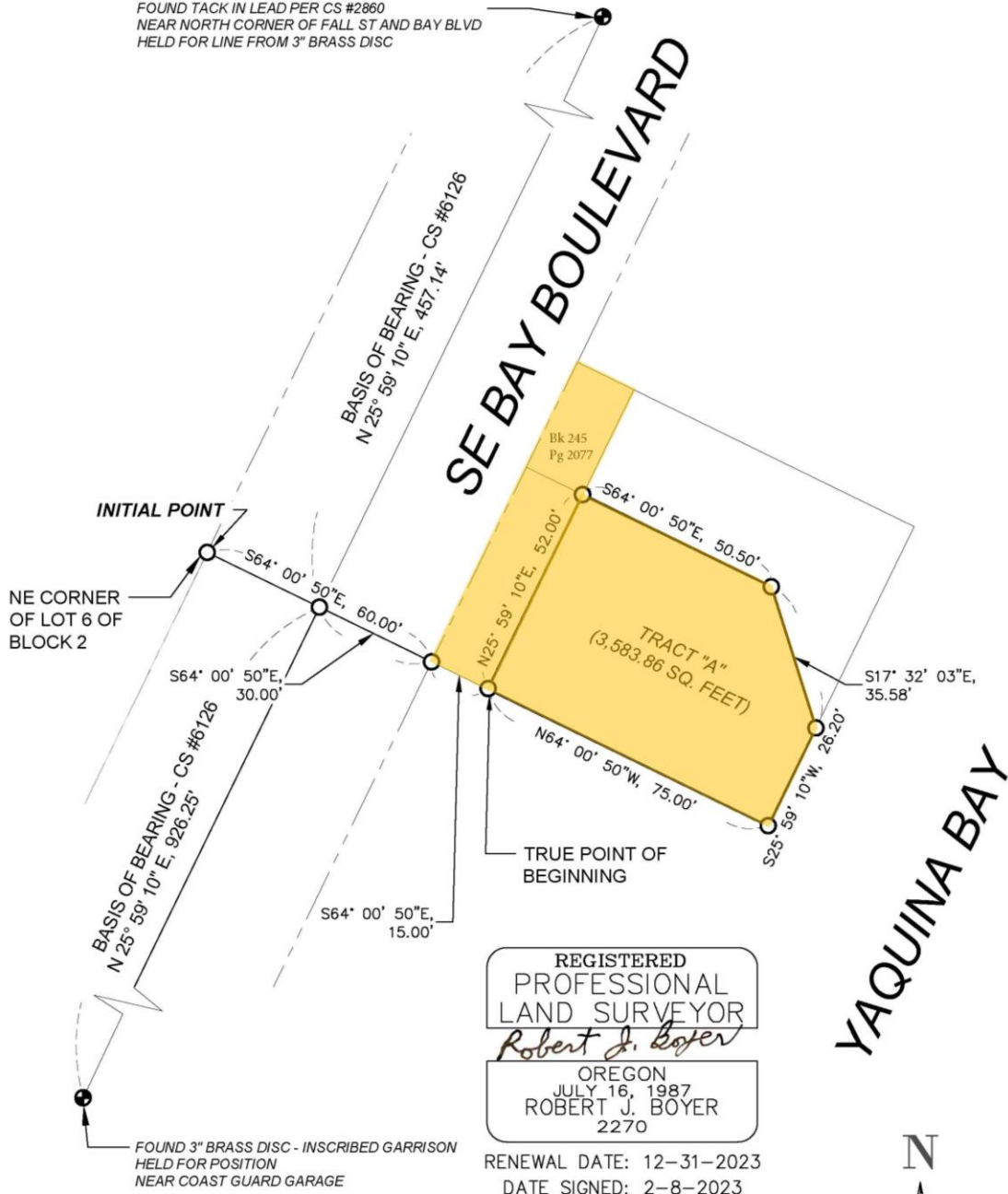
Notary Public for Oregon
My commission expires: _____

EXHIBIT A

ABBY ST PIER - TAX LOT 01300

DEPARTMENT OF STATE LANDS PRIVATE PIER LEASE - TRACT A

FOUND TACK IN LEAD PER CS #2860
NEAR NORTH CORNER OF FALL ST AND BAY BLVD
HELD FOR LINE FROM 3" BRASS DISC



DRAWN BY: CMJ/RJB
DATE: FEBRUARY, 2023

EXHIBIT FOR TRACT "A"

CITY OF NEWPORT

NEWPORT
LINCOLN COUNTY, OREGON

Civil West
Engineering Services, Inc.

Sale Agreement # **359-24**



FINAL AGENCY ACKNOWLEDGEMENT

1 Property Address or Legal Description: **669 SW Bay Blvd., Newport, OR 97365**

2 Both Buyer and Seller acknowledge having received the Oregon Real Estate Initial Agency Disclosure Pamphlet at first contact with
3 their Agent, and hereby acknowledge and consent to the following agency relationships in this transaction:

4 Name of Buyer's Agent: **Anne Kiblinger** License # **200710159**

5 Name of Real Estate Firm: **Emerald Coast Realty** License # **950100043**

6 Address: **360 Hwy. 101, Yachats, OR 97498** Phone: **(310)795-31112** Email: **riverseaproperty@gmail.com**

7 The agent is of: ☒ The Buyer exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").

8 Name of Buyer's Agent: _____ License # _____

9 Name of Real Estate Firm: _____ License # _____

10 Address: _____ Phone: _____ Email: _____

11 The agent is of: ☐ The Buyer exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").

12 Name of Buyer's Agent: _____ License # _____

13 Name of Real Estate Firm: _____ License # _____

14 Address: _____ Phone: _____ Email: _____

15 The agent is of: ☐ The Buyer exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").

16 Name of Seller's Agent: **Freddie Saxton** License # **200801080**

17 Name of Real Estate Firm: **Advantage Real Estate** License # **200003082**

18 Address: **205 E Olive St, Newport, OR 97365, ,** Phone: **(541)961-2085** Email: **Freddy@advantagerealestat.**

19 The agent is of: ☒ The Seller exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").

20 Name of Seller's Agent: _____ License # _____

21 Name of Real Estate Firm: _____ License # _____

22 Address: _____ Phone: _____ Email: _____

23 The agent is of: ☐ The Seller exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").

24 Name of Seller's Agent: _____ License # _____

25 Name of Real Estate Firm: _____ License # _____

26 Address: _____ Phone: _____ Email: _____

27 The agent is of: ☐ The Seller exclusively ☐ Both the Buyer and the Seller ("Disclosed Limited Agency").

28 If both Parties are each represented by one or more Agents in the same real estate firm, and the Agents are supervised by the same
29 principal broker in that real estate firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited
30 agent for both Buyer and Seller as more fully explained in the Form 9.2 Disclosed Limited Agency Agreement that has been reviewed
31 and signed by Buyer, Seller and Agent(s).

32 Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this
33 acknowledgement at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counteroffer will
34 be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of the Agreement or any terms
35 therein.

36 ACKNOWLEDGED

37 Buyer: Arthur N Hoppe Print: **Arthur N Hoppe** Dated: 10/15/2024

38 Buyer: _____ Print: _____ Dated: _____

39 Buyer: _____ Print: _____ Dated: _____

40 Buyer: _____ Print: _____ Dated: _____

41 Seller: _____ Print: **City of Newport** Dated: _____

42 Seller: _____ Print: _____ Dated: _____

43 Seller: _____ Print: _____ Dated: _____

44 Seller: _____ Print: _____ Dated: _____

Final Agency Acknowledgement · Version 2024-2

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Sale Agreement # 359-24



1.2 OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. THE PARTIES TO THIS AGREEMENT SHOULD READ IT IN ITS ENTIRETY. IF THE PARTIES HAVE QUESTIONS ABOUT THEIR OBLIGATION UNDER THIS AGREEMENT, THEY SHOULD SEEK COMPETENT LEGAL AND FINANCIAL ADVICE.

1. Names of parties to this Agreement (the "Parties") (attach detailed Party contact information as Exhibit A):

Buyer <u>Arthur N Hoppe</u>	Seller <u>City of Newport</u>
Buyer _____	Seller _____
Buyer _____	Seller _____
Buyer _____	Seller _____

2. Agreement to Purchase and Sell:

Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Property described in Section 3 under the terms and conditions described in this Agreement, which becomes binding upon Mutual Acceptance by Buyer and Seller.

3. Property Description (the "Property").

3a. "Real Property": The land and all improvements upon the land located at 669 SW Bay Blvd., Newport, OR 97365 in the county of Lincoln, Oregon and further identified here and in Exhibit B (attach Exhibit B for additional property description and legal description) along with all fixtures, easements, rights and interests appurtenant thereto.

3b. "Personal Property": All of Seller's rights in the Personal Property included on **Form 2.4 Bill of Sale** or on an attached Exhibit.

4. Financial Terms:

4a. "Purchase Price" of: \$ 615,000.00

4b. "Earnest Money" in the form of checks, wire transfer, or promissory note: \$ 6,150.00

4c. Remainder of Down Payment \$ _____

4d. Remainder of Purchase Price to be paid at Closing by ☒ Cash ☐ Loan ☐ Seller-Financing: \$ 608,850.00

4e. \$ _____ of the Purchase Price allocated for Personal Property included in an attached Bill of Sale (**Form 2.4**)

4f. If any amounts above are based on Contingent Funds or Nonliquid Funds, specify: _____

4g. ☒ Seller to pay **Buyer brokerage fees** to Buyer's agent's firm at Closing in amount of \$ _____ or **2.500** % of Purchase Price.

4h. ☐ *Seller's agent's firm has separately agreed to pay **Buyer brokerage fees** in amount of \$ _____ or _____ % of Purchase Price.

4i. Total **Buyer brokerage fees** to be paid by Seller and Seller's agent's firm \$ _____ or _____ % of Purchase Price.

4j. Other Buyer closing costs/prepaid items to be paid by Seller at Closing in amount of \$ _____ or _____ % of Purchase Price.

***Line 4h is for informational purposes only and references an agreement between real estate brokerages that is not part of this Agreement. Buyer attests that total in line 4h does not exceed the brokerage fee set in Buyer's Buyer Representation Agreement.**

4k. Earnest Money to be deposited with Western Escrow Newport ("Escrow Agent") within:
☐ **3 Business Days; or** ☐ **5 Business Days** of Effective Date

4l. Release of Earnest Money: Earnest Money becomes nonrefundable and payable to Seller:
☐ At 5:00pm on the final day for Earnest Money Deposit in Section 4k.
☒ After satisfaction or release by Buyer of the Contingencies in Section 9; or
☐ Other: _____

5. Closing: Closing to take place in Newport Oregon with Escrow Agent no later than:

☐ _____ [Date]; or
☒ **15 Calendar Days** after end of Due Diligence Period.

6. Possession: Seller to deliver possession to Buyer, subject to any tenancies:

☐ at Closing; or
☐ on _____ [Date].

7. Prorations (if applicable) will occur as of ☒ Closing ☐ Possession ☐ Other Date _____

8. Conveyance: Transaction accomplished by way of ☒ Deed; or

If transaction Seller-Carried (**Form 8.1**): ☐ Deed, Promissory Note and Deed of Trust ; or ☐ Land Sale Contract

9. Contingencies: Buyer's agreement to purchase Property is contingent on the following:

Buyer Initials ANH **Seller Initials** _____

Sale Agreement # 359-24



OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

- 49 ☒ Buyer's release of Due Diligence Contingency within 60 Calendar Days of Effective Date ("Due Diligence Contingency
50 Period");
51 ☐ Buyer's release of Financing Contingency within _____ Calendar Days of Effective Date ("Financing Contingency Period");
52 ☐ Other _____

- 53 **10. Environmental Assessments:** By checking the below box, Seller agrees to the following:
54 ☒ If Buyer's Phase 1 Environmental Assessment results in a determination that a Phase 2 Environmental Assessment is
55 necessary, Seller hereby provides permission for Buyer to conduct invasive inspections during Phase 2 and agrees to
56 extend the Due Diligence Contingency Period, if any, identified in Section 9 above by:
57 ☒ **45 Calendar Days;** or ☐ _____ Calendar Days.

- 58 **11. FIRPTA.** Seller is a foreign person under 26 U.S. Code § 1445 (FIRPTA): ☐ Yes (**Form 2.7**) ☒ No

- 59 **12. Assignment:** Assignment of this Agreement is: ☒ Permitted ☐ Prohibited without Seller's consent (see Section 44)

- 60 **13. Additional Provisions:** Attach General Addendum (**Form 2.2**) if necessary: _____
61 **1. Seller agrees to grant Buyer a 30 day extension of Due Diligence period should Buyer find that extension necessary.**
62 **2. Buyer to determine if Subject Property will be suitable for Buyer's intended use during Buyer's**
63 **Due Diligence period.**
64 **3. Buyer to have 45 days to approve or disapprove Oregon Division of State Lands Lease after Buyer's receipt of that**
65 **document.**
66 **4. Buyer to have 45 days to approve or disapprove City of Newport Pier Easement Agreements after Buyer's receipt of those**
67 **documents.**
68 **5. Seller to have all of the pilings pertaining to Subject Property surveyed by a licensed engineer including those pilings**
69 **under the Subject Property's commercial building as well as those pilings under the portion of the property that the City of**
70 **Newport intends to retain. Buyer shall have 30 days to approve or disapprove Pilings Survey after Buyer's receipt of said**
71 **survey.**
72 **6. Seller will remove all tenants before closing and pay any legally required tenant relocation costs if necessary.**
73 **7. Subject Property includes T/L R357311**
74 **8. This offer will automatically expire on on October 31, 2024.**

- 78 **14. Attached addenda and exhibits:**
79 _____
80 _____
81 _____

OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT TIME PERIOD TERMS

- 83 **15. Counting Time:** This Agreement is to be interpreted using the time zone in which the Property is located. Any period counted in
84 either Business Days or Calendar Days commences on the next Business Day or Calendar Day, respectively, following the triggering
85 event. Unless otherwise stated in this Agreement, the triggering event is Mutual Acceptance of this Agreement. A period ends, or
86 a deadline is reached, at 5pm (if Business Days) or 11:59pm (if Calendar Days) on the final day of the period or on the day of the
87 deadline.
- 88 **16. Buyer Representations and Duties Regarding Financing; Financing Contingency:** If Buyer is financing any portion of purchase
89 price with a loan, Buyer shall diligently and in good faith take all steps necessary to obtain Buyer's loan. Buyer must Promptly
90 inform Seller of any developments regarding Buyer's financing that may affect Buyer's ability to comply with the terms this
91 Agreement. Upon request by Seller, Buyer shall Promptly provide Seller with evidence of Buyer's efforts to comply with the terms
92 of this paragraph.
93 If the Parties have made this Agreement subject to the Financing Contingency, the following applies: If Buyer has not affirmatively
94 released the Financing Contingency by the date identified for Buyer's satisfaction or release of Financing Contingency on page 1
95 of this Agreement, this Agreement will automatically terminate with all Earnest Money not yet released to Seller pursuant to the
96 other terms of this Agreement Promptly returned to Buyer.
- 97 **17. Title Reports, Documents and Contingency:** Within 1 Business Day after Mutual Acceptance, Seller shall order or cause to be
98 ordered a preliminary title report ("Preliminary Report"), together with complete and legible copies of all documents that will

Buyer Initials ANH

Seller Initials _____

Sale Agreement # **359-24**



OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

remain as exceptions to Buyer's policy of title insurance ("Title Documents") from the Title Company, including but not limited to conditions, covenants and restrictions ("CC&Rs"); deed restrictions; and easements. Unless waived in writing by Buyer, this transaction is contingent upon Buyer's approval of the Preliminary Report and Title Documents as described in this Section ("Title Review Contingency").

Buyer shall have ☒ **10 Business Days**; or ☐ _____ **Business Days after receipt of a Preliminary Report and Title Documents** to notify Seller in writing of any items disapproved by Buyer ("Title Review Period"). If an Amended Preliminary Title Report is issued that supplements the Preliminary Report ("Amended Report") with additional liens, CC&Rs, deed restrictions, or encumbrances ("New Items"), Buyer's Title Review Period will extend for an additional **10 Business Days** after delivery of the Amended Report ("Extended Review Period"), or until the Closing Date, whichever is sooner. During this Extended Review Period, Buyer may disapprove only of the New Items in the Amended Report.

If Buyer provides written disapproval of any items in the Preliminary Report and Title Documents or Amended Report, Seller has ☒ 10 Business Days; or ☐ _____ Business Days upon receipt of Buyer's notice to correct the matters identified in Buyer's disapproval or provide assurances acceptable to Buyer that the matters will be corrected prior to Closing ("Title Correction Period"). If Buyer's written disapproval is based on an Amended Report and Buyer's notice of disapproval is delivered to Seller within **10 Business Days** before the Closing Date, the Closing Date will be extended for **10 Business Days** to provide sufficient time for the Title Correction Period. If Seller has failed to correct items disapproved by Buyer or otherwise failed to provide adequate assurances that such items will be corrected prior to Closing, within **2 Business Days** after the end of the Title Correction Period Buyer may give Seller a **Form 5.3 Buyer's Notice of Termination** stating that Seller failed to provide such corrections or assurances within the Title Correction Period, and all Earnest Money not yet released to Seller shall be returned to Buyer. **Buyer's failure to provide written disapproval and a Notice of Termination within the times set forth in this Section constitutes Buyer's acceptance of the matters disclosed in the Preliminary Report or Amended Report and Title Documents or Buyer's acceptance of Seller's title corrections.**

Seller will continue to have a duty to convey marketable title, regardless of this provision. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Standard Coverage Owner's Policy of Title Insurance, showing title vested in Buyer. Buyer may acquire extended coverage in which case Buyer shall pay the difference in cost between standard and extended coverage. If applicable, Buyer shall pay the cost of obtaining the ALTA Loan Policy of Title Insurance required by Buyer's lender. Seller may obtain a Seller's policy of title insurance at Seller's expense.

18. Due Diligence (Inspections, Environmental Assessments, Document Review, Approvals): Buyer, at Buyer's sole risk and expense, may have the Property and all its components inspected, including but not limited to any and all inspections, tests, and surveys concerning the structural condition of the improvements, all mechanical, electrical and plumbing systems, hazardous materials, pest infestation, soils conditions, wetlands, Americans with Disabilities Act compliance, zoning, and all other matters affecting the suitability of the Property for Buyer's intended use and/or otherwise reasonably related to the purchase of the Property including the economic feasibility of such purchase ("Due Diligence"), except that invasive inspections may only be done with Seller's written approval.

Buyer shall provide reasonable notice to Seller of inspections and conduct inspections at reasonable times. For portions of the Property occupied by tenants, Buyer shall make reasonable arrangements with Seller as to the time and duration of Buyer's inspections and shall take reasonable steps to protect tenants' property and avoid disturbing tenants. Seller shall provide reasonable access for Buyer's inspections. Buyer is responsible for restoration of the Property following any inspections performed by Buyer or on Buyer's behalf. Buyer shall indemnify, defend, and hold harmless Seller from and against any and all costs, losses, damages, expenses, liabilities, actions, liens or claims arising from or related to any inspection-related activities on or about the Property performed by Buyer, Buyer's agent, employee, contractor or invitee. Upon Seller's request, Buyer shall provide Seller a copy of any inspection or other buyer-procured reports requested by Seller.

Within ☒ 20 Calendar Days; or ☐ _____ Calendar Days after Mutual Acceptance ("Document Delivery Period"), Seller shall deliver to Buyer legible and complete paper or electronic copies of all the documents to which Seller has access that are listed on **Form 6.2 Commercial Diligence Document Request Sheet**. Until this transaction closes or terminates, Seller has an ongoing obligation to Promptly provide to Buyer documents listed in **Form 6.2** if those documents come within Seller's access and to provide updated copies of documents already delivered to Buyer if the information in the documents materially changes.

At Buyer's request, Seller will provide access to Seller's architects, engineers, contractors, subcontractors, managers, analysts, and appraisers in connection with the Buyer's inspection and document review of the Property.

Due Diligence Contingency: If the Parties have made this Agreement subject to the Due Diligence Contingency, the following applies: If by the end of the period selected by Buyer and Seller for Buyer's satisfaction or release of the Due Diligence Contingency on page 1 of this Agreement ("Due Diligence Period"), Buyer has not notified Seller in writing that Buyer accepts the Property and

Buyer Initials

ANH

Seller Initials

Form 1.2 · Oregon Commercial Real Estate Purchase and Sale Agreement · Version 2024-2

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669 SW Bay Blvd.

Sale Agreement # **359-24**

OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT



all aspects thereof in its then-current condition, this Agreement will automatically terminate with all Earnest Money not yet released to Seller pursuant to the other terms of this Agreement Promptly returned to Buyer.
This section does not apply to or affect rights granted in the **Form 2.8 Well Addendum** or **Form 2.9 On-Site Sewage Addendum**.

19. Smoke and Carbon Monoxide ("CO") Detectors: IF PROPERTY CONTAINS RESIDENTIAL HOUSING UNITS, PRIOR TO BUYER'S APPRAISAL, OR IF NO APPRAISAL IS CONDUCTED, AT LEAST **5 BUSINESS DAYS** BEFORE CLOSING SELLER SHALL ENSURE THE PROPERTY CONTAINS THE REQUIRED NUMBER OF APPROVED AND PROPERLY INSTALLED SMOKE DETECTORS/ALARMS AND CO ALARMS IN ACCORDANCE WITH ORS 479.260, OAR 837-045-0050, OAR 837-047-0120, OAR 837-047-0130 AND ANY OTHER REQUIREMENTS OF THE STATE FIRE MARSHALL, THE STATE BUILDING CODE, AND LOCAL MUNICIPAL CODES. If reinspection by Buyer's lender or appraiser is needed because of Seller's Failure to install working detectors or alarms prior to Buyer's appraisal, Seller will be responsible for the cost of reinspection.

20. Risk of Loss: Seller must Promptly notify Buyer in writing if all or a material part of the Property is destroyed without fault of Buyer and neither Closing nor Possession have occurred. Seller shall use reasonable diligence to submit all claims and related information to Seller's insurance company and Promptly inform Buyer of all relevant updates regarding Seller's insurance claim. At Buyer's sole discretion, Buyer may elect to continue with the transaction by notifying Seller in writing before Closing and within **10 Business Days** after receiving Seller's notice of Property destruction ("Post-Destruction Period"). Upon such notice from Buyer, the Closing Date shall automatically be extended for a reasonable period of time required to cure or repair any damage or destruction, but in no case longer than **60 Calendar Days**. The Parties may agree in a written contract outlining the terms and conditions under which Buyer will remain obligated to purchase the Property.
If Buyer does not give Seller written notice of intent to proceed with the transaction and Seller has not repaired all damage or destruction to the Property, or if Seller fails to Promptly notify Buyer in writing if all or a material part of the Property is destroyed, Seller cannot enforce this Sale Agreement and Buyer may give Seller a **Form 5.3 Buyer's Notice of Termination** terminating the transaction. In this instance Buyer is entitled to a refund of the Earnest Money and to recover any portion of the Purchase Price that Buyer has paid.
If all or a material part of the Property is destroyed without fault of Seller and either Closing or Possession have occurred, Buyer remains obligated to purchase the Property under the terms of this Agreement.

21. Lead-Based Hazard Contingency: IF PROPERTY CONTAINS TARGET HOUSING UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA), SELLER SHOULD PROVIDE **FORM 2.6** AND **FORM 10.3** TO BUYER PRIOR TO ACCEPTING BUYER'S OFFER. Federal law requires that before being obligated under a contract to buy housing built prior to 1978, Seller must disclose to Buyer any known information concerning the presence of lead-based paint or lead-based hazards in the home or building. Buyer must receive **Form 10.3**, an EPA-approved information pamphlet on identifying and controlling lead-based hazards ("Protect Your Family from Lead in Your Home") from Seller and the Agreement must include the **Form 2.6 Lead-Based Hazard Addendum** that confirms that Seller has complied with all notification requirements. The **Form 2.6 Lead-Based Hazard Addendum** describes the **10 Calendar Day** (or different period of time if agreed to by the Parties) contingency period that, unless waived, Buyer has to inspect for lead-based hazards and give Buyer a **Form 5.3 Buyer's Notice of Termination** describing lead-based hazards identified in these inspections. **If Seller is required under this Section to provide Buyer with Form 10.3 and Form 2.6 and Seller fails to do so, Buyer may terminate this transaction and recover all Earnest Money by delivering a Form 5.3 Notice of Termination to Seller at any time prior to Closing.**

22. Statutory Seller's Property Disclosure Statement: The Parties should review ORS 105.465 to confirm that this transaction is not subject to Oregon's Seller's Property Disclosure Statement ("SPDS") law (ORS 105.462-105.490). If transaction is subject to the SPDS law, Seller must comply with that law by providing Buyer with a **Form 3.1 Seller Property Disclosure Statement**, or comparable form, after Buyer has made a written offer to purchase the Property and, unless waived by Buyer in writing, Buyer will have **5 Business Days** after both delivery of the SPDS and Mutual Acceptance to revoke Buyer's offer by delivering **Form 5.7 Seller Property Disclosure Statement (SPDS) Revocation of Offer** to the Seller disapproving of the Seller's Property Disclosure. If Seller is required to deliver the SPDS and fails or refuses to do so, Buyer may revoke Buyer's offer at any time before Closing by delivering **Form 5.7 Seller Property Disclosure Statement (SPDS) Revocation of Offer** to the Seller indicating that Seller failed or refused to provide the SPDS.
Regardless of the applicability of the SPDS law, Seller's disclosure obligations under the terms of this Agreement and under the common law remain, including but not limited to Seller's duty to disclose known material defects to the Buyer and to notify Buyer if Seller gains Actual Knowledge of information that makes any previous representations made by Seller about the condition of the Property in this Agreement or any associated disclosures materially false.

23. Closing Date: If Closing Date falls on a day other than a Business Day, or any other day when the county recording office is closed, the Closing Date is the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed.

Buyer Initials

ANH

Seller Initials

Sale Agreement # 359-24



OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT GENERAL TERMS

- 24. Definitions:** Definitions apply to this Agreement and each included addendum, unless otherwise specified in the subject addendum. In addition to the terms below, defined terms include those defined by the Parties on Page 1 of this Agreement (e.g. Purchase Price, Earnest Money, Closing Date, Escrow Agent, etc.). Defined terms are capitalized when used in this Agreement.
- Actual Knowledge:** Direct knowledge of information, not including information that the relevant Party “should have” known
- Business Day:** Any day other than Saturday, Sunday, or a legal state holiday under ORS 187.010.
- Buyer and Seller:** “Buyer” means any and all buyers, and “Seller” means any and all sellers, who are party to this Agreement.
- Closing:** When all documents are recorded and the sale proceeds are available to Seller.
- Contingent Funds:** Money that will belong to Buyer with the uncertain occurrence of a future event that is outside of Buyer’s control, such as money gifts, proceeds from lawsuits, or a Year-End Bonus.
- Effective Date:** The date that Mutual Acceptance occurred.
- Fixture:** Any physical property that is permanently attached to real property including but not limited to the following, along with any integrally related controls or keys: doors and windows including storm doors and windows and door and window screens; awnings; installed irrigation equipment; installed landscaping features (including hardscapes and plantings); installed antennas; attached floor coverings; heating, ventilation, air conditioning systems and related components; installed fireplace and fireplace insert components; attached light fixtures and light bulbs; plumbing; water heaters; installed window blinds, and installed curtain or drapery rods (but not curtains or drapes). Physical property that is attached to real property solely for the purpose of preventing the physical property from damage or causing injury as a result of tipping, falling or sliding is not “permanently attached.”
- Mutual Acceptance:** “Mutual Acceptance” of a document occurs when both Buyer and Seller have signed and delivered the document, with no modification of terms, to the other Party.
- Nonliquid Funds:** Money that is not currently available to the Buyer without some kind of transfer, such as 401K account balances, stock, cryptocurrency, or other things of value that Buyer must first sell or liquidate before realizing a cash sum.
- Parties/Party:** “Parties” refers to Buyer and Seller and “Party” refers to either the Buyer or the Seller, as determined by context.
- Personal Property:** Any physical property not permanently attached to real property and not otherwise defined as a Fixture.
- Possession:** When the Buyer has the legal right to occupy the Property, subject to any Tenancies.
- Promptly:** As soon as is practicable and no more than two Business Days.
- 25. Headlines:** Headings at the beginning of each section and subsection are solely for convenience of reference.
- 26. Property Description:** Buyer and Seller agree that if not provided on page 1 of this Agreement or in accompanying attachment, the legal description of the Real Property provided by the Title Company will be reviewed and confirmed by Buyer and Seller prior to conveyance of title. No Personal Property is included in this sale unless specifically identified by Buyer and Seller in this Agreement or in an exhibit or addenda thereto. If any fixtures or personal property included in this sale are controlled by wifi, Bluetooth or similar technology, Seller will promptly notify Buyer and will provide Buyer with all necessary instructions and access information at Closing.
- 27. No Sale of Business:** This Agreement only relates to the purchase and sale of real property, accessories, and Personal Property. Any intent by the Buyer to assume or purchase shares or membership interest of any entity shall not be part of this Agreement or part of the Purchase Price. Parties are advised to seek out independent legal counsel to aid in the purchase and sale of stock, membership interest, or the transfer of any registered business names, assumed business names, trademarks, copyrights, or other intellectual property and goodwill.
- 28. 1031 Exchange Like-Kind Exchange:** If either Party intends to pursue this transaction as part of an Internal Revenue Code 1031 exchange (“Exchanging Party”), the Exchanging Party must Promptly notify the other Party and Escrow. The other Party shall cooperate so long as it will not delay Closing and does not cause additional cost or liability to the other Party. The Exchanging Party shall indemnify, defend and hold the other Party harmless from any liability, damages and costs arising out of the 1031 exchange.
- 29. Additional Seller Representations:** Unless otherwise disclosed in writing, Seller represents the following:
- (i) Seller will deliver to Buyer, at the time Buyer is entitled to Possession, the Property and all its included components in substantially the same condition as when Buyer submitted Buyer’s offer to purchase.
 - (ii) Seller will keep the Property fully insured through Closing and shall keep utilities paid through Closing.

Buyer Initials

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Seller Initials

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OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT



- (iii) Seller represents that Seller has no Actual Knowledge of any liens or assessments to be levied; boundary disputes or encroachments; pending or contemplated eminent domain or condemnation; pending or threatened litigation; any violation or alleged violation of law, rule or ordinance; or any unperformed obligations to any governmental authority related to the Property.
- (iv) Seller has no Actual Knowledge of any hazardous or toxic substance, waste or material being used, generated, stored, or disposed of on or transported to or from the Property in violation of any applicable law prior to or during the period in which Seller has owned the Property. "Hazardous or toxic substance, waste or material" means those defined in Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Hazardous Materials Transportation Act, and Oregon Revised Statutes 465.003.
- (v) Seller represents that Seller knows of no other material defects related to the Property not otherwise described in in this Agreement or in any addenda thereto.
- (vi) Seller has no Actual Knowledge of discrepancies between boundaries in the legal description of the Property and any current possession and use boundaries.

Seller has an obligation to Promptly notify Buyer if Seller gains Actual Knowledge of information that makes any representations made by Seller about the condition of the Property in this Agreement or in any associated disclosures materially false.

30. Buyer Acknowledgement of Condition of Property: Buyer acknowledges that, subject to the representations made by Seller in this Agreement or any addenda thereto, and the representations made by Seller in Seller's Property Disclosure Statement (if any), Buyer accepts the present condition of the Property and is purchasing the Property in "as-is, where-is" condition. Neither Buyer's nor Seller's agent has a duty to investigate property conditions. Buyer is responsible for Buyer's own diligent investigation of property conditions. Nothing in this paragraph diminishes Buyer's rights under any express contingencies included in this Agreement.

31. Special Tax Assessment: Seller is obligated to inform Buyer if Property or any portion thereof is subject to federal, state or local laws governing historic properties, special assessment under ORS 358.475-ORS 358.565 (Historic Properties) or special assessment under ORS 308A or ORS 321 (Farm, Habitat, Forestland, etc.). If Property or any portion thereof is subject to special assessment under ORS 358.505, Seller shall provide Buyer with a **Form 4.3 Historic Property Addendum**, and the following statement applies: THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505. If Property is subject to any other Special Assessment, Seller shall provide Buyer with a **Form 2.22 Special Tax Assessment Addendum**.

32. Earnest Money Deposit: Buyer represents that Buyer has sufficient available funds for the Earnest Money agreed to on page 1 of this Agreement. Buyer shall deliver Earnest Money to the Escrow Agent within the timeframe and in a form described on page 1 of this Agreement. After the Earnest Money Deposit Deadline and if Buyer fails to deposit Earnest Money, Buyer's Earnest Money deposit fails due to insufficient funds or is reversed by Buyer or bank, Seller shall have the option to pursue the following remedies:

(i) Seller can provide Buyer with a **Form 5.2 Seller's Notice of Default**, giving buyer the Cure Period to provide the Earnest Money Deposit. Buyer's failure to cure after receiving a Notice of Default will result in Seller being entitled to bring action against Buyer for recovery of the intended Earnest Money sum.

(ii) Within **2 Business Days** after the end of the Earnest Money Deposit Deadline, Seller can terminate this transaction by delivering a **Form 5.4 Seller's Notice of Termination** to Buyer, at which point any Earnest Money Buyer has provided will be refunded to Buyer, and Buyer's further obligation to provide Earnest Money shall cease. Seller will not have a cause of action to recover the intended Earnest Money sum in this instance.

33. IRS and Foreign Investment in Real Property Tax Act, 26 U.S. Code § 1445 (FIRPTA) Reporting: Buyer and Seller acknowledge under 26 USC § 1445 ("FIRPTA"), if Seller is a foreign person as defined by FIRPTA, Buyer is required to withhold federal income taxes up to 15% of the Purchase Price. Seller warrants the identification of Seller's status as foreign or non-foreign under FIRPTA on Page 2 of this Agreement is correct. If Seller is not a foreign person under FIRPTA, Seller is required to provide Buyer, or Escrow Agent acting as a Qualified Substitute under FIRPTA, a completed signed Certification of Non-Foreign Status that meets the requirements of 26 CFR § 1.1445-2(b)(2) ("Certification"). Escrow Agent is authorized by law to act as a Qualified Substitute. If Escrow Agent acts as a Qualified Substitute, upon delivery of Seller's Certification to Escrow Agent, Seller and Buyer shall instruct Escrow Agent to provide Buyer a Qualified Substitute Statement that meets the requirements of 26 USC §1445(b)(9). Buyer must retain the Certification or Qualified Substitute Statement until the end of the fifth taxable year following the taxable year in which this transaction takes place. Escrow shall deliver a copy of the Certification to IRS upon Buyer request. Seller's and Buyer's real estate agents are not experts in FIRPTA and will not act as a Qualified Substitute or as a transferor or transferee agent under FIRPTA. For detailed information on how to comply with FIRPTA Buyer and Seller should seek independent legal and tax advice from a qualified attorney or tax professional, and are encouraged to include **Form 2.7 FIRPTA Addendum** with this transaction.

Buyer Initials

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Seller Initials

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OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT

304 **34. Tenants and Leases:** Seller agrees to make a good-faith effort to obtain completed tenant estoppel certificates attached hereto
305 as **Form 7.2**, or other format agreed upon by the Buyer and Seller in writing, from each tenant occupying the Property, and to also
306 make a good-faith effort to obtain tenant estoppel certificates as required by Buyer's lender, if applicable. The certificates that
307 are so obtained shall be delivered to the Buyer during the Due Diligence Period. To the extent Seller is unable to obtain an
308 estoppel certificate from any tenants, Seller must provide similar assurances in writing to Buyer based on Seller's Actual
309 Knowledge, during the Due Diligence period.
310 If the Property is subject to leases, Buyer and Seller shall execute and deliver to each other through the Escrow Agent at Closing
311 an Assignment of Lease agreement on **Form 6.1** or other format agreed to by the Buyer and Seller in writing.

312 **35. Proration of Taxes, Fees, Utilities, Rents and Deposits:** Unless otherwise agreed in writing:
313 **Buyer** shall be responsible for all property-related taxes, fees, and utility charges, and shall be entitled to all property related
314 rents and other income that accrue after the date identified for Prorations on Page 1. If Buyer is taking Property subject to
315 tenant, all deposits held by Seller on behalf of tenant shall be transferred to Buyer. If there is propane or heating oil on the
316 Property, Buyer shall have the propane or oil company measure the level of the fuel at or before Closing and shall pay Seller for
317 the market value of the fuel at the time of measuring.
318 **Seller** shall be responsible for paying all property-related taxes, fees and utility charges, and shall be entitled to all property-
319 related rents and income, that accrue prior to the date identified for Prorations on Page 1.
320 All funds required to be exchanged or prorated between the Parties pursuant to this section other than propane or heating oil,
321 shall be handled through Escrow. Real estate transfer taxes and escrow fees, if any, are split evenly between the Parties.

322 **36. Closing Costs:** Compensation for real estate agents will be paid at Closing according to the terms of Section 4g or any written
323 compensation agreement between the Parties and their agents/agent's firms and/or between the agents/agent's firms. Unless
324 otherwise agreed in writing or prohibited by Buyer's loan program, Closing Costs shall be divided as follows:
325 **Buyer shall pay at or before Closing:** Buyer's recording fees, Buyers closing costs not agreed to be paid by Seller, and, if applicable,
326 lender fees and cost of lender's title insurance policy and the marginal cost of extended coverage owner's title insurance policy.
327 **Seller shall deduct from the proceeds of the Sale to pay:** Owner's title insurance policy [Owner's title policy will not be construed
328 as a Seller credit], Seller's recording fees, the costs of clearing any liens or encumbrances that must be cleared to meet the terms
329 of this Agreement and other Seller's closing costs.

330 **37. Closing, Possession, Property Condition, Cleaning, State Withholdings:** Closing and Possession must occur by 5:00pm on the
331 Closing Date, which must not be later than the date identified in the Closing Section on page 1 of this Agreement. If the Parties
332 selected a period of Calendar Days after the end of the Due Diligence Period for a "no later than" Closing Date, Buyer shall notify
333 Seller at least **5 Calendar Days** in advance of Buyer's desired actual Closing Date. Seller shall deliver to Buyer, at the time of
334 Possession, the Property and all its included components in substantially the same condition as when Buyer submitted Buyer's
335 offer to purchase. If any Property system or appliance becomes inoperative or malfunctions prior to Possession, Seller shall repair
336 the system or appliance such that the system or appliance is in the same condition as it was at the time of Buyer's offer or replace
337 the system or appliance with one of at least equal quality. Prior to Possession, Seller shall clean all common area building interiors
338 and remove all trash and debris from the common areas of the Property. If Seller removed any Fixtures, Seller shall repair or
339 replace any surfaces damaged in the process of removing such Fixtures. Unless otherwise agreed, prior to Possession Seller shall
340 remove from the Property all items not included in the sale and not belonging to tenants. Any items remaining at Possession that
341 do not belong to tenants shall become property of the Buyer. Seller retains no rights to such property or to the proceeds of the
342 sale of such property. Buyer may pursue claim against Seller to recover costs Buyer incurs removing or disposing of such property.
343 Subject to the exemptions in ORS 314.258(3), if Seller is an out-of-state resident or corporation not registered or otherwise
344 qualified to do business in Oregon, Escrow shall act as the Authorized Agent under ORS 314.258 for withholding purposes and the
345 Parties will cooperate with Escrow to execute and deliver all documents required to carry out Oregon withholding laws.

346 **38. Deed and Condition of Title:** Except as otherwise agreed by the Parties in writing, Seller shall convey marketable title to the
347 Property by Statutory Warranty Deed, or, if applicable, by personal representative's deed, or trustee's deed or similar legal
348 fiduciary's deed that meets the requirements for conveying interests in real property contained in ORS Chapter 93. Title shall be
349 conveyed free from encumbrances other than those matters included in the Preliminary Report or amended Preliminary Report
350 and Title Documents accepted by Buyer according to the terms of the Title Contingencies section of this Agreement.

351 **39. Default:** Unless otherwise described in the last paragraph of this section, a Party will only be deemed in default under this
352 Agreement when:

Buyer Initials 

Seller Initials _____

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OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT



(i) A Party is in violation of an obligation or requirement of this Agreement or any Addendum thereto, and the Party is given written notice on **Form 5.1** or **Form 5.2 Notice of Default and Opportunity to Cure**, explaining the Party's failure to comply with terms in this Agreement; and

(ii) Such failure continues without cure or remedy for the period described in the Notice of Default ("Cure Period").

The defaulting Party may cure the default by performing the required action or obligation within the Cure Period or by providing the other Party reasonable written assurances that prove that the claim of default was in error. If a provision of the Agreement or an addendum (a) grants a Party the right to terminate the Agreement using a **Form 5.3** or **5.4 Notice of Termination** and (b) does not also expressly grant the Party the right to send a **Form 5.1** or **5.2 Notice of Default**, then the Party may not send a Notice of Default based on that provision.

This section will not be construed as extending the time by which any contingency release must be given. A party will be in default under this Agreement without having received a Notice of Default and Opportunity to Cure in the event that (i) the Party misrepresented a material fact related to the subject matter of the contract, (ii) the Party wrongfully fails to Close or perform an obligation required to Close by the Closing Date, or (iii) the Party failed to meet an obligation under this Agreement and the language of the Agreement or an addendum expressly permits the other Party to terminate using a **Form 5.3** or **Form 5.4 Notice of Termination** without first sending a **Form 5.1** or **Form 5.2 Notice of Default and Opportunity to Cure**.

40. Termination, Escrow Instructions: After a Curable Default goes uncured, the non-defaulting Party will have **2 Business Days** to terminate this Agreement by giving the defaulting Party a **Form 5.3** or **Form 5.4 Notice of Termination**, stating that the defaulting Party failed to cure or that an immediate default occurred. If the non-defaulting Party does not deliver the Notice of Termination within the **2 Business Days** after the default occurred, the non-defaulting Party will be considered to have released their right to terminate based on that default.

Upon failure of a contingency within the contingency's timeframe outlined in this Agreement, the Party permitted to terminate under the contingency provision may terminate this Agreement by providing a **Form 5.3** or **Form 5.4 Notice of Termination** to the other Party indicating which contingency failed. If (i) the language of the Agreement or an addendum permits the party to terminate using a **Form 5.3** or **Form 5.4 Notice of Termination** without first sending a Notice of Default and Opportunity to Cure, (ii) a Party misrepresented a material fact related to the subject matter of the contract, or (iii) a Party wrongfully fails to Close or cannot satisfy a condition to Closing by the Closing Date, the other Party may provide a **Form 5.3** or **Form 5.4 Notice of Termination** to the other Party indicating the reason for the termination.

Upon delivery of a valid Notice of Termination, both Parties' further obligations under the Agreement will end. If a termination by either Party is not authorized by the Agreement or any addendum thereto, the non-terminating Party may be entitled to Earnest Money. In the instance of an unauthorized termination by Seller, Buyer may also pursue claims for money damages or specific performance. A non-terminating party who wishes to pursue remedies for unauthorized termination should follow the Section 42 Dispute Resolution provisions of this Agreement and consult an attorney.

Within **2 Business Days** after receiving a **Form 5.3** or **Form 5.4 Notice of Termination**, the non-terminating Party shall provide a **Form 5.5** or **5.6 Response to Termination**. Failure to provide a **Form 5.5** or **Form 5.6 Response to Termination** may result in dispute resolution actions being taken against the non-responding Party. The **Form 5.3** and **Form 5.4 Notices of Termination** and the **Form 5.5** and **Form 5.6 Responses to Termination** shall contain instructions for Escrow on how Earnest Money shall be distributed. Buyer's request for or acceptance of Earnest Money does not prohibit Buyer from pursuing claims for specific performance or monetary damages in the case of Seller's unauthorized termination. After consulting an attorney, Buyer may use **Form 5.5** to elect to waive claims to specific performance, release Seller from obligation to convey Property to Buyer, and authorize conveyance to a third-party.

The Parties agree that Escrow Agent is prohibited by Oregon law from disbursing Earnest Money without either:

- (i) Written, signed, and dated instructions from both Parties agreeing on the disposition of Earnest Money; or
- (ii) An order from a court of competent jurisdiction directed to Escrow Agent that provides disbursement instructions.

Notwithstanding the above, Escrow Agent may dispense Earnest Money to Buyer if Buyer revokes Buyer's offer with a valid **Form 5.7 Seller Property Disclosure Statement (SPDS) Revocation of Offer** pursuant to ORS 105.462-105.490 or if Buyer and Seller reach a separate agreement after the execution of this Agreement that instructs Escrow Agent on disposition of Earnest Money. Section 41 shall dictate Earnest Money disposition unless there is a good faith dispute over the right to Earnest Money. Disputes over Earnest Money shall be resolved according to the Section 42 Dispute Resolution provisions of this Agreement. The Parties shall hold harmless, defend and indemnify Escrow and all Listing Brokers, Buyer's Brokers, and Principal Brokers from all claims, actions, suits, charges and judgements whatsoever arising out of the Parties' failure to comply with the terms of this Agreement.

41. Property Earnest Money Disposition:

Buyer Initials

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Seller Initials

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Buyer: Unless otherwise agreed in writing, upon termination, Buyer has the right to recover all Earnest Money when (i) the provisions of this Agreement or any Addenda to this Agreement expressly permit such recovery; or (ii) either Party terminates this Agreement due to Seller's default. Buyer's acceptance of all recovered Earnest Money does not constitute a waiver or release of other legal remedies or causes of action available to Buyer in case of Seller's default.

Seller: Unless otherwise agreed in writing, Seller has the right to keep all Earnest Money (i) upon successful Closing of this transaction, (ii) when the provisions of this Agreement or any Addenda to this Agreement expressly permit such recovery, or (iii) either Party terminates this Agreement due to Buyer's default and the provision under which Buyer is in default does not expressly permit Buyer to recover Earnest Money.

Buyer and Seller agree that the Earnest Money amount described on Page 1 of this Agreement is a binding liquidated sum that represents Buyer and Seller's best reasonable estimate of Seller's damages in case of a default by Buyer. Buyer and Seller agree that Seller's retention of the Earnest Money described on Page 1 of this Agreement is Seller's sole remedy against Buyer's default.

42. Dispute Resolution: Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this Agreement, shall be exclusively resolved in accordance with the dispute resolution provisions of this Section, under the laws of Oregon, and in the county where the real property is located. It will not be considered a waiver, release or violation of this provision to file a court action to preserve a statute of limitations, enable the recording of a notice of lis pendens, or to file a mechanics lien.

Disputes between Buyer and Seller shall be exclusively resolved through the Small Claims Court of the county in which the Property is situated if the dispute falls within the jurisdiction of that court. The Parties knowingly and voluntarily waive their statutory and constitutional right to have such matters resolved by jury trial or removed from the Small Claims Court to the Circuit Court.

All other disputes between Buyer and Seller, including disputes about the applicability of this provision, shall be submitted to mediation, and if unresolved through mediation, to binding arbitration. Mediation shall take place through Arbitration Services of Portland (ASP) unless Buyer's or Seller's agent is a member of the Portland Metropolitan Association of REALTORS® (PMAR), in which case mediation shall take place through the PMAR Buyer and Seller Mediation program. Arbitration shall take place through ASP, according to the then-existing rules of ASP.

The prevailing Party in any dispute resolution procedure (as determined by the judge, mediator or arbitrator, as applicable) shall be entitled to recover all reasonable attorneys' fees, costs and expenses incurred at trial, on appeal, at mediation and at arbitration, unless the prevailing Party refused to participate in mediation, in which case the prevailing party shall not be entitled to such fee, cost and expense recovery.

The following matters are excluded from this Dispute Resolution provision:

- (i) Judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land sale contract;
- (ii) An eviction or forcible entry and detainer action;
- (iii) Any matter within the jurisdiction of probate, small claims, or bankruptcy court;
- (iv) Matters that must be exclusively resolved under Article 17 of the Code of Ethics and Professional Standards Policies of the National Association of REALTORS®; and
- (v) Matters related to contracts with Buyer or Seller that predate this Agreement and contain a mandatory mediation or arbitration provision.

ALL PARTIES TO THIS AGREEMENT HAVE BEEN ADVISED TO CONSULT INDEPENDENT LEGAL COUNSEL TO UNDERSTAND THE PROVISIONS OF THIS AGREEMENT AND BY CONSENTING TO THIS AGREEMENT, HEREBY WAIVE THE STATUTORY AND CONSTITUTIONAL RIGHT TO BRING ISSUES AND CLAIMS RELATED TO THIS AGREEMENT TO A TRIAL BY JUDGE OR JURY, OTHER THAN SMALL CLAIMS COURT PROCEEDINGS AS DESCRIBED ABOVE, IN ANY STATE OR FEDERAL ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

43. Mandatory Statement Regarding Fire Protection District and Approved Uses: THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS,

Buyer Initials ANH

Seller Initials _____

Form 1.2 · Oregon Commercial Real Estate Purchase and Sale Agreement · Version 2024-2

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Sale Agreement # 359-24

OREGON COMMERCIAL REAL ESTATE PURCHASE AND SALE AGREEMENT



IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

44. Assignment to Third Party: Assignment of this agreement by Buyer to an entity owned or controlled by Buyer or to a 1031 Exchange accommodator is permitted without Seller's consent in all cases. Buyer's authority to assign this Agreement to any other Party is governed by the selection of Buyer and Seller on page 1 of this Agreement. This Agreement is binding upon and will inure to the benefit of duly authorized assigns.

45. Obligations Survive Death: This Agreement survives the death of either or both Parties and is binding upon their successors and estates.

46. Time is of the Essence: Time is of the essence in all terms, provisions, covenants, and conditions contained in this Agreement.

47. Severability: If any clause or provision of this Agreement is or becomes illegal, invalid, impossible to perform, or unenforceable under present or future laws effective during the term of this Agreement, the Parties intend that the remainder of this Agreement shall not be affected. The Parties intend that in lieu of each clause or provision of this Agreement that is or becomes illegal, invalid, impossible, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms as may be possible, legal, and enforceable.

48. Nonwaiver: The waiver by a Party of any breach, violation, or default of a provision of this Agreement will not operate as a waiver of any subsequent breach, violation, or default of that or of any other provision.

49. Entire Agreement; Modifications: This Agreement sets forth the final and exclusive understanding of the Parties, and there are no other representations, warranties, statements, or agreements between the Parties except as expressly set forth in this Agreement. Any modification to the terms of this Agreement must be in writing, dated and signed by Buyer and Seller.

50. Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Buyer's Offer: **Buyer's signature below and delivery to Seller is an offer to enter into this Agreement on the terms above.** If the Buyer wishes to include an expiration date and time for this offer ("Offer Deadline"), Buyer should include it in the Additional Provisions section of this Agreement. Buyer may withdraw this offer by giving Seller oral or written notice of withdrawal prior to Mutual Acceptance

BUYER:
Buyer's Signature Arthur N Hoppe Date & Time 10/15/2024
Arthur N Hoppe
Buyer's Signature _____ Date & Time _____
Buyer's Signature _____ Date & Time _____
Buyer's Signature _____ Date & Time _____

Seller's Response: Seller: ☐ **ACCEPTS**
☐ **REJECTS**
☐ **COUNTERS Buyer's offer (use Form 2.1).**

Seller will be bound by this Agreement only by selecting "ACCEPTS" and delivering a signed copy of this Agreement to Buyer prior to Offer Deadline, if any. Acceptance after the Offer Deadline, if any, will only be valid upon Mutual Acceptance of **Form 2.3**. IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year accompanying the signatures below:

SELLER:
Seller's Signature _____ Date & Time _____
City of Newport
Seller's Signature _____ Date & Time _____
Seller's Signature _____ Date & Time _____
Seller's Signature _____ Date & Time _____

This Purchase and Sale Agreement was delivered/presented on:
_____, [Date], at _____ [Time]
Freddie Saxton [Seller's Agent Name]
_____, [Seller's Agent Signature]

This Agreement is not to be used as a Receipt of Earnest Money.
Buyer Initials ANH Seller Initials _____



6.2 COMMERCIAL DUE DILIGENCE DOCUMENT LIST

1. Property Address or Description: 669 SW Bay Blvd., Newport, OR 97365

2. Names of Parties to this Agreement:

Buyer Arthur N Hoppe	Seller City of Newport
Buyer	Seller
Buyer	Seller
Buyer	Seller

3. Due Diligence Documents. Seller must deliver all documents selected below within the Document Delivery Period. Seller should redact all personally identifying information of Tenants in the Selected Diligence Documents before delivery to Buyer. If Seller cannot provide the Selected Diligence Documents, Seller must provide Buyer with a statement explaining why Seller is unable to provide the Selected Diligence Documents. Until the transaction closes or until the transaction terminates, Seller shall have an ongoing obligation to Promptly provide Buyer with the selected documents on this Due Diligence Document list as those documents come within Seller's access. Seller must provide Buyer with updated copies of documents already delivered if the information in previously provided documents materially changes.

4. Selected Diligence Documents. Buyer requests all of the following documents regarding the Property, or provide Buyer with reasonable access to the below documents:

- ☒ Property Tax statements.
- ☐ Leases with Tenants on the Property.
- ☐ Tenant Estoppel Certificates.
- ☐ Tenant Ledgers.
- ☐ Rent Roll, showing Tenant names, suite numbers, size of premises, terms and expiration dates, options to extend, common area expense sharing, security deposits, concessions, business uses, and schedule of repairs.
- ☐ Current and historic vacancy rates.
- ☒ Service Contracts.
- ☐ Financial Statements and Reports.
- ☐ Copies of all loan documents being assumed, if any.
- ☐ Operating and capital expense budgets of Property.
- ☒ Utility Bills for the last two years.
- ☒ Copies of all Owner's Insurance Policies in effect with respect to the Property.
- ☐ List of all employees, if applicable, including name, wage, position, and benefits.
- ☒ Title Insurance Policy documents.
- ☒ Most recent Surveys of the Property
- ☒ Building Inspection Reports, and Roof Reports.
- ☒ Mechanical reports, including HVAC.
- ☒ Geotechnical soil reports and Environmental Studies.
- ☒ Seismic risk assessment reports.
- ☒ Site Plans.
- ☒ Architectural Drawings, Engineering Plans, and Blueprints.
- ☒ Zoning Documents
- ☒ Governmental Permits.
- ☐ All licenses, permits, approvals, and certificates of occupancy for the Property and each tenant.
- ☒ Approvals and Certifications.
- ☐ Copies of any notices of violations or verifications of compliance with any federal, state, or local health, fire, building, zoning, safety, environmental protection, or other codes, laws, rules, regulations, or ordinances relating to or applying to the Property.
- ☒ Documents related to any Property or building related litigation.

5. Other Requested Documents:

6. By mutually accepting the above terms, the Parties agree to the terms of this Addendum and make it part of the above referenced Sale Agreement:

Buyer: Arthur N Hoppe	Dated: 10/15/2024	Seller: City of Newport	Dated:
Buyer:	Dated:	Seller:	Dated:
Buyer:	Dated:	Seller:	Dated:
Buyer:	Dated:	Seller:	Dated:



9.4 BUYER REPRESENTATION AGREEMENT

This is a legally binding agreement establishing an exclusive agency relationship between Buyer and Agent and establishing Buyer's obligations to compensate Agent. If Buyer does not understand this Agreement Buyer should seek the advice of an attorney.

1. Parties to this Agreement.

Buyer: Arthur N Hoppe
 Buyer: _____
 Buyer: _____
 Buyer: _____

Broker: Anne Kiblinger
 Principal Broker _____
 Firm Emerald Coast Realty

2. Purpose. This Agreement establishes an exclusive agency relationship between Buyer and Agent for the purpose of meeting Buyer's objective ("Objective") to purchase, lease, exchange or obtain an option to purchase the following (check all that apply):
☐ Residential Real Estate ☒ Commercial Real Estate ☐ Manufactured or Floating Home ☐ Agricultural Land ☐ Vacant Land; in the following locations and on the following terms: 669 SW Bay Blvd. Newport, OR 97365

☐ Other objective (describe objective): _____

3. Agents. By signing below, Buyer understands and agrees that this Agreement creates an agency relationship with Broker, Principal Broker, _____ [insert name(s) of additional agents acting as buyer's agent] and with any other agent associated with Firm that Firm appoints to act as Buyer's agent (collectively and individually referred to in this agreement as "Agent").

4. Buyer Acknowledgement. Buyer acknowledges that at first contact with Agent, Buyer received the Initial Agency Disclosure Pamphlet describing agency relationships and legal duties of Agent, and that Buyer reviewed and understands the information contained therein. Buyer acknowledges that Agent is not an expert in legal, zoning, financial, construction, engineering, or environmental health and safety matters and that Agent has no duty to investigate matters outside of Agent's expertise. Agent cannot guarantee accuracy of information received from third-parties nor the confidentiality of information given to third-parties. Buyer represents that Buyer has not entered into any agreement establishing an agency relationship with another buyer's agent that overlaps with this Agreement's Objective or that obligates Buyer to compensate the other agent for accomplishment of said Objective.

5. Duties and Services of Agent.

- (i) Agent will act as Buyer's agent in accomplishing Objective and in doing so Agent is bound by the relevant duties and responsibilities described in the Initial Agency Disclosure Pamphlet and the REALTOR® Code of Ethics.
- (ii) Agent shall use reasonable efforts to accomplish Objective.
- (iii) Agent shall locate property as described in Section 2 from the information available in the Multiple Listing Service ("MLS") and other sources available to Agent.
- (iv) Agent shall make submissions to Buyer describing and identifying properties that substantially meet the criteria set forth in Section 2, subject to any additional limitations expressed by Buyer verbally or in writing.
- (v) Agent shall negotiate acceptance and terms of offers to acquire such property per Buyer's instructions and within the scope of Agent's expertise.

6. Duties of Buyer.

- (i) Buyer shall cooperate and not interfere with Agent's efforts to accomplish Objective.
- (ii) Buyer shall promptly provide Agent with all pertinent information requested by Agent for the purpose of accomplishing Objective.
- (iii) Buyer will reasonably communicate with Agent about Buyer's preferences and intentions related to Objective and will promptly respond to communications from Agent.
- (iv) Upon delivery by Agent, Buyer will read Form 10.1 Buyer Advisory.
- (v) Buyer will seek expert advice if matters arise that are outside the scope of Agent's expertise.
- (vi) Buyer shall conduct all negotiations for property through Agent during the Term of this Agreement.
- (vii) Buyer shall not enter into any buyer representation agreement with another agent relating to Objective during Term.
- (viii) Buyer shall promptly provide lender and Escrow a copy of this Agreement for the purpose of including Buyer's payment obligation to Agent in Buyer's Loan Estimate, Closing Disclosure and Closing/Settlement Statement, and gives Agent permission to do the same. This Agreement shall be considered instructions to Escrow and Buyer will cooperate with Agent, lender and Escrow to complete any additional documentation needed to ensure the payment obligation under this Agreement is satisfied at Closing.

Buyer Initials

ANH

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BUYER REPRESENTATION AGREEMENT

7. Term. The term of this Agreement begins upon Mutual Acceptance by the Parties and ends at 5:00pm on _____ [Date] or upon successful completion of Objective, whichever is sooner ("Term"). However, if Buyer is under contract with a third party to purchase or lease a property at the date and time above, Term shall be automatically extended through the closing of the transaction. At no time will Term be longer than a period of 24 months.

8. Compensation. AGENT'S COMPENSATION FOR SERVICES RENDERED IS FULLY NEGOTIABLE AND IS NOT FIXED, CONTROLLED OR RECOMMENDED BY LAW, OREGON REALTORS®, THE MLS, OR ANY PERSON NOT A PARTY TO THIS AGREEMENT

In consideration of the services to be performed under this Agreement, Buyer shall pay Firm in the following manner:

- ☒ At Closing, 2.500 % of the Gross Sales Price ("Commission"). The Gross Sales price is the sales price unmodified by seller concessions or buyer upgrades.
- ☐ At Closing an amount of \$ _____ ("Flat Fee")
- ☐ Other compensation arrangement: _____

Agent shall be entitled to a Commission or Flat Fee in the above manner if:

- (i) Buyer's acquisition occurs during the stated Term of this Agreement and Buyer has not delivered written notice of termination as described in Section 10 below prior to entering into a purchase and sale agreement for the Property
- (ii) Buyer's acquisition occurs within ☒ **180 Calendar Days**; or ☐ _____ **Calendar Days** of end of the stated Term of this Agreement and Buyer became aware of the acquired property during the stated term of this Agreement.

If Buyer enters an exclusive buyer representation agreement with a subsequent duly licensed real estate broker or principal broker after expiration or mutually agreed upon termination of this Agreement, and application of this Agreement would result in Buyer paying more than one Commission or Flat Fee, no Commission or Flat Fee will be due under this Agreement. This provision does not apply if Buyer unilaterally terminates this Agreement before the end of the Term, which is governed by Section 10 below.

9. Seller Contributions Toward Buyer's Agent Compensation: Seller contributions toward Buyer Agent's compensation are neither required nor recommended by law, Oregon REALTORS®, the MLS or any third party. There are two ways in which Buyer's payment obligation to Agent in Section 8 may be offset by seller:

- (i) Per agreement between the seller and listing agent, the listing agent may share a portion of the listing agent's compensation with Buyer's Agent ("Cooperative Compensation"). Such Cooperative Compensation agreement must be entered in to before Buyer submits Buyer's offer. If the Agent and Listing Agent agree that a portion of the Listing Agent's compensation will be paid to Agent, then Agent shall disclose the Cooperative Compensation agreement to Buyer prior to submission of Buyer's offer, Agent must receive Buyer's approval of the Cooperative Compensation agreement prior to submission of Buyer's offer, and Agent shall make best efforts to obtain said Cooperative Compensation at Closing.
- (ii) The seller may contribute directly toward the Buyer Agent fees ("Seller Contribution"), which Buyer can request in Buyer's purchase offer. Buyer authorizes Agent to contact listing agent or seller (if seller is unrepresented) to discuss seller's willingness to provide Seller Contributions and to negotiate on Buyer's behalf for Seller Contributions.

At Closing, Cooperative Compensation and Seller Contributions, if any, shall be credited against Buyer's payment obligation in Section 8 above. Buyer shall be responsible for paying any remaining amounts owed under Section 8. Buyer consents to Agent accepting compensation from more than one party. Agent may not accept total compensation payments from all sources in excess of compensation agreed to in Section 8 and under Oregon law (ORS 696.290) Agent may not rebate excess compensation to Buyer.

10. Termination. Buyer or Agent may terminate this Agreement at any time by giving written notice to the other party. However, if Buyer unilaterally terminates this Agreement prior to the end of Term, Buyer shall pay an early termination fee of \$ _____ to be paid at the time of delivering the written termination notice, representative of the reasonable cost of Agent's expenses and time up to the moment of the Buyer's early termination. If Buyer unilaterally terminates this Agreement before the end of the Term and Buyer acquires a property within the timeframe and on the terms described in Section 8 of this Agreement, Agent will be entitled to the compensation amount contemplated in Section 8, minus the early termination fee amount in this section. Upon termination pursuant to the terms of this section, both Parties will be released of all obligations under this Agreement, other than dispute resolution obligations, obligations to pay an early termination fee and obligations to pay compensation stated in Section 8 of this Agreement.

11. Dispute Resolution. Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this Agreement, shall be exclusively resolved in accordance with this dispute resolution provision, under the laws of Oregon. All disputes within the jurisdiction of the small claims court shall be submitted to small claims court in the county where the event giving rise to the dispute took place. All disputes not within the jurisdiction of the small claims

Buyer Initials

ANH

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669 SW Bay Blvd.

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9.4 BUYER REPRESENTATION AGREEMENT

01 court of the county where the event giving rise to the dispute took place will be resolved through mediation with Arbitration Services
02 of Portland (ASP), and if unresolved through mediation, to binding arbitration through ASP according to the then-existing rules of ASP.
03 The prevailing Party in any dispute resolution procedure (as determined by the judge, mediator or arbitrator, as applicable) shall be
04 entitled to recover all reasonable attorneys' fees, costs and expenses incurred at trial, on appeal, at mediation and at arbitration.

05 The following matters are excluded from this Dispute Resolution provision:
06 (i) Any matter within the jurisdiction of probate, small claims, or bankruptcy court;
07 (ii) Matters that must be exclusively resolved under Article 17 of the Code of Ethics and Professional Standards Policies of the
08 National Association of REALTORS®; and
09 (iii) Matters related to contracts with Buyer that predate this Agreement and contain a mandatory mediation or arbitration
10 provision.

11 BUYER HAS BEEN ADVISED TO SEEK INDEPENDENT LEGAL COUNSEL TO UNDERSTAND THE PROVISIONS OF THIS AGREEMENT AND BY
12 CONSENTING TO THIS AGREEMENT, HEREBY WAIVE THE CONSTITUTIONAL RIGHT TO BRING ISSUES AND CLAIMS RELATED TO THIS
13 AGREEMENT TO A TRIAL BY JUDGE OR JURY, OTHER THAN SMALL CLAIMS COURT PROCEEDINGS, IN ANY STATE OR FEDERAL ACTION,
14 PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

15 12. Additional Provisions: _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____

22 13. Entire Agreement. This Agreement sets forth the final and exclusive understanding of the Parties, and there are no other
23 representations, warranties, statements, or agreements between the Parties except as expressly set forth in this Agreement.

24 14. Signatures
25 Buyer: Arthur N Hoppe Arthur N Hoppe Dated: 10/15/2024
26 Buyer: _____ Dated: _____
27 Buyer: _____ Dated: _____
28 Buyer: _____ Dated: _____
29 Agent: Anne Kiblinger Anne Kiblinger Dated: 10/15/24



10.5 WIRE FRAUD ADVISORY

1 IF YOU DO NOT TAKE PROPER PRECAUTIONS, CRIMINALS COULD TARGET YOU AND STEAL YOUR MONEY.

2 Buyers and Sellers should take extreme caution when wiring funds in real estate transactions. Cybercrime is widespread
3 and the real estate industry is a target. Scams are sophisticated and continually changing, which requires Buyers, Sellers,
4 and industry partners to be on constant alert to identify and report questionable practices. Among other tactics,
5 scammers hack into an email account of one of the players involved in a real estate transaction to gather intelligence
6 and then use that intelligence to trick a party into sending money to an account set up by the scammer.


7 Accordingly, in each real estate transaction, you are advised of the following:

- 8 ✓ At the beginning of the transaction, always discuss in person or over the telephone with verified licensed
9 professionals the wiring process, intended timelines, parties, details of the planned transaction, etc.
- 10 ✓ At the beginning of the transaction, establish trusted contact information for everyone you will be
11 communicating with. Only communicate using the trusted contact information.
- 12 ✓ Do not rely solely on electronic communications (e-mail, text messages, etc.) when conducting wire transfers.
- 13 ✓ Always independently confirm wiring instructions (including account and routing information), either in person
14 or by telephone, with a trusted and verified person before taking final steps to wire funds; when confirming
15 wiring instructions by telephone, always use a trusted phone number that is verified independently of the
16 communication containing the wiring instructions.
- 17 ✓ Talk to your professionals about whether there is a secure portal or other system that can be used to exchange
18 financial and other sensitive information, rather than using email.
- 19 ✓ Never send sensitive information, such as social security numbers, routing and account numbers, and/or credit
20 numbers, unless it is done through a secure/encrypted delivery system; and
- 21 ✓ Monitor your e-mail account for unrecognized activity and never click on links or attachments in unverified e-
22 mails.

23 If you believe you are the victim of a suspicious wire transfer, we advise that you immediately contact your bank, escrow
24 agent, and real estate professional at a trusted and verified phone number. In addition, please contact the FBI at (503)
25 224-4181 and file a complaint using the FBI's Internet Crime Complaint Center (IC3) at: <https://www.ic3.gov>.

26 The undersigned hereby acknowledge(s) receipt of this notice and the risks associated with, and the vulnerabilities of
27 electronic transfer of funds. The undersigned further agree that if electronic transfer of funds is utilized in this
28 transaction, they hereby hold the Brokerages, their agents and the designated title and escrow company harmless
29 from all claims arising out of fraudulent transfer instructions, fraudulent taking of said funds and/or any other
30 damage relating to the fraudulent conduct of third parties influencing the implementation of transfer instructions.

31 5. Signatures.

32 Buyer:		Dated: 10/15/2024	Seller:		Dated:	
33	Arthur N Hoppe		City of Newport			
34 Buyer:		Dated:	Seller:		Dated:	
35 Buyer:		Dated:	Seller:		Dated:	
36 Buyer:		Dated:	Seller:		Dated:	



2.7 FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA) ADDENDUM

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1. Property Address or Description: 669 SW Bay Blvd., Newport, OR 97365

2. Names of Parties to this Agreement:

Buyer Arthur N Hoppe

Seller City of Newport

Buyer

Seller

Buyer

Seller

Buyer

Seller

3. Definitions.

"Amount Realized" as defined in 26 U.S.C. § 1001(b).

"Applicable Wash Sale" as defined in 26 U.S.C. § 897(h)(5)(B)(i).

"Foreign Person" as defined in 26 U.S.C. § 1445(f)(3).

"Qualified Substitute" as defined in 26 U.S.C. § 1445(f)(6).

"Residence" means a property intended for use by the Buyer or Buyer's family, for at least 50% of each year for 2 years after Closing.

Corporations cannot own Residences. 26 U.S.C. § 1.1445.2(d)(1).

"TIN" is a Taxpayer Identification Number, including Social Security Number, Employer Identification Number, and Individual Taxpayer Identification Number.

4. Qualified Substitute. If the Parties are using Escrow services, Escrow shall act as the Qualified Substitute and provide the below affidavits. If Escrow does not agree to be the Qualified Substitute, the parties may terminate services with Escrow and select an Escrow service that will agree to act as Qualified Substitute. Parties will equally share the cost of terminating Escrow, if any.

5. IRS and Foreign Investment in Real Property Tax Act, 26 U.S. Code § 1445 (FIRPTA) Reporting. Subject to regulations promulgated by the Secretary of the Treasury ("Secretary"), under 26 U.S.C. § 1445(a), the transferee ("Buyer") of any real property in the United States must deduct and withhold a tax equal to either 10% or 15% of the Amount Realized by a Foreign Person transferor ("Seller"). If Seller is a disregarded entity [LLC, Trust, etc.], the entity's owner shall be treated as the transferor. If Seller is exempt under FIRPTA, Buyer does not need to deduct and withhold any amount.

Buyer is to deduct or withhold funds as though Seller is not exempt if (i) Buyer, or a Qualified Substitute under FIRPTA, receives notice or has actual knowledge of false statements in any affidavits or statements by Seller, or (ii) Seller fails to furnish a copy of affidavits or statements of Seller to the Buyer, or a Qualified Substitute, by Closing, as required by the Secretary. Buyer shall ensure the IRS receives withheld funds at most 20 Calendar Days after Closing. Seller agrees to indemnify Buyer for any claims or causes of action arising from Seller's misrepresentations or falsehoods on this FIRPTA Addendum. Buyer agrees to keep Seller's TIN and Foreign Person status confidential and, excepting Buyer's tax preparer, will not disclose it to any third party unless required by law or court order.

Check any of the below boxes that apply in this Sale:

6. ☐ Affidavit: Seller is not a Foreign Person. Seller swears under penalty of perjury, that Seller is not a Foreign Person. Seller shall complete an Affidavit of Non-Foreign Status on a form provided by Escrow as the Qualified Substitute, attesting to this statement.

7. ☐ Affidavit: Seller is Exempt Domestic Corporation. Seller swears under penalty of perjury, that Seller complies with 26 U.S.C. 1445(b)(3). Seller shall complete an Affidavit of Exempt Corporation Status on a form provided by Escrow as the Qualified Substitute, attesting to this statement.

8. ☐ Seller is Otherwise Exempt. Seller has received a "qualifying statement" from the Secretary as described in 26 U.S.C. § 1445(b)(4); the Amount Realized is less than \$300,000 and Buyer is acquiring the property as an exempt Residence; the sale was related to an Applicable Wash Sale; or any other reason described in 26 U.S.C. § 1445(b). Seller shall complete an Affidavit on a form provided by Escrow as the Qualified Substitute, attesting to this statement.

9. If no box is checked above or if Buyer has not received the above required Affidavit: If Property is Residence and Amount Realized is between \$300,000 and \$1,000,000, Buyer shall withhold 10% of the Amount Realized; otherwise Buyer shall withhold 15% of the Amount Realized. Alternate withholding rules apply to certain domestic and foreign partnerships, trusts, estates, corporations, regulated investment companies and trusts under 26 U.S.C. 1445(e).

Amounts withheld cannot be greater than the Seller's maximum tax liability as determined or reduced by the Secretary at the request of Buyer or Seller. Seller may seek a refund for amounts withheld in excess of Seller's maximum tax liability from the Secretary.

10. Signatures.

By mutually accepting the above terms, the Parties agree to the terms of this Addendum and make it part of the above referenced Sale Agreement:

Buyer: Arthur N Hoppe

Dated: 10/15/2024

Seller: City of Newport

Dated:

Buyer:

Dated:

Seller:

Dated:

Buyer:

Dated:

Seller:

Dated:

Buyer:

Dated:

Seller:

Dated:

Form 2.7 · Foreign Investment in Real Property Tax Act (FIRPTA) Addendum · Version 2024-2

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Anne Kiblinger, 360 Hwy. 101 Yachats OR 97498

Phone: 3107953112

Fax: 5415470415

669 SW Bay Blvd.

Anne Kiblinger

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Sale Agreement # 359-24

2.1 COUNTEROFFER TO REAL ESTATE PURCHASE AND SALE AGREEMENT

1 **1. Property Address or Description:** 669 SW Bay Blvd., Newport, OR 97365

2 2. Names of Parties to this Agreement:		
3 Buyer <u>Arthur N Hoppe</u>	Seller	<u>City of Newport Oregon</u>
4 Buyer _____	Seller	_____
5 Buyer _____	Seller	_____
6 Buyer _____	Seller	_____

7 **3. Description of Addendum.**

8 ☒ **SELLER Counteroffer # 1**. This Counteroffer is a rejection of (check one) ☒ Buyer's Offer ☐ Buyer's Counteroffer # _____ and
9 is an offer by Seller to enter into an agreement with Buyer on the terms below. Seller may withdraw this Counteroffer by giving Buyer
10 oral or written notice of withdrawal prior to Mutual Acceptance.

11 ☐ **BUYER Counteroffer # _____**. This Counteroffer is a rejection of Seller's Counteroffer # _____ and is an offer by Buyer to enter into
12 an agreement with Seller on the terms below. Buyer may withdraw this Counteroffer by giving Seller oral or written notice of
13 withdrawal prior to Mutual Acceptance .

14 **4. Counteroffer.** The Parties accept all of the terms and conditions contained in the above Offer or Counteroffer with the following
15 changes (Parties can attach documents reflecting the changes if desired):

16 Seller agrees to price and general terms of buyers offer, subject to final approval during public
17 meeting to be held on November 18, 2024 and subject to mutual approval of final purchase
18 documents to be drafted by seller. Buyer's due diligence period shall commence on the next
19 business day following seller approval.
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____
29 _____


30 **5. Deadline.** This Counteroffer expires on 11/05/2024 [Date] at 5:00 ☐ a.m. ☒ p.m. (Deadline).
31 The offeree may accept the Counteroffer only by selecting "Accept" in Section 6 below and delivering a true, signed copy of this
32 Counteroffer form to the offeror prior to Deadline. If acceptance occurs after Deadline, the Parties must complete **Form 2.3 Late**
33 **Acceptance Addendum** in order for the Agreement to be binding on the Parties.

34 **6. Response:** ☒ **ACCEPTS** ☐ **REJECTS** ☐ **COUNTERS Counteroffer (use new Form 2.1 for Counter-Offer terms).**

35 **7. Signatures.**

36 **By signing below, the Parties agree to the terms of this addendum and make it part of the above referenced Sale Agreement:**

37 Buyer's Signature	<u>Arthur N Hoppe</u>	Date & Time	<u>10/31/24</u>	<u>6:07 PM</u>
38 Buyer's Signature	_____	Date & Time	_____	_____
39 Buyer's Signature	_____	Date & Time	_____	_____
40 Buyer's Signature	_____	Date & Time	_____	_____

41 Seller's Signature	<u></u>	Date & Time	<u>10/31/2024</u>	<u>1:32 PM PDT</u>
42 Seller's Signature	_____	Date & Time	_____	_____
43 Seller's Signature	_____	Date & Time	_____	_____
44 Seller's Signature	_____	Date & Time	_____	_____



POWELL BANZ
VALUATION

VALUATION SERVICES

Real Estate Appraisal
Consulting
Litigation
Estate Planning
Feasibility Analysis
Rent Surveys

PROPERTY TYPES

Land
Subdivisions
Multi-Family
Single-Family
Industrial
Office
Medical
Retail
Public
Religious
Parks / Open Space
Farms / Agricultural
Specialty

SERVING

Oregon
Washington
Idaho
Northern California

Powell Banz Valuation, LLC

1467 13th Street SE
Salem, Oregon 97302
(503) 371-2403 voice
(503) 371-2613 fax
www.powellbanz.com

REAL ESTATE APPRAISAL REPORT



Photo taken November 2, 2022, #13200-2

ABBAY STREET PIER BUILDING

669 SW Bay Boulevard
Newport, Oregon 97365
PO #: 22-026

PREPARED FOR

Derrick Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

PREPARED BY

Katherine Powell Banz, MAI
PBV File Number: P221296

EFFECTIVE DATE OF VALUE

"As If" Date of Value: November 2, 2022

POWELL BANZ VALUATION, LLC



December 2, 2022

Derrick Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

RE: ABBEY STREET PIER BUILDING
669 SW Bay Boulevard
Newport, Oregon 97365
PO #: 22-026

Dear Mr. Tokos:

As requested, the captioned property has been valued using generally accepted appraisal principles and practices. This appraisal report is intended to comply with the development and report requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) and the Appraisal Institute. A copy of the signed professional service agreement is included in the Addenda.

The subject is identified as the **Abby Street Pier Building**. Improvements consist of a two-story, 3,961 SF NRA retail building located along the Newport Bayfront. The improvement is situated on an estimated site area of 3,271 SF, with a portion of the site owned and the remainder leased from the Department of State Lands. The improvement shares a tax lot and leased land with a public pier; however, per the scope of work, this analysis considers the building and its supporting footprint only.

The building is located on W-2 (Water-Related)-zoned land. It is operating at 28% occupancy; one of the three retail suites is currently leased on a month-to-month basis.

The subject property was previously appraised by Powell Banz Valuation, LLC in a report (PBV Job #: P191293) dated August 9, 2019, just outside the prior three years.

Based upon my investigation and analysis of available information, the concluded value under the requested scenario, as of November 2, 2022, was:

MARKET VALUE SCENARIO	DATE	VALUE
"As If" Market Value – Leased Fee & Leasehold	November 2, 2022	\$600,000
Estimated Marketing/Exposure Time		One year or less

This appraisal is based on the hypothetical condition that the subject improvements were partitioned from the surrounding public pier as of the date of value.

The concluded value is predicated on the following extraordinary assumptions:

- **The appraiser's estimated subject site size at partition completion, including the allocation between the leased and owned site components, is generally accurate;**
- **The City of Newport will retain access to the mechanical room for pier maintenance.**

These assumptions may have affected the assignment results. If determined to be false, the value conclusion herein will need to be revisited.

This appraisal is subject to the conditions and comments presented in this report. If any questions arise concerning this report, please contact the undersigned.

Sincerely,

POWELL BANZ VALUATION, LLC



Katherine Powell Banz, MAI
OR State Certified General Appraiser
No. C000897
Expiration Date: August 31, 2024

KPB:tgg
Appraisal Report
P221296

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ADDENDA

Purchase Order – City of Newport	
Taxes, Assessment Data, Deed & Legal Description	
Department of State Lands Lease & Renewal Agreement	
Regional Description	
Appraiser Qualifications	
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EXECUTIVE SUMMARY

PROPERTY INFORMATION		
PO #:	22-026	
Property Name:	Abbey Street Pier Building	
Address:	669 SW Bay Boulevard Newport, Oregon 97365	
Tax Account Number:	Portions of: R357311, R366804, R530598	
Map/Tax Lot:	Portions of: 11-11-08-CA-01300, 01300-L2, 01300-L3	
Property Type:	Retail	
Current Use:	Multi-tenant retail building	
Owner of Record:	City of Newport	
BUILDING CHARACTERISTICS		
Number of Buildings:	1	
Number of Tenants:	1	
Gross Building Area:	4,133 SF	
Net Rentable Area:	3,961 SF	
Percent Occupied:	28%	
Year Built:	1979	
Condition:	Fair to average	
Substantial Deferred Maintenance:	See narrative	
SITE CHARACTERISTICS		
Land Area—Approx. Owned:	613 SF	
Land Area—Approx. Leased:	2,658 SF	
Zoning Designation:	W-2 (Water Related)	
Conforming Use:	Yes	
HIGHEST AND BEST USE		
As if Vacant:	Water/tourism-oriented retail use	
As Improved:	Existing multi-tenant retail improvements	
Excess / Surplus Land:	None	
VALUATION INFORMATION		
Cost Approach:	Not Presented	
Income Approach:	\$600,000	
Sales Comparison Approach:	\$555,000	
VALUE CONCLUSION – LEASED FEE & LEASEHOLD		
Concluded “As If” Market Value:	Effective Date of Value	Value Conclusion
Allocation for Furniture, Fixtures and Equipment:	November 2, 2022	\$600,000
	None	

PRELIMINARY APPRAISAL INFORMATION

SCOPE OF WORK

Scope of Work is defined in 2020-2021 USPAP (effective through December 31, 2022) as “the type and extent of research and analyses in an assignment.” The scope of work addresses the application and extent of the development process. It can include, but is not limited to: the extent to which the property is identified, the extent to which tangible property is inspected, the type and extent of data researched and the type and extent of analyses applied to arrive at opinions or conclusions. The seven items used in defining the scope of work and the proposed solution are discussed in detail below:

This appraisal report is designed to inform the reader of all factors influencing the property's value in a clear and concise manner. The Preliminary Appraisal Information sections provide an overview of the property and general information. The Description section starts with general regional issues and proceeds to more specific issues directly related to the property. The Highest and Best Use section establishes the premise upon which the property is valued.

The goal of the appraiser is to produce a credible value conclusion. Credible is defined in 2020-2021 USPAP (effective through December 31, 2022) as “worthy of belief.”

In order to conclude a credible market value opinion, the client and appraiser determined that the Valuation section focuses on the **“as if” stabilized market value** of the **leased fee** interest in the subject property with market rents in place. It describes the Income Capitalization and Sales Comparison Approaches, and includes comparable information, application of market information to the subject, and valuation analysis. The approaches utilized are reconciled into final value conclusions as applicable.

Based on the analysis contained herein, the in-place lease is below market and there are two vacant suites. Adjustments to the stabilized value are considered within each approach, as needed, to result in the **“as if” market value** of the **leased fee and leasehold estate**.

All comparable data has been verified by either a party to the transaction or an agent, unless otherwise identified. Supporting information is attached in the Addenda.

The building shares a pier and tax lot with the adjacent public pier; however, the client is considering selling the building and supporting site but retaining the public pier via a partition. **Per the scope of work, the following analysis considers the “as if” value assuming the building and supporting site were separate from the public pier.** Further; note the underlying supporting site is partially owned and partially leased from the Department of State Lands (noting the pier extends out into the waterway).

A survey or other precise measurements of the supporting site size was not provided; therefore, the appraiser estimated this area using measurements obtained at the time of inspection and via Google Earth. This appraisal assumes the measurements are reasonably correct and reflect the area the ownership would partition for the building's supporting site. If the measured area is determined to be false, the value conclusions will need to be revisited.

CLIENT AND INTENDED USER

The client and intended user for this appraisal is the City of Newport.

PRELIMINARY APPRAISAL INFORMATION (continued)

OTHER INTENDED USERS

Other intended users include the client's legal and accounting professionals.

INTENDED USE

The purpose of this appraisal is to estimate market value, in **leased fee**, under the applicable scenario, as described in this report.

Without prior written approval from the author, **the intended use of this report is limited to decision-making regarding a potential sale of the subject property by the client**. All other uses are expressly prohibited. Reliance on this report by anyone other than the client for a purpose not set forth above is prohibited. The author's responsibility is limited to the client. If you are not the stated intended user contact our office to have an appraisal customized for your needs.

TYPE OF VALUE

The **"As If"** Value represents the value of the subject, under hypothetical condition(s) contrary to what is known by the appraiser to exist as of the date of inspection.

INSPECTION DATE

November 2, 2022

EFFECTIVE DATE OF VALUE

As If Market Value: November 2, 2022

DATE OF REPORT

December 2, 2022

PROPERTY CHARACTERISTICS

The subject is identified as the **Abby Street Pier Building**. Improvements consist of a two-story, 3,961 SF NRA retail building located along the Newport Bayfront. The improvement is situated on an estimated site area of 3,271 SF, with a portion of the site owned and the remainder leased from the Department of State Lands. The improvement shares a tax lot and leased land with a public pier; however, per the scope of work, this analysis considers the building and its supporting footprint only.

The building is located on W-2 (Water-Related)-zoned land. It is operating at 28% occupancy; one of the three retail suites is currently leased on a month-to-month basis.

PRELIMINARY APPRAISAL INFORMATION (continued)

ASSIGNMENT CONDITIONS

- An interior and exterior inspection of the subject.
- Interviewing the subject's property representative, Derrick Tokos, Community Development Director, City of Newport.
- Inspecting of the subject property neighborhood.
- Gathering and confirming lease comparables and improved sales from the immediate area and competing marketplaces.
- Inspecting the exterior of all comparables utilized in person or via photographs.
- Reviewing the subject's income and expense history as provided by the property representative.
- Highest and best use analysis.
- The application of the Income Capitalization and Sales Comparison Approaches to arrive at an indication of value for the subject property.
- A review of the written report.

APPRAISER ASSISTANCE

Tyson Giza, Appraiser Assistant #AA03308 (expires July 26, 2023), aided in the following aspects of this appraisal assignment as outlined in ACLB Administrative Rules (OAR) 161-025-0030:

- Definition of the appraisal problem (A).
- Preliminary analysis, selection and collection of applicable data (B).
- Analysis of the subject property (C).
- Conducting a Highest and Best Use analysis (D).
- Estimating value of the subject property using the applicable approaches of value – the Income and Sales Comparison Approaches (F).
- Reconciliation of each value estimate to arrive at a final estimate of value (G).
- Reporting estimate(s) of value(s) as defined (H).

All work performed by Tyson Giza has been directed, reviewed and approved by Katherine Powell Banz, MAI.

PRELIMINARY APPRAISAL INFORMATION (continued)

DEFINITION OF MARKET VALUE

This definition is in compliance with the OCC (Office of the Comptroller of the Currency), FDIC (Federal Deposit Insurance Corporation), FIRREA (Federal Institutions Reform, Recovery, and Enforcement Act), and USPAP (Uniform Standards of Professional Appraisal Practice) as adopted by the Appraisal Foundation and the Appraisal Institute. This definition complies with the 2020-2021 USPAP (effective through December 31, 2022) regulations.

Market Value, as defined by *The Appraisal of Real Estate, 15th Edition* as published by the Appraisal Institute is:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."¹

PROPERTY RIGHTS APPRAISED

Leased Fee Interest, which is defined by *The Dictionary of Real Estate Appraisal, 7th Edition* (2022), Appraisal Institute, as:

The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires.

Leasehold Estate: *the right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease.*

- **Sandwich Leasehold Estate:** *the interest held by the sandwich leaseholder when the property is subleased to another party; a type of leasehold estate.*
- **Subleasehold Estate:** *the right to occupy and use property that results when the lessee in a prior lease conveys (i.e., subleases) the right of use and occupancy to another, the sublessee; also known as a subleasehold interest.*

SPECIFIED FINANCING

Cash to seller, with or without financing; considered to be cash equivalent.

¹ *The Appraisal of Real Estate, 15th Edition*. Chicago: Appraisal Institute, 2020.

PRELIMINARY APPRAISAL INFORMATION (continued)

OWNERSHIP AND SALES HISTORY ANALYSIS

According to Lincoln County Assessor's records, the subject property is currently vested under the ownership of **THE CITY OF NEWPORT**. The most recent transaction occurred June 11, 1992 between the NEWPORT URBAN RENEWAL AGENCY (Grantor) and THE CITY OF NEWPORT (Grantee) for a recorded consideration of \$0 in Warranty Deed 245-2077; this transaction was between governmental parties.

No transactions involving the subject have occurred in the last three years and the property is not currently listed for sale.

ASSESSMENT AND TAX INFORMATION

Annual real estate taxes levied by the **Lincoln County** Assessor's Office are summarized on the following table:

Tax Account	Tax Lot	Real Market Value			Assessed Value (M50)	2022/2023 Taxes	Unpaid Taxes*	Tax Rate
		Land	Improvements	Total				
R357311	11-11-08-CA-01300	\$245,770	\$651,460	\$897,230	\$0	\$0.00	\$0.00	\$18.1165
R366804	11-11-08-CA-01300-L2	\$24,830	\$86,850	\$111,680	\$65,580	\$1,118.87	\$0.00	\$18.1165
R530598	11-11-08-CA-01300-L3	\$60,010	\$207,350	\$267,360	\$157,260	\$2,766.05	\$1,563.31	\$18.1165
Total		\$330,610	\$945,660	\$1,276,270	\$222,840	\$3,884.92	\$1,563.31	

Source: Lincoln County Assessor's Office

RMV as of July 2022, certified October 2022 by Lincoln County

*Unpaid taxes excludes taxes owed for 2022/2023

Note that the subject reflects only a portion of the above tax lots in the "as if" scenario. The City of Newport is tax-exempt; however, the Abbey Street Pier Building's three retail tenants are all taxed and billed individually for this expense based on their shares of the leased space. Tax account R530598 (Lattas of Oregon Inc.; the first floor glass fusing space) are delinquent on their taxes, with the unpaid 2021/2022 tax reported on the above chart.

LEGAL DESCRIPTION

Please refer to the Addenda for a full legal description.

INSPECTION

Date of Inspection:	November 2, 2022
Property Representative:	Paul (last name unknown), City of Newport Facilities Department
Powell Banz Valuation, LLC:	Katherine Powell Banz, MAI (exterior only; interior via photographs and prior 2019 inspection) Jonathan B. Banz, MAI, AI-GRS Tyson Giza
Extent of Inspection:	A physical interior and exterior inspection was performed. The interior of the glass retail space on the first floor was not accessible; it was inspected from the exterior through the storefront windows.

PRELIMINARY APPRAISAL INFORMATION (continued)

SOURCES OF INFORMATION

The following sources were contacted to obtain relevant information:

Source	Information
Derrick Tokos, Community Development Director, City of Newport	Subject information including lease documents and operating statements.
Lincoln County Assessor's Office	Subject data; tax information.
City of Newport Planning Department	Zoning information.
Realquest	Subject data, comparable research.
Multiple brokers and real estate professionals	Local area data; comparable confirmation.
Regional Multiple Listing Service	Comparable research.
Flex Multiple Listing Service	Comparable research.
LoopNet	Comparable research.
CoStar	Comparable research.
County Deed Records	Comparable research.

COMPETENCY RULE

I am aware of the competency rule as detailed in *USPAP*, and with my understanding, I possess the education, knowledge, technical skills, and practical experience to complete this assignment competently, in conformance with the stated regulations. I have appraised numerous retail properties in Newport, along the Oregon Coast, and throughout the State of Oregon in recent years.

PERSONAL PROPERTY, FIXTURES, AND INTANGIBLE ITEMS

No personal property, trade fixtures, or intangible items were included in this valuation.

USE OF RECOGNIZED APPRAISAL APPROACHES

This report utilizes two of the three recognized valuation methods: the Income Capitalization and Sales Comparison Approaches to value.

The Cost Approach is reliable when the improvements are new, nearly new or proposed. The subject was built in 1979. The Cost Approach was considered, but ultimately not developed due to the age of the improvements and the subjective nature of reliably estimating depreciation, which may conclude a value inconsistent with the primary approaches. The exclusion of this approach does not compromise the validity of the value conclusions contained herein.

UNAVAILABILITY OF INFORMATION

All information necessary to develop an estimate of value of the subject property was available to the appraiser, except for a survey with the actual leased and owned subject site areas, and a precise subject supporting site area. Per the scope of work, the subject's supporting site area has been estimated utilizing on-site measurements and Google Earth aerial measurements.

PRELIMINARY APPRAISAL INFORMATION (continued)

EXPOSURE TIME AND MARKETING PERIOD

Exposure time is defined within the 2020-2021 USPAP (effective through December 31, 2022) as:

The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.

Exposure time is best established upon the experience of recent comparable sales. The sales indicate a standard exposure period of **one year or less** for appropriately priced properties similar to the subject.

Marketing period is very similar to exposure time, but reflects a projected time period to sell the property, rather than a retrospective estimate.

Based on the subject property type and the data presented herein, a similar marketing period of **one year or less** remains reasonable.

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is subject to the following assumptions and limiting conditions:

HYPOTHETICAL CONDITIONS

A hypothetical condition is a condition that is contrary to the facts, and yet will be used to value a property. An example of a hypothetical condition would be assuming a larger amount of land than actually exists to arrive at a value.

This appraisal is based on the hypothetical condition that the subject improvements were partitioned from the surrounding public pier as of the date of value.

EXTRAORDINARY ASSUMPTIONS

An extraordinary assumption is an assumption made that does not exist, but could reasonably exist.

The concluded value is predicated on the following extraordinary assumptions:

- **The appraiser's estimated subject site size at partition completion, including the allocation between the leased and owned site components, is generally accurate;**
- **The City of Newport will retain access to the mechanical room for pier maintenance.**

These assumptions may have affected the assignment results. If determined to be false, the value conclusion herein will need to be revisited.

ORDINARY ASSUMPTIONS

The analysis assumes that the Lincoln County Assessor's office legal description accurately represents the subject property. A survey has not been provided to the appraiser. If further verification is required, a survey by a registered surveyor is advised.

I assume no responsibility for matters legal in character, nor do I render any opinion as to title, which is assumed to be marketable.

All existing liens, encumbrances, and assessments have been disregarded, unless otherwise noted, and the property is appraised as though free and clear, under responsible ownership, and competent management.

The exhibits in this report are included to assist the reader in visualizing the property. I have made no survey of the property and assume no responsibility in connection with such matters.

Unless otherwise noted herein, it is assumed that there are no encroachments, zoning, or restrictive violations pertinent to the subject property.

This report is not a real property inspection; the appraiser only performed a visual inspection of accessible areas and this appraisal cannot be relied upon to disclose conditions and/or defects in the property.

The appraiser assumes no responsibility for determining if the property requires environmental approval by the appropriate governing agencies, nor if it is in violation thereof, unless noted.

ASSUMPTIONS AND LIMITING CONDITIONS (continued)

Information presented in this report has been obtained from reliable sources, and it is assumed that the information is accurate.

This report shall be used for its intended purpose only, and by the parties to whom it is addressed. Possession of the report does not include the right of publication.

Simply because a borrower or third party may receive a copy of the appraisal, does not mean that the borrower or third party is an Intended User as that term is defined in USPAP.

The appraiser may not be required to give testimony or to appear in court by reason of this appraisal, with reference to the property in question, unless prior arrangements have been made.

The statements of value and all conclusions shall apply as of the dates shown herein. The appraiser has no present or contemplated future interest in the property that is not specifically disclosed in this report.

Neither all, nor any part, of the contents of this report shall be conveyed to the public through advertising, public relations, news, sales, or other media without the written consent or approval of the author. This applies particularly to value conclusions and to the identity of the appraiser and the firm with which the appraiser is connected.

This report must be used in its entirety. Reliance on any portion of the report independent of others may lead the reader to erroneous conclusions regarding the property values. No portion of the report stands alone without approval from the author.

The valuation stated herein assumes professional management and operation of the building(s) throughout the lifetime of the improvements, with an adequate maintenance and repair program.

The valuation is based on the projection that the improvements will maintain a stabilized occupancy level over its economic life, with tenants paying market level rents.

The liability of Powell Banz Valuation, LLC and employees is limited to the client only and only up to the amount of the fee actually received for the assignment. Further, there is no accountability, obligation, or liability to any third party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraiser is in no way responsible for any costs incurred to discover or correct any deficiency in the property. The appraiser assumes that there are no hidden or unapparent conditions of the property, subsoil, or structures that would render it more or less valuable. In the case of limited partnerships or syndication offerings or stock offerings in real estate, the client agrees that in case of lawsuit (brought by lender, partner, or part owner in any form of ownership, tenant, or any other party), any and all awards, settlements, or cost, regardless of outcome; the client will hold Powell Banz Valuation, LLC completely harmless.

The appraiser is not qualified to detect the presence of toxic or hazardous substances or materials which may influence or be associated with the property or any adjacent properties. I have made no investigation or analysis as to the presence of such materials, and expressly disclaim any duty to note the presence of such materials.

ASSUMPTIONS AND LIMITING CONDITIONS (continued)

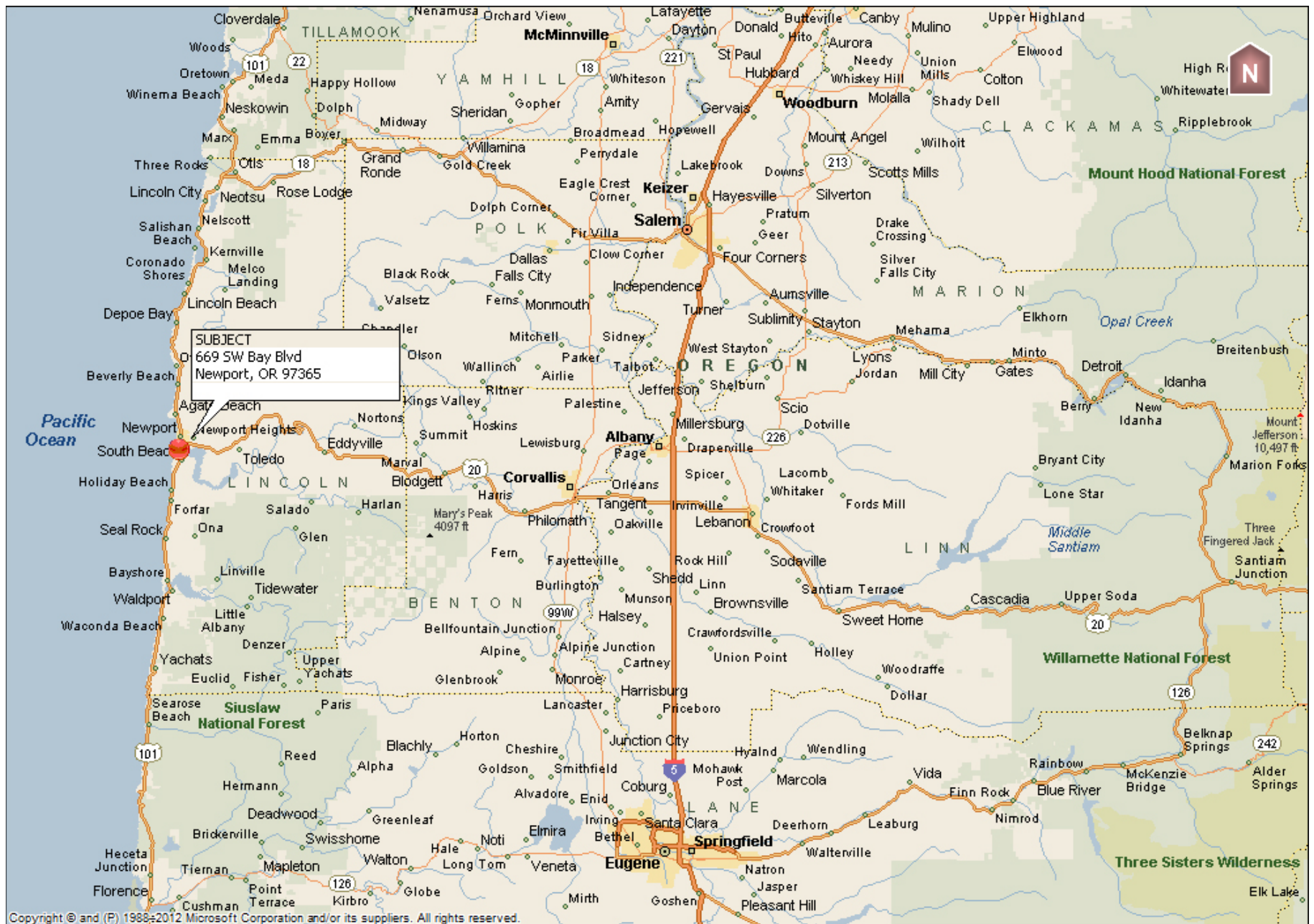
Therefore, irrespective of any degree of fault, Powell Banz Valuation, LLC and its principals, agents, and employees, shall not be liable for costs, expenses, damages, assessments, or penalties, or diminution in value, property damage, or personal injury (including death) resulting from or otherwise attributable to toxic or hazardous substances or materials, including without limitation hazardous waste, asbestos material, formaldehyde, or any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, solids, or gasses, waste materials or other irritants, contaminants, or pollutants.

The appraiser assumes no responsibility for determining if the subject property complies with the *Americans with Disabilities Act (ADA)*, which prescribes specific building standards which may be applied differently to different buildings, depending on such factors as building age, historical significance, amenability to improvement, and costs of renovation. Powell Banz Valuation, LLC its principals, agents, and employees, shall not be liable for any costs, expenses, assessments, penalties, or diminution in value resulting from non-compliance. Except as otherwise noted herein, this appraisal assumes that the subject complies with all ADA standards appropriate to the subject improvements; if the subject is not in compliance, the eventual renovation costs and/or penalties would negatively impact the present value of the subject. If the necessary renovation costs, time period needed for renovation, and penalties for non-compliance (if any) were known today, appropriate deductions would be made to the value conclusion(s) reported herein.

AERIAL PHOTOGRAPH (LINCOLN COUNTY GIS MAP)

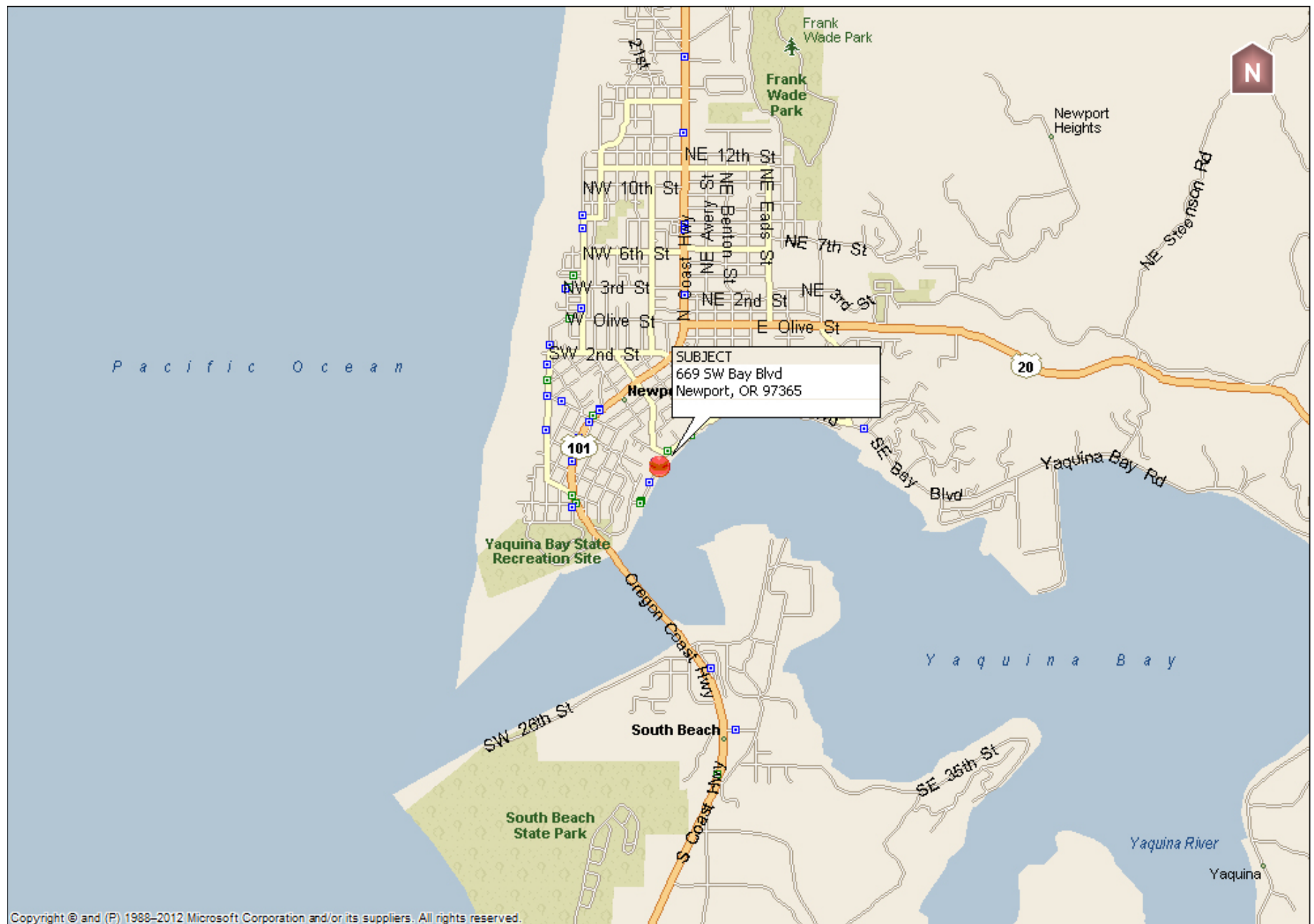


REGIONAL MAP



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NEIGHBORHOOD MAP

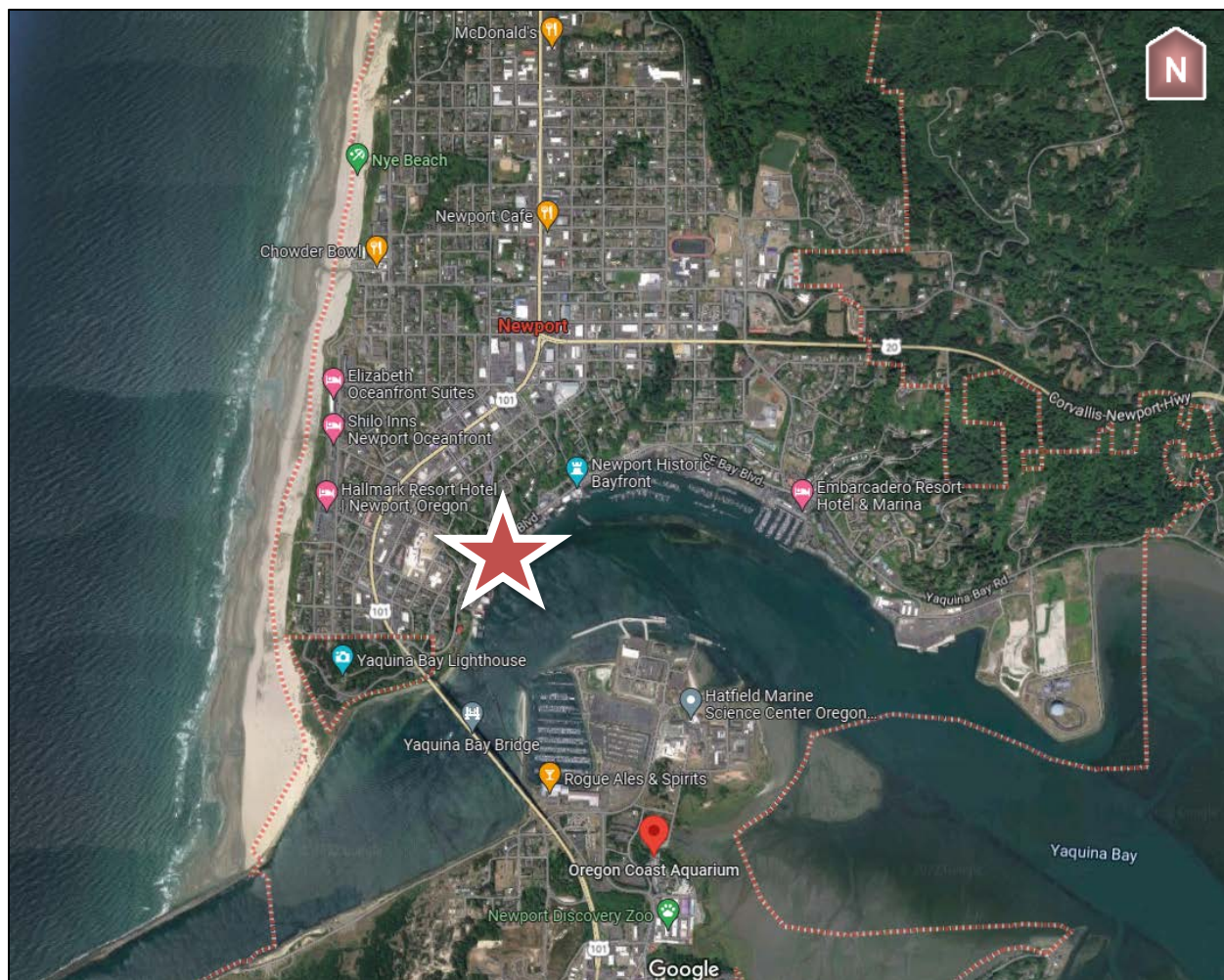


DESCRIPTION

REGIONAL DESCRIPTION

Please see the Addenda for a detailed description of the Central Coast Region.

NEIGHBORHOOD DESCRIPTION



A neighborhood is defined as a geographic area characterized by a similarity of users and/or uses within which any change has a direct and immediate effect on the subject and its value or marketability. The subject is located in **Newport's Bayfront** on Yaquina Bay.

The area is served by all public utilities, including water, sewer, electricity, natural gas, telephone, and cable television. Police and fire protection are by the City of Newport.

Newport is heavily reliant on its tourism and seafood industries. The **Bayfront area**, which is east of Highway 101, consists of novelty retail shops and restaurants that cater to travelers as well as seafood processing facilities. The Hatfield Marine Science Center and the Oregon Coast Aquarium are major tourist attractions. Both are located south of the subject's immediate neighborhood, across the Yaquina Bay Bridge in South Beach. The Seafood and Wine Festival, which is held annually and sponsored by the City of Newport Chamber of Commerce, celebrated its 41st anniversary in 2019. This event takes place in February and is located just north of the Oregon Coast Aquarium, on OSU Drive.

DESCRIPTION (continued)

Generally, Newport is situated along the length of the Highway 101 corridor, from NE 73rd Street on the north to SE 116th Street on the south. Newport's west boundary is the Pacific Ocean. East of Highway 101, it generally dissolves into residential acreage and timber land.

Highway 101 serves as the primary north/south transportation route through the city. It plays a major role in the local neighborhood due to the majority of commercial uses and city services aligned along it. Commercial development has grown up along both sides of the highway, including a wide variety of establishments catering to both travelers and local residents. The highway separates Newport into a tourist oriented west half and residential/heavy commercial uses on the east half.

The City of Newport has worked in conjunction with ODOT to update its **Transportation System Plan (TSP)** for 2022 and added several new goals to the prior TSP completed in 2012. One of the key opportunities noted in the TSP update is improving circulation along Oregon Coast Highway. Three circulation options were considered and evaluated based on their impact to the goals of the TSP and the objectives of the Northside Urban Renewal Area for the commercial core to improve traffic flow and reduce congestion.

The option that scored highest under the aforementioned criterion was converting the existing highway into a two-way couplet that splits between Abbey Street from the south and Angle Street to the north, as depicted in the image below. The location of the subject site is depicted by the green star, showing its proximity to the potential change in circulation of the highway.

Note that the other two circulation options, which include maintaining the existing two-way highway with streetscape improvements or a longer couplet option that runs between Angle Street and Bayley Street further south, have not been eliminated from further consideration. City Council and the Planning Commission are scheduled to review the new TSP between November 21 and November 28, 2022. The entire City of Newport TSP can be reviewed at the following link: https://sites.jla.us.com/files/newport-tsp/1657732384_newport-tsp-adoptiondraft-7-7-22-full-document.pdf?2336784eb9

DESCRIPTION (continued)

FIGURE 37: US 101 SHORT COUPLET CIRCULATION OPTION



The primary east/west arterial is Highway 20 (Olive Street), which connects Newport to Corvallis, heading east. Two circulation options were considered for Highway 20 as part of the updated TSP: the first option maintains the existing alignment but includes several streetscape upgrades to enhance bicycle and pedestrian environment, while the second option consists of a couplet between NE Harney Street/SE Moore Drive and Highway 101. Through the quantitative/qualitative analysis and public outreach evaluation process, maintaining two-way traffic on the existing highway emerged as the preferred alternative.

Within the city limits, Highway 20 becomes Olive Street and is primarily lined with commercial uses.

Oregon Coast Community College relocated to SE Harborton Street, east of Mike Miller Park. The adjacent Wilder Village is a multi-phase mixed-use development. The green/sustainable community consists of residences, townhomes, cottages, and future phases will include apartments and office/retail uses. At the corner of Olive Street and Highway 101, a former auto dealership was demolished to make way for a new Walgreens that was completed in 2014.

The **Oregon Coast Aquarium** opened in 1992 and is located on 23 AC adjacent to Yaquina Bay in the South Beach neighborhood of Newport. It is visited by nearly 500,000 tourists annually.

DESCRIPTION (continued)

The Oregon Museum of Science and Industry (OMSI) opened the **Coastal Discovery Center at Camp Gray** in 2016, an educational camp located on nearly 20 acres. The facility has three classrooms, over 150 bunk beds, and serves more than 5,000 people annually with year-round programming.

Oregon State University's **Hatfield Marine Science Center (HSMC)** is located on 49 acres leased from the Port. The research facility has approximately 75-100 students, 12-14 faculty, and is visited by more the 150,000 tourists annually.

In 2015, OSU announced a plan to construct a \$50+ million, three-story, 72,000 SF Marine Studies Building.



According to a March 13, 2018 article published on the OSU website (<https://today.oregonstate.edu/news/osu-hold-ceremony-march-15-launch-construction-new-marine-studies-building>), the Gladys Valley Marine Studies Building is one of the first "vertical evacuation" sites for tsunamis in the United States. The facility includes a large academic and research core, connected to a separate community space, auditorium, and innovation laboratory. The roof is 47' high and has been designed to serve as an evacuation area for up to 900 people. Construction began in March 2018 and was completed in 2020.

The Newport Student Housing report (prepared for Newport by EcoNorthwest in November 2014) states that the Hatfield expansion would create demand in Newport for an additional 165 to 260 dwelling units. The increase in the student population was expected to place additional strain on Newport's low vacancy housing market.

The **Pacific Fleet of NOAA (National Oceanic and Atmospheric Administration)** relocated from Washington to the South Beach neighborhood of Newport. Construction began on the facility in January 2010 and was completed in mid-2011. The total cost of the project was estimated at \$38 million, of which \$19.5 million was provided by State of Oregon Lottery funds. NOAA is leasing the site from the Port of Newport under a 20-year lease at \$2.4 million per year.

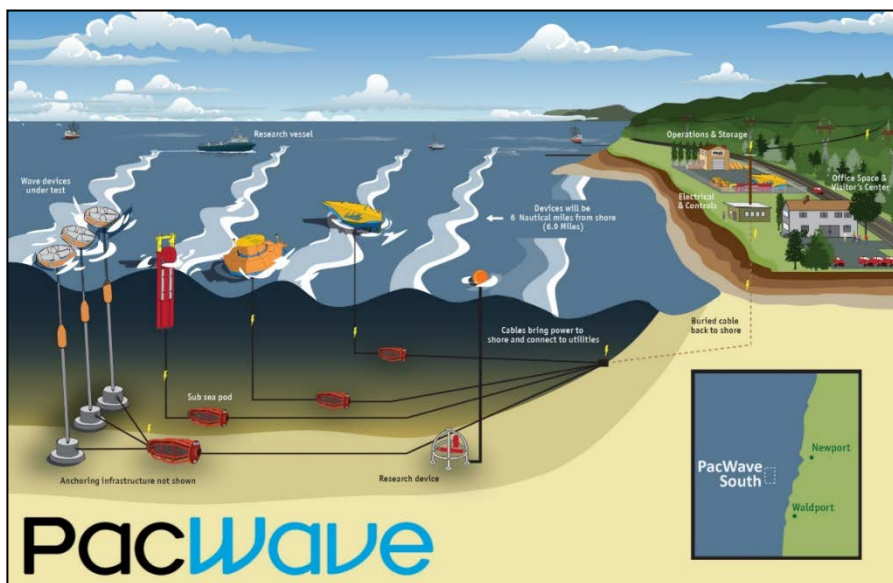
DESCRIPTION (continued)

In 2015, voters passed Ballot Measure 21-163, which issued a 20-year bond for up to \$57 million for the construction of a new hospital, built on the same site as the existing **Samaritan Pacific Communities Hospital**, a 25-bed critical access hospital located at the corner of SW 9th Street and SW Abbey Street. The project included three different construction phases, all of which have now been completed. Phase one began in early summer 2017 with the addition of a new 120,000 SF building.



The existing hospital building remained open during initial phases of construction and was renovated. Samaritan Health, which operates the hospital, contributed another \$11 million toward the project. Phase two, which included complete renovation of an existing two-story building originally constructed in 1988, finished in late February 2020. The final phase included demolishing the original structure built in 1951 with construction of expanded parking along the front of the hospital. Construction for the final phase was completed in early 2021.

In February 2021, Oregon State University announced a federal lease has been issued that will allow an OSU-led project to operate the nation's first offshore wave energy testing facility in federal waters. The estimated \$80 million facility will be located 6.9 miles off-shore southwest of Newport. The project is known as PacWave South and it will include both off-and on-shore components. The illustration at right, courtesy of OSU, depicts an artist's rendering of the project.



According to OSU:

"PacWave South will be the first pre-permitted, full-scale, utility grid-connected wave energy test site in the United States. It is designed to allow wave energy developers the opportunity to test different technologies for harnessing the energy of ocean waves...Current timelines suggest construction could begin this summer, and the facility should be operational by 2023."

DESCRIPTION (continued)

New residential development includes the **Wyndhaven Ridge Apartments** at 1345 NE Lakewood Drive. The first phase was completed in July 2021 with additional phases to follow. The project required the developer to apply for a building height variance, which was approved by City of Newport's Planning Commission. The project will total 78 new market-rate apartment units.

Whaler Hotel, located at 155 SW Elizabeth Street, offers immediate beach access and is undergoing a 25-unit expansion based on a conditional use permit and design review approval granted in May of 2021.

The future for residential and commercial property in Newport is strong over the long term. Buildable properties within the city limits have become scarce and the availability of adequate utilities to service new developments is questionable. This has raised the demand for both improved and unimproved properties.

Overall, the Pacific Ocean and Yaquina Bay, ocean related commerce, including the fishing and tourism industries as well as oceanic research and education, has resulted in sustained market conditions and new development in past years. In the long-term, the economic security of the area is anticipated to continue.

SITE DESCRIPTION

Hazardous Waste/Asbestos

Upon physical inspection of the site, no hazardous material was evident. I have made no independent investigation regarding this issue. This appraisal assumes the site is free of all hazardous waste and toxic materials. Please refer to the Assumptions and Limiting Conditions section regarding this issue.

Current Use

The site is improved with the **Abbey Street Pier Building**, a two-story retail building that is demised into three rentable units. The building was constructed in 1979, according to Lincoln County Assessor's records.

Site Size

Per the scope of work, the subject is considered "as if" partitioned from the existing site, which includes a public pier, with only the supporting building site included.

Based on the appraiser's approximate measurements taken during the 2019 inspection, cross referenced with Google Earth aerial imagery, the subject's total supporting site area, including the area beneath the second floor walkways but excluding the remainder of the public pier, is **3,271 SF**.

The subject site includes an owned area (fronting Bay Boulevard) and a leased area (the area beneath the pier in Yaquina Bay, owned by the State of Oregon and leased from the Department of State Lands).

DESCRIPTION (continued)

Site Size (continued)

Owned site area: According to measurements taken from the subject's plat map, the larger parcel leased fee site size is 0.03 AC. This includes the area used as the public pier. Per the plat map, the larger site has a width of 80'. More specific site measurements were not available.

A site area of 0.03 AC suggests that, prior to rounding, the actual square footage may range from 0.025 AC to 0.035 AC, or 1,089 SF to 1,525 SF. Based on the larger site size width of 80', this suggests a site depth of $(1,089 \text{ SF} / 80')$ 13.6' to $(1,525 \text{ SF} / 80')$ 19.1'.

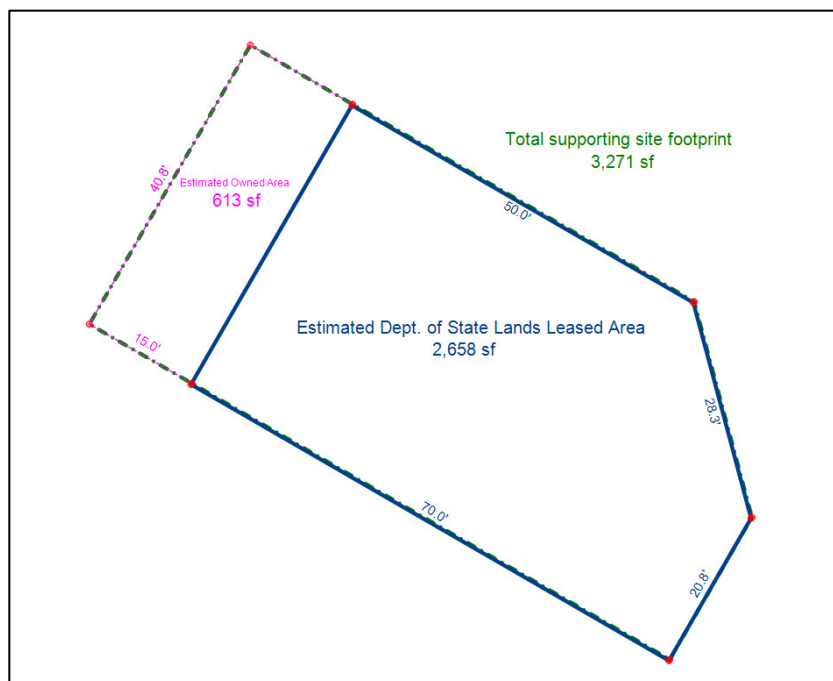
A rounded depth of 15' is assumed for the larger leased fee parcel.

Next, the subject's building width, including the exterior second floor walkway, was considered. It totals **40'10"**, or **40.83 feet**. Multiplying this total by the concluded rounded lot depth of **15'** results in an **owned supporting site area, in leased fee, for the subject building improvement**, of $(40.83' \times 15')$ **613 SF**. The subject's site ownership extends to the high water line, determined by the Oregon Department of State Lands and is subject to change due to natural shifts in water patterns. Further research is advised to determine the current actual water line and survey the subject's lot depth and width for the supporting site.

Leased site area: The subject's total supporting site area is estimated to be **3,271 SF**. Subtracting the previously calculated owned site area from the total site area results in a leased site area of **(3,271 SF – 613 SF) 2,658 SF**. The appraiser's measurements for the total site area and leased/owned components are shown below. Note the drawing is approximate.

DESCRIPTION (continued)

Site Size (continued)



Department of State Lands Lease – The current lease term commenced in 2018 and carries an **18-year term**; the lease rate is determined by a formula from the Department of State Lands on a per SF basis with annual 3% escalations. Because the actual lease includes the pier area, which is excluded from this report, the appraiser's estimated leased area will be used herein. The 2022 lease rate is equal to \$2,594.10. Based on the total leased area of 3,750 SF, this equates to **\$0.6918 per SF**. Based on the subject supporting site's calculated leased area (2,658 SF), this results in an annual lease expense of **\$1,839**.

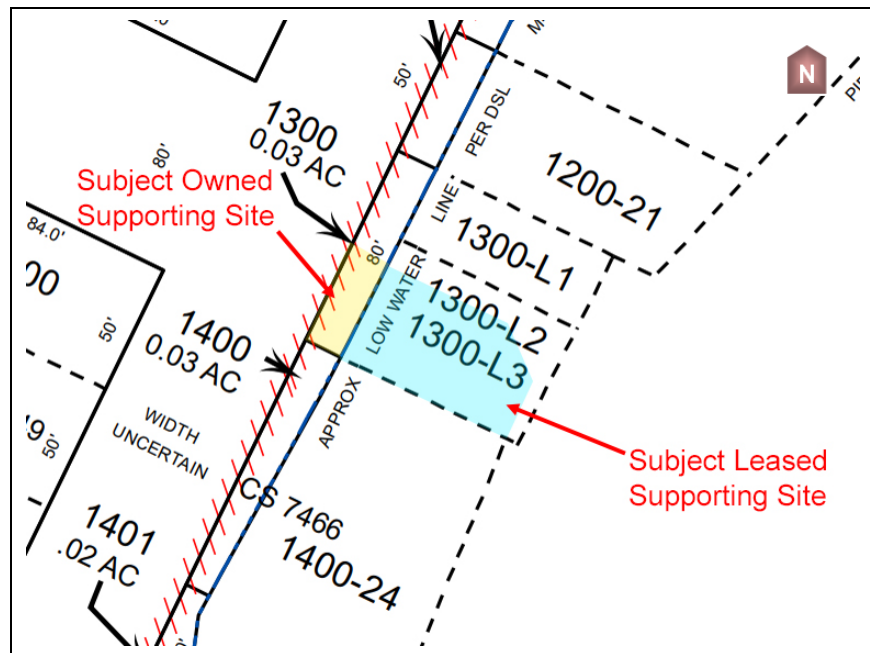
State Lands Lease		Per SF
Lease Rate	2022 lease rate	\$0.6918
x leased area - SUPPORTING SITE ONLY		2,658
2022 Department of State Lands Rent - Supporting Site Only		\$1,839

Shape

Irregular.

DESCRIPTION (continued)

Plat Map



Map and Tax Lots

Portions of 111108CA 01300 (owned), 1300-L2, & 1300-L3 (leased).

Topography

Access to the site is level at street grade along its west boundary, then submerged under water along Yaquina Bay; the constructed pier results in a flat area for building development.

Proximate Properties--

North

Public pier, with Mo's Seafood & Chowder Annex and fish processing facility beyond.

East

Yaquina Bay.

South

Pacific Seafood Plant and other commercial services along SW Bay Blvd. beyond.

West

SW Bay Boulevard, with public parking lot and restrooms beyond.

Utilities

Public utilities, including water, sewer, garbage and electricity are available to the subject property.

Street Improvements

SW Bay Boulevard is an asphalt paved street improved with curbs, gutters, streetlights and sidewalks. It is a two-way, two-lane street running parallel to the bay front. Southwest and northwest of the subject, there is angled street parking along the west side of the street.

DESCRIPTION (continued)

Exposure

Good, the supporting site benefits from an estimated 40' 10" of frontage along SW Bay Boulevard. The location is in-line, without corner exposure. However, it is near the heart of the Bay Boulevard retail corridor, which attracts significant pedestrian and car traffic from tourists.

Accessibility

Average; the site is accessible to pedestrians from Bay Boulevard; there is no on-site parking or curb cut access.

Easements and Encumbrances

A preliminary title report prepared by Western Title & Escrow and dated May 31, 2019 was provided for review. Encumbrances and easements include:

- Lessees' unpaid property taxes (discussed previously);
- The rights of public and governmental bodies for fishing, navigation, and commerce in and to any portion of the subject land lying below the high water line of the Yaquina Bay;
- The right, title, and interest of the State of Oregon in and to any portion lying below the high water line of Yaquina Bay.

Upon reviewing county plat maps, there did not appear to be any other adverse easements, encroachments, or encumbrances relevant to the subject property. If questions arise regarding easements, encroachments, or encumbrances, further research is advised.

Zoning and Comprehensive Plan



DESCRIPTION (continued)

The site is zoned **W-2 (Water Related)** by the City of Newport. Per Section 14.03.040 of the Development Code, this zone is intended "to provide areas within and adjacent to the Yaquina Bay Shorelands for water-dependent, water-related, and other uses that are compatible or in conjunction with water-dependent and water-related uses." Allowed uses include:

- Boat rentals, sport fishing, and charter boat services;
- Docks, wharves, and piers;
- Marinas, boat construction, repair and service, and boat fuel facilities;
- Marine research and education facilities;
- Seafood markets;
- Bait, tackle, and sporting goods stores specializing in water-related merchandise.

Further, all uses permitted in the C-2 district, including retail, are conditional uses in this zone. **The subject's retail uses are permitted as a conditional use.**

There are no minimum lot area, width, or setback requirements. The maximum building height is 35'.

Per Section 14.14.040, off-street parking for retail uses must be provided at the rate of one space per 300 SF, or (4,133 SF / 300 SF) 14 spaces. The subject has no on-site parking. However, the parking requirement may be met through off-site parking located within 200 feet of the subject in a "satellite" lot; the public parking lot across the street qualifies, and results in the zone parking requirements being met.

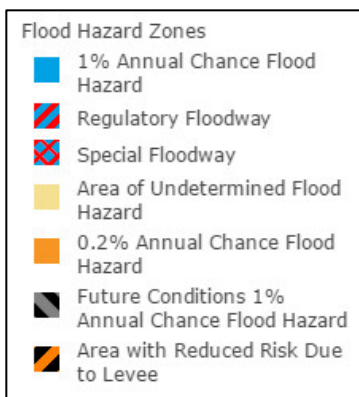
The complete zoning code can be located at the following City of Newport website address:

<https://www.newportoregon.gov/dept/adm/documents/newportmunicipalcode.pdf>

Zoning and Comprehensive Plan (continued)

DESCRIPTION (continued)

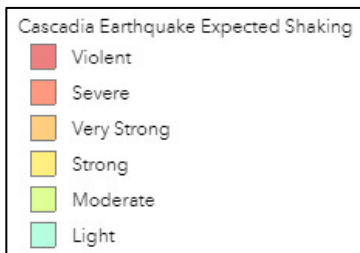
Floodplain



According to the Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), Flood Insurance Rate Map (FIRM), Community-Panel No. 41041C0368E, dated October 18, 2019, the subject site lies in Zone AE, an area subject to inundation by the 1% annual chance flood hazard, with a base flood elevation of 13 feet. However; it is assumed the subject's pier is above the 13 feet flood minimum. The property representative did not report that the subject is required to carry flood insurance; further research is advised to confirm the improvements are outside of the flood zone.

DESCRIPTION (continued)

Seismic Hazard



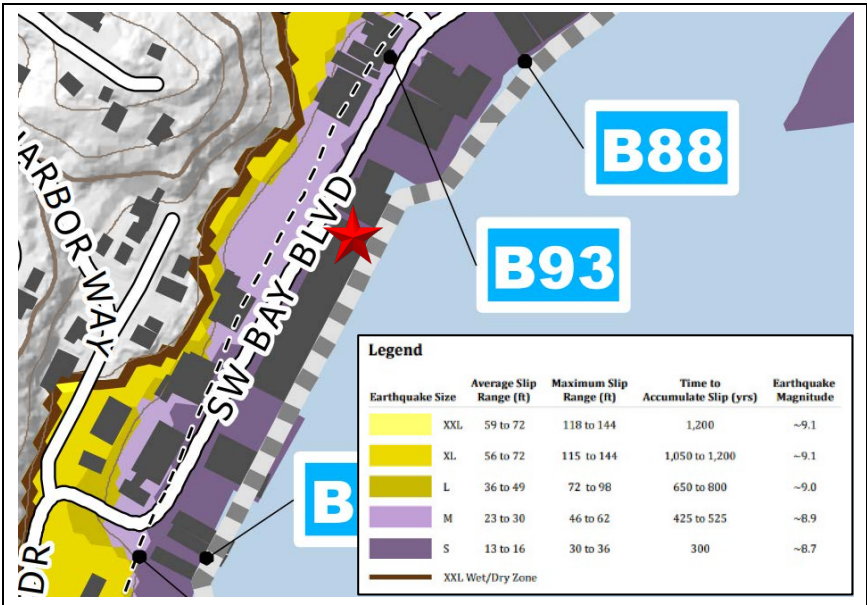
According to the Oregon Department of Geology and Mineral Industries (DOGAMI), the data show the amount of shaking expected if a magnitude 9.0 Cascadia Subduction Zone (CSZ) earthquake occurs. A CSZ earthquake will create a local tsunami that will inundate the Oregon coast.

The subject site will experience **severe** shaking in the event of seismic activity. This data shows the strongest shaking expected to occur during an earthquake in a 500-year period. The stronger the amount of shaking, the more structural damage will occur.

This seismic rating is typical for the immediate area and larger region.

DESCRIPTION (continued)

Tsunami Hazard



According to the DOGAMI Tsunami Inundation Map (TIM) above, the subject lies in an area subject to inundation by a “Small” tsunami from an 8.7 magnitude earthquake.

The color shading in the map above corresponds to five earthquake scenarios (S, M, L, XL, and XXL), and the areas expected to be inundated by the resultant tsunamis. The inundation maps incorporate the most recent tsunami science available, including recent publications by colleagues studying the Cascadia Subduction Zone, updated computer simulation models using high-resolution LIDAR topographic data, and knowledge gained from recent earthquakes and tsunamis.

Soils

Soils are assumed to be stable, supporting the subject and neighborhood buildings.

Site Rating

Overall, noting the W-2 zoning designation and bayfront location with Yaquina Bay views and frontage, the site has a good rating for a water-dependent commercial use. The shape of the site is conducive to development as well, though the improvement must be constructed on a pier due to the sloping topography into the bay.

DESCRIPTION (continued)

DESCRIPTION OF IMPROVEMENTS



(Photo taken November 2, 2022, #13200-2)

Introduction

The improvement description is primarily based upon a physical inspection of the property, an interview with the property representative, and assessor's records.

Hazardous Materials/Asbestos

This appraisal assumes that the structure is free of all hazardous waste and toxic materials, including (but not limited to) asbestos. I have made no independent investigation regarding this issue. Please refer to the Assumptions and Limiting Conditions section regarding this issue.

Current Use

The subject is the **Abbey Street Pier Building**, a two-story retail building constructed in 1979 as an urban revitalization project funded by the City of Newport. It is divided into three retail units, one of which is leased on a month-to-month basis. It is located adjacent to a public pier and fronts Yaquina Bay.

DESCRIPTION (continued)

General Description

The first floor is demised into two retail spaces.

Latta's of Oregon, Inc., D.B.A. the Art Glass Factory, leases the first floor street-fronting unit; it includes an open floor/display area, and tenant improvements include glass ovens, with a brick wall behind them. A break area in the corner includes a utility sink and counter.

There is also a single restroom in the space; this restroom is shared with the east-adjacent tenant, with the east-adjacent tenant accessing the space through a sliding door. The current rental rate is equal to \$1,223/month (\$1.10/SF/mo.).

The east, bay-facing space is now vacant and was most recently operating as an ice cream parlor. This space includes an open display/eating area, with counter and preparation space with sink. As noted, this space shares the restroom in the west-adjacent space. The tenant is no longer operating their business out of this space and was reportedly operating month-to-month prior to closing their business. The last rent payment received from this tenant was on August 16, 2022 for \$600 (\$1.00/SF/mo.).

Exterior access along the north elevation leads to three single restrooms, only one of which is functional. There is also a mechanical room, which includes componentry for the pier's fire suppression system. Per the client representative, the City of Newport would need to continue to retain access to this space subsequent to sale for continued maintenance of the public pier. This analysis assumes the City will continue to have access to the mechanical room at no charge, and the mechanical space is therefore not included in the net rentable area.

Access to the second floor is via two exterior stairwells, with an upper exterior deck running from the east stairwell to the north stairwell. The second floor space is vacant and was formerly used as an art gallery. The space includes an open retail floor, with one single restroom and storage spaces. This space also benefits from panoramic views of Yaquina Bay and vaulted ceilings with exposed wood beams and wood paneling. Several signs of deferred maintenance including water damage were observed in this space. It would require an investment toward interior renovations to be returned to rentable condition.

DESCRIPTION (continued)

Size

According to building measurements taken at the time of inspection, the subject's gross building area is shown below:

	First Floor (SF)	Second Floor (SF)	Total (SF)	% of NRA
Ice cream parlor	595	0	595	15.02%
Glass Shop	1,097	0	1,097	27.70%
Former Art Gallery (Vacant)	0	2,249	2,249	56.78%
Usable Area	1,692	2,249	3,941	99.50%
Common Area Restrooms	20	0	20	0.50%
Net Rentable Area	1,712		3,961	100.00%
Exterior Restrooms	110	0	110	2.78%
Mechanical Space	62	0	62	1.57%
Gross Building Area	1,884	0	4,133	104.35%

Gross building area is **4,133 SF**. This includes 62 SF of mechanical space, which houses the fire sprinkler room (which the City of Newport plans to retain access to and is therefore not considered rentable area).

Net rentable area is **3,961 SF**. Note: the lease documents do not have square footages for the spaces. Therefore, suite areas are determined from the appraiser's measurements.

There is a 20 SF common area restroom on the first floor, which is shared by the ice cream parlor and glass shop. Therefore, this space must be allocated proportionally between the first floor tenants:

Tenant Pro Rata Share					
Commercial Space	USF	% of First Floor USF	x Common Area (SF)	Share of Comm. Area	SF NRA
Ice Cream Parlor	595	35.17%	20	7	602
Glass Shop	1,097	64.83%	20	13	1,110
Total Tenant Share	1,692	100.00%			1,712

The subject also includes three exterior-accessed common area restrooms. These restrooms were formerly used as public restrooms, but, per the property representatives, they became too difficult to maintain and fostered illicit activities. The appraisers considered whether tenants and landlords would include the shared bathroom area in their common area calculation for net rentable area. However, noting that the existing tenants all have access to single restrooms, and also considering there is a public restroom to the west across the street at the public parking lot, it is concluded these restrooms would not be desirable to tenants and would not be counted in the tenants' rentable area. The three single restrooms' building area is considered with the mechanical space.

DESCRIPTION (continued)

Site Coverage

The site coverage is calculated below:

SITE COVERAGE	
First Floor Footprint	1,884
Site Area	3,271
Site Coverage Ratio	57.60%

This indicates a site coverage ratio of **57.60%**, which is bracketed by the sales used in the Sales Comparison Approach.

Site Coverage	
2	90.16%
S	57.60%
5	41.64%
1	33.72%
4	20.51%
6	15.42%
3	14.25%

Foundation

Wood pier.

Exterior Walls

Combination of board and batten and lap wood siding; per the property representatives, the west wall was replaced at a cost of \$80,000 between 2016 and 2018. At the time of inspection, damage was observed to the siding that had not been replaced, specifically along the north and east elevations.

It is noted that wear and tear, particularly to the exterior, is common in Oregon coastal buildings, specifically noting the harsh storms, salt spray, and other inclement weather.

Exterior Pedestrian Doors

The first floor retail spaces have double storefront glass doors in aluminum frames; the second floor retail space is accessed via a single storefront glass door with aluminum frame. The mechanical and exterior-accessed single restrooms all have metal doors in metal frames.

Roof Structure

Layered gable.

Roof Cover

Composite asphalt shingle; per the property representative, the roof was replaced in 2015/2016 at an estimated cost of \$35,000.

Insulation

Assumed to be to code.

DESCRIPTION (continued)

Heating and Air Conditioning	Wall heaters; the fused glass tenant space has kilns which are the tenant's property.
Floor Coverings	<p>Floor coverings include:</p> <ul style="list-style-type: none">• Tile with tile base and walls in the exterior-accessed single restrooms;• Sheet vinyl with a wood base in the ice cream parlor;• Vinyl tiles in the glass shop;• Oiled wood floors in the art gallery.
Interior Walls	Interior walls are generally textured and painted drywall. There are ceramic bricks around the kilns in the glass shop, and the exterior common area single restrooms have floor-to-ceiling ceramic tiles.
Interior Doors	Wood core.
Ceiling	<p>First Floor: painted and textured drywall.</p> <p>Second Floor: vaulted, with stained wood planks and wood beams.</p>
Interior Lighting	Lighting is generally fluorescent, with a combination of can, box, and ceiling-mounted fixtures. Per the property representative, the exterior lights were replaced with LED within the last five to six years.
Plumbing	<p>Plumbing includes:</p> <ul style="list-style-type: none">• Three former public restrooms, each equipped with one toilet and one sink, which are accessed from the building exterior (only one is operational);• One single restroom on the first floor, located in the glass shop tenant suite and shared with the ice cream parlor tenant suite, and one single restroom on the second floor: both are improved with one toilet and one sink;• The first floor tenant suites also both have hand-washing sinks in their main floor areas; the ice cream parlor also has a metal commercial sink.
Elevator	None. The subject's second floor is accessed via two exterior stairwells.

DESCRIPTION (continued)

Life Safety	The subject's building improvement is not equipped with fire sprinkler protection. However, there is a sprinkler system under the larger pier. About 160' of this system was repaired in the last year.
Condition	Fair to average. Finishes are dated and would benefit from updating; some deferred maintenance (as is typical with coastal buildings) was noted to the exterior, as well as water damage to a portion of second floor ceiling. The subject reflects generally similar condition and quality to the majority of retail buildings along Bay Boulevard.
Basement	None.
Building Age	
Actual Age	The subject was constructed in 1979, according to county records. The actual age of the building is 43 years.
Effective Age	The effective age is 20 years based on visual observation.
Total Economic Life	45 years per <i>Marshall Valuation Service</i> .
Remaining Economic Life	25 years.
Site Improvements and Landscaping	The site is improved with a wood pier. There is no landscaping or other notable site improvements. The adjacent public pier area has landscaped planters and sitting areas and is popular as a fishing and relaxing space.
Parking	None on-site, as is typical with other buildings along the Bayfront. However, there is a public parking lot immediately west of the subject, with additional angled street parking along the west edge of Bay Boulevard.

The preceding information is a basic description of the subject improvements. This information is utilized in the valuation of the property. Reliance has been placed upon information provided by the property representative, the on-site inspection and county records. It is assumed there are no hidden defects, and that all structural components are functional and operational, unless otherwise noted. If questions arise regarding the integrity of the structure or their operational components, it may be necessary to consult additional professional resources.

SUBJECT PHOTOGRAPHS
NOVEMBER 2, 2022

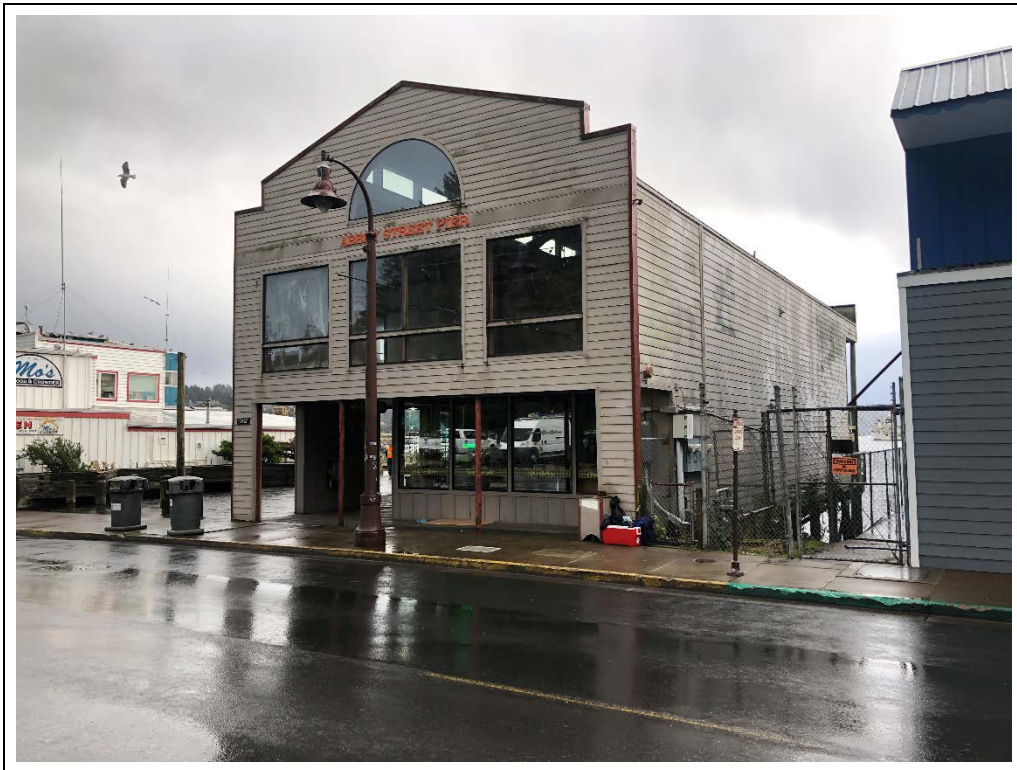


1. View southeast of north and west elevations. (13200-2)



2. View east of west elevation. (13200-4)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)



3. View northeast of south and west elevations. (13200-5)



4. View southwest from public pier of a portion of subject's north elevation. (13200-47)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)

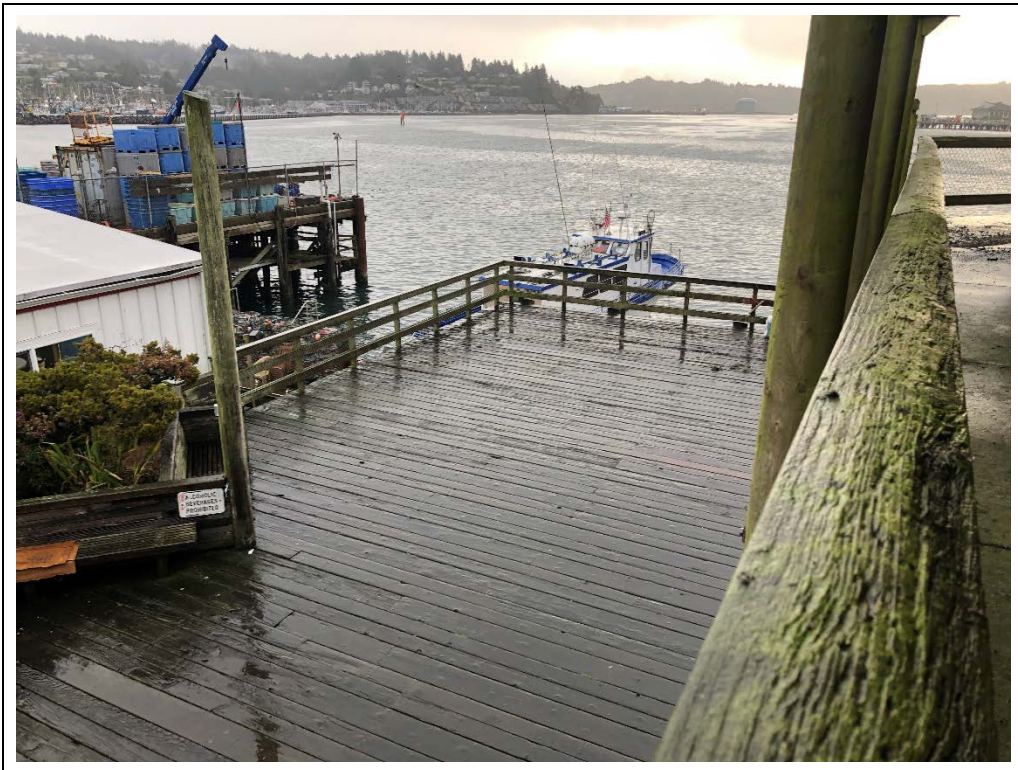


5. View south from public pier of the remaining area of north and west elevations. (13200-48)



6. View west across public pier; subject at left. (13200-46)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)



7. View northeast of public pier from second floor walkway/deck area, Yaquina Bay beyond. (13200-34)



8. View east across Yaquina Bay from second floor walkway/deck area. (13200-14)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)

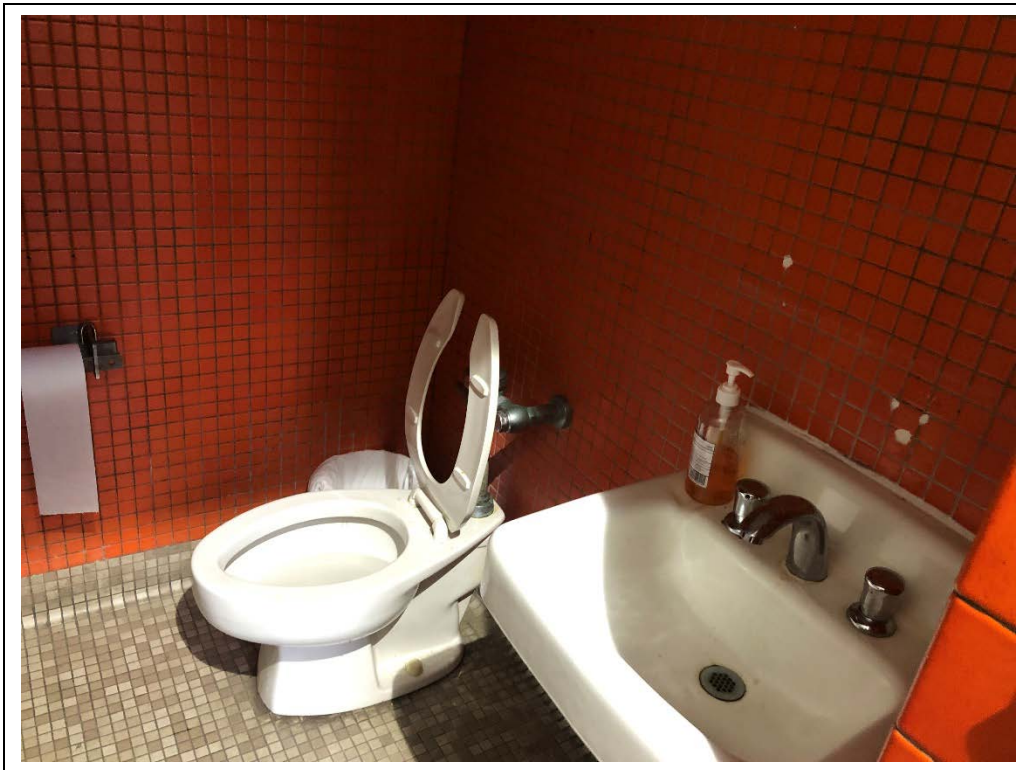


9. Street scene: view south along SW Bay Boulevard; subject at left.
(13200-1)

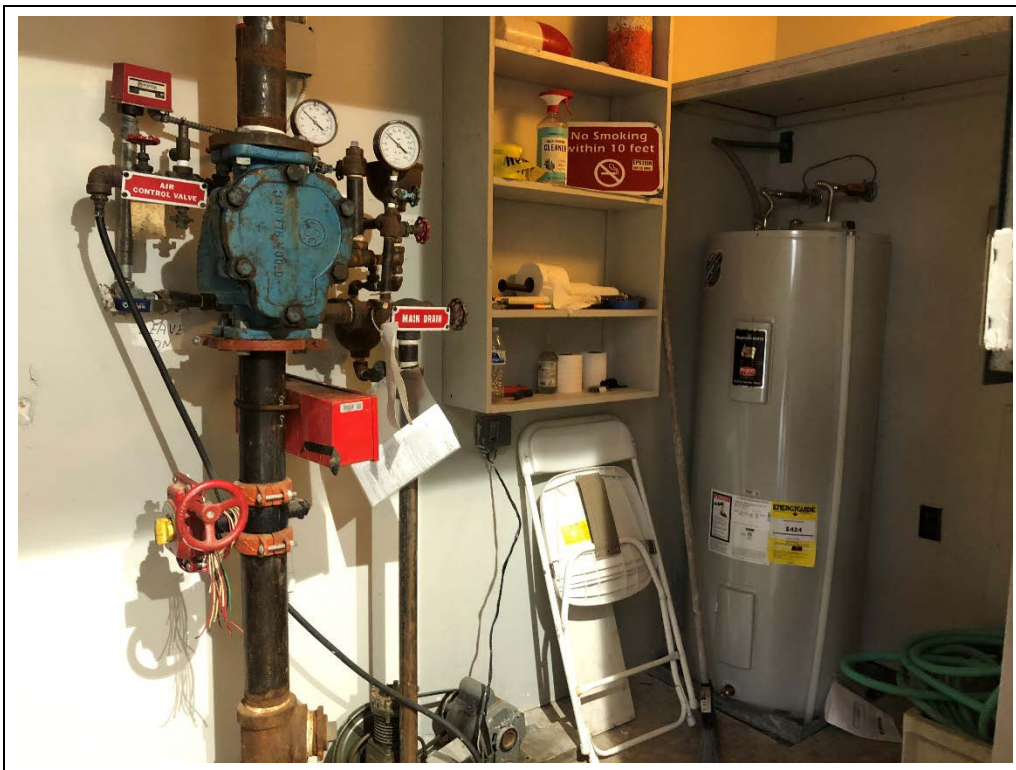


10. Street scene: view north along SW Bay Boulevard; subject at right.
(13200-6)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)

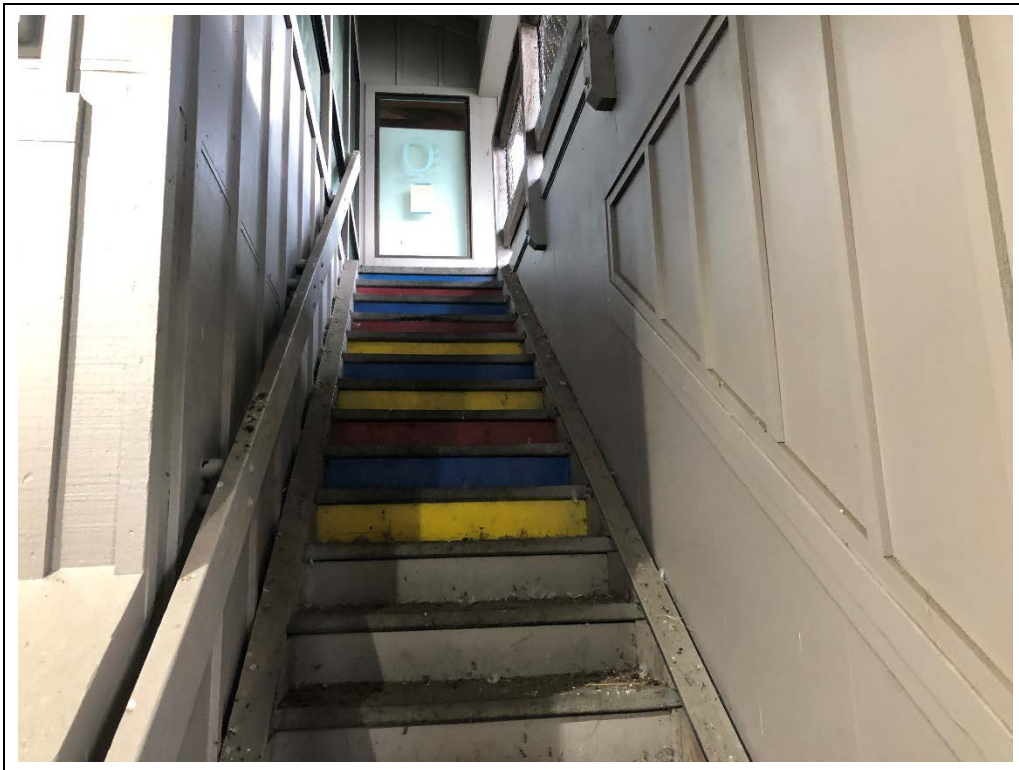


11. Exterior restroom. (13200-10)



12. Mechanical room. (13200-12)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)



13. Exterior stairwell along the north elevation providing access to second floor space. (13200-11)

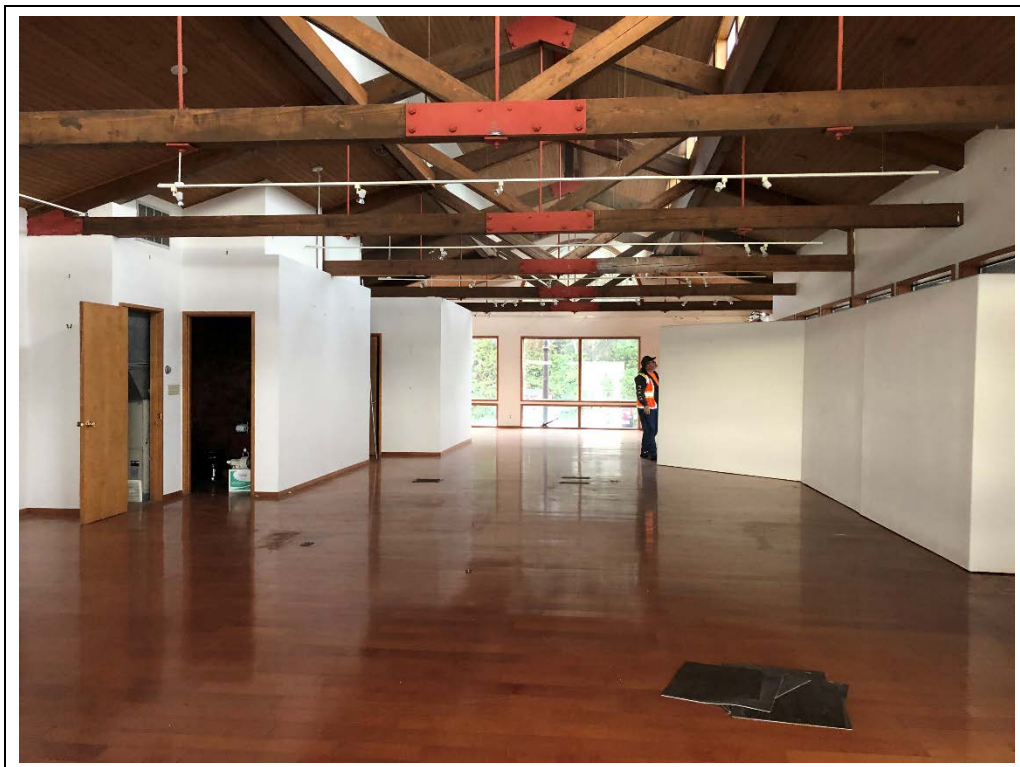


14. Second floor suite access. (13200-16)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)

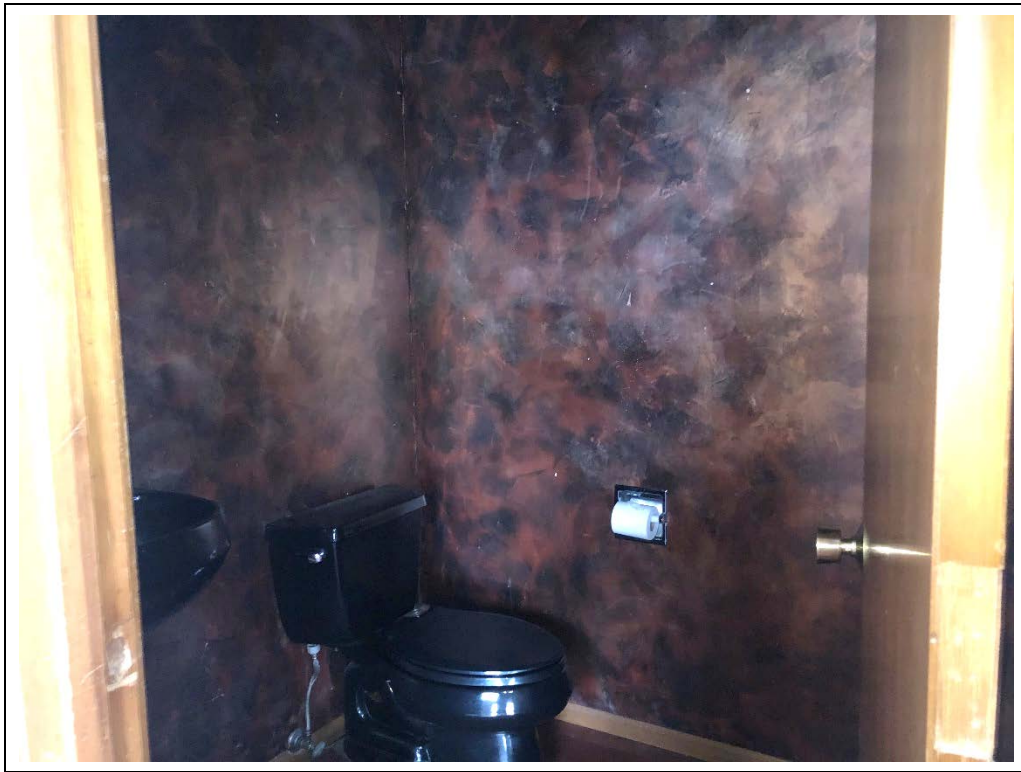


15. Interior view of vacant second floor space. (13200-19)



16. Alternate view. (13200-29)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)



17. Private restroom. (13200-24)



18. Water damage observed on wall/ceiling. (13200-25)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)



19. Interior view of former ice cream parlor. (13200-45)



20. Alternate view. (13200-39)

SUBJECT PHOTOGRAPHS – NOVEMBER 2, 2022 (continued)

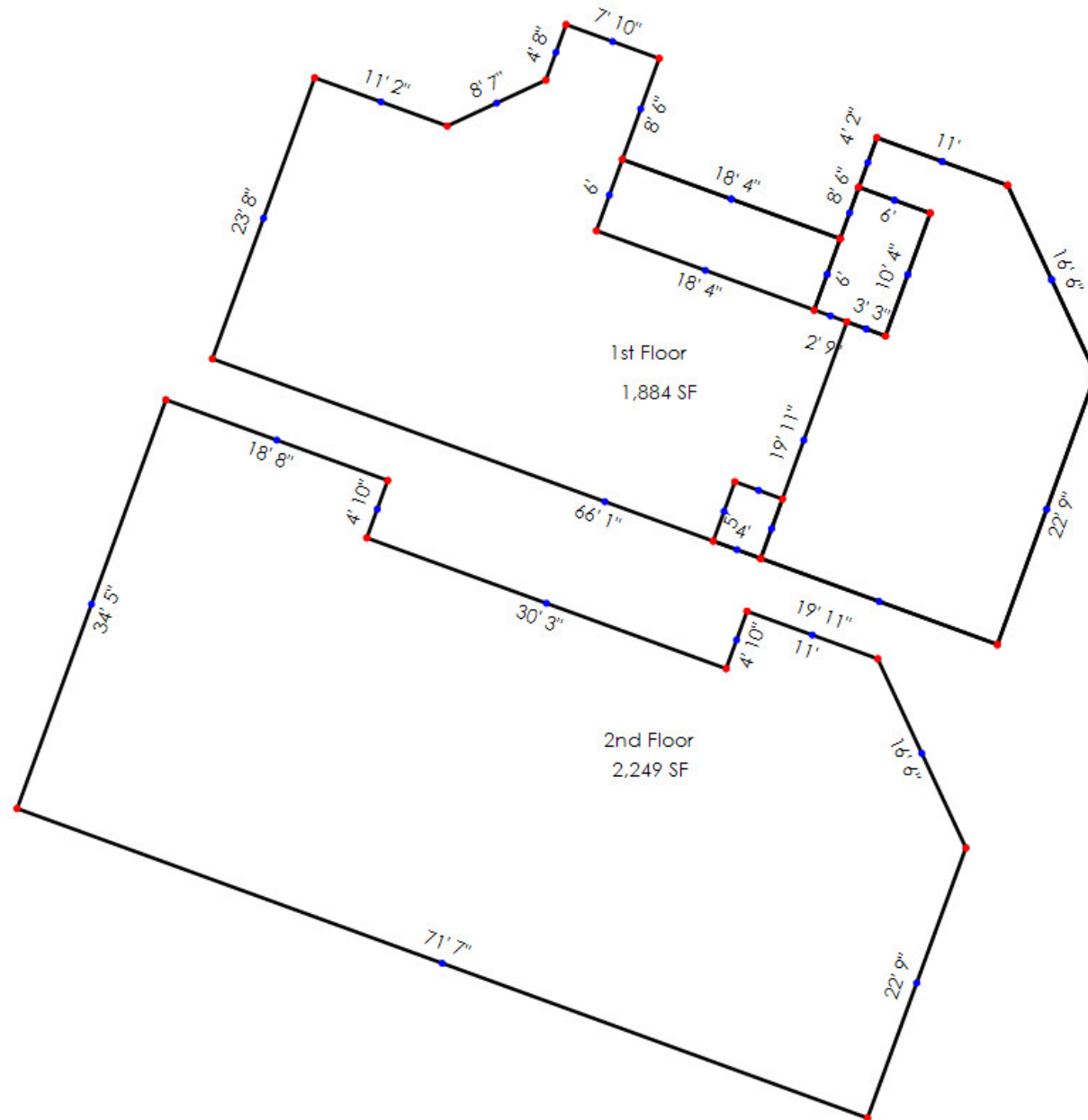


21. Interior view of glass shop space (not accessible on day of inspection; observed through exterior window). (13200-53)



22. Alternate view. (13200-52)

BUILDING DIAGRAM



MARKET ANALYSIS/HIGHEST & BEST USE

MARKET OVERVIEW

Population

According to the Portland State University Population Research Center, the most recent 2021 population in Newport is 10,591.

Unemployment

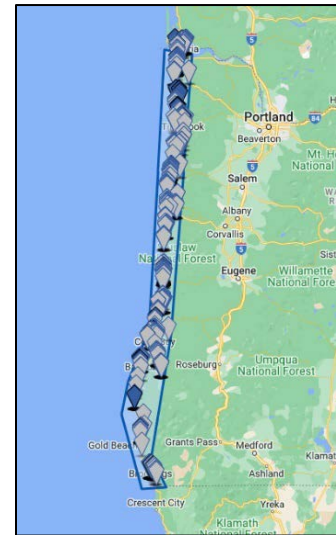
According to the State of Oregon Employment Department, the employment data as of October 2022 (most recent data available) reflects an unemployment rate of 5.2% in Lincoln County and 4.1% in the state of Oregon.

MARKET CONSIDERATIONS

The local retail/office market was surveyed using CoStar to determine recent trends. **The search parameters included all office and retail properties along the Oregon coast greater than 1,000 SF.** A search was also made including only the subject's immediate Lincoln County area; however, it yielded limited results. The surveyed area is shown on the map at right.

Supply & Demand Conditions - Demand for office space is measured from the following indicators: (1) vacancy rate analysis (2) rent trends and (3) absorption. These items are addressed in the following narrative.

CoStar reports current inventory of 1,838 buildings totaling about 14.3 million SF as shown on the following charts.



INVENTORY SF	UNDER CONSTRUCTION SF	12 MO NET ABSORPTION SF	VACANCY RATE	MARKET RENT/SF	MARKET SALE PRICE/SF	MARKET CAP RATE
14.3M +0.3%	33K -47.8%	205K +68.8%	1.7% -1.1%	\$17.75 +1.4%	\$170 +3.1%	7.1% +0%
Prior Period 14.3M	Prior Period 63.2K	Prior Period 122K	Prior Period 2.8%	Prior Period \$17.51	Prior Period \$165	Prior Period 7.1%

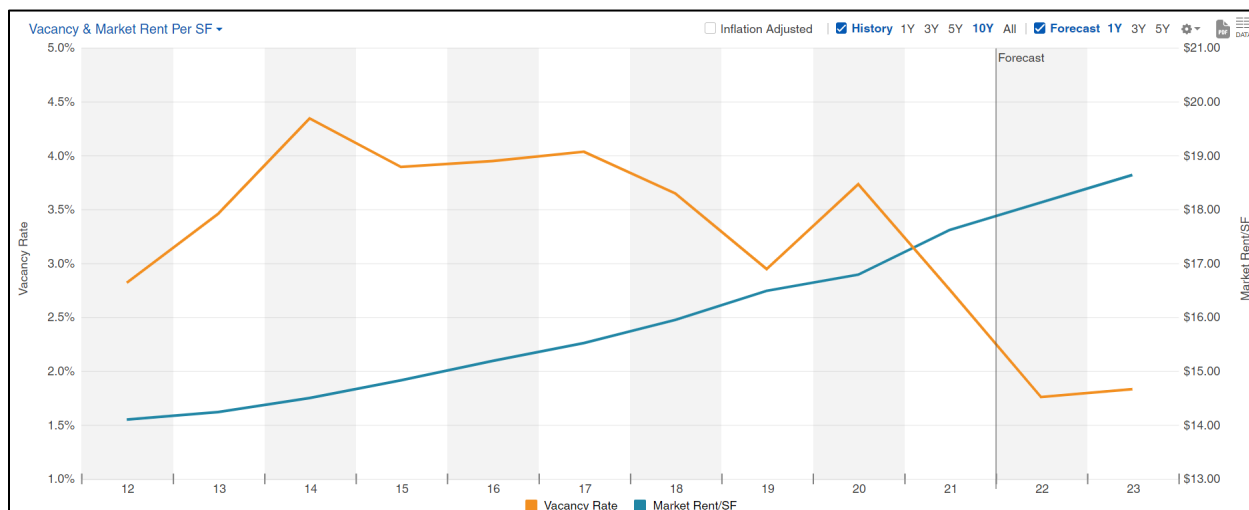
Availability		Inventory	
Vacant SF	240K ↓	Existing Buildings	1,838 ↑
Sublet SF	3.1K ↑	Under Construction Avg SF	8.3K ↓
Availability Rate	2.5% ↓	12 Mo Demolished SF	0 ↓
Available SF	360K ↓	12 Mo Occupancy % at Delivery	100.0% ↓
Available Asking Rent/SF	\$17.91 ↓	12 Mo Construction Starts SF	9.1K ↓
Occupancy Rate	98.3% ↑	12 Mo Delivered SF	39.4K ↑
Percent Leased Rate	98.4% ↑	12 Mo Avg Delivered SF	9.9K ↑

Sales Past Year		Demand	
Asking Price Per SF	\$120 ↓	12 Mo Net Absorp % of Inventory	1.4% ↑
Sale to Asking Price Differential	-8.6% ↓	12 Mo Leased SF	90.1K ↑
Sales Volume	\$64.8M ↓	Months on Market	9.3 ↓
Properties Sold	130 ↓	Months to Lease	4.4 ↓
Months to Sale	8.9 ↓	Months Vacant	5.4 ↓
For Sale Listings	63 ↑	24 Mo Lease Renewal Rate	93.7%
Total For Sale SF	384K ↑	Population Growth 5 Yrs	5.4%

According to CoStar, there is about 39,400 SF of new construction reported in the past year, with another 33,000 SF of new construction in progress. Overall, the market rent per SF is higher, the vacancy rate is lower, and net absorption is higher than the prior year's average.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

Vacancy and Market Rent - The following chart illustrates changes in the average vacancy and rental rates per year for office and retail properties 1,000 SF and larger throughout the Oregon coast since 2012.

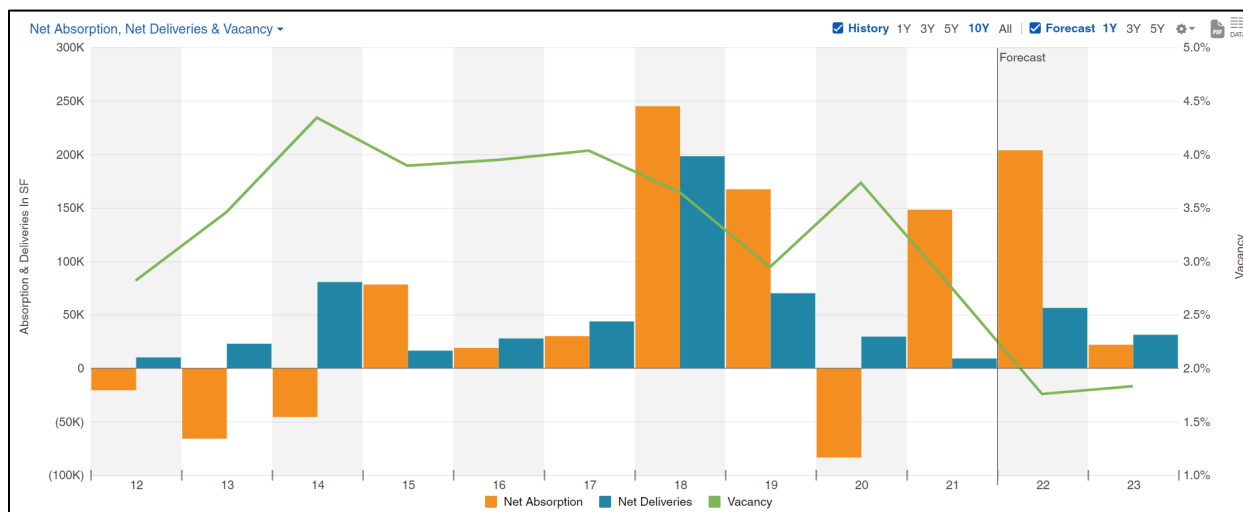


Vacancy fell between 2017 and 2019; the 2020 increase reflects the ripple effects of the COVID-19 pandemic and its associated social distancing, remote work, and resulting office/retail downsizing. However, even at the 2020 peak, vacancy reached only 3.7%, which remains below the market accepted industry standard of 5.0%. Current vacancy measures **1.7%**. However, it is noted that many coastal properties lease between owners and tenants without property managers and/or brokers. Given this, the vacancy rate reported by CoStar is likely understated, as the owner-listed spaces are frequently not catalogued on CoStar.

Rental rates have steadily increased over the past five years, currently averaging \$17.75/SF (\$1.48/SF/month) over the prior one-year period. This reflects a strong increase over the prior year where rent rates averaged \$17.51/SF (\$1.46/SF/month). Continued increases in market rent are anticipated over the next year. However, as the rental rates reported are in nominal dollars, the current high inflation may reduce the real increase in rental rates.

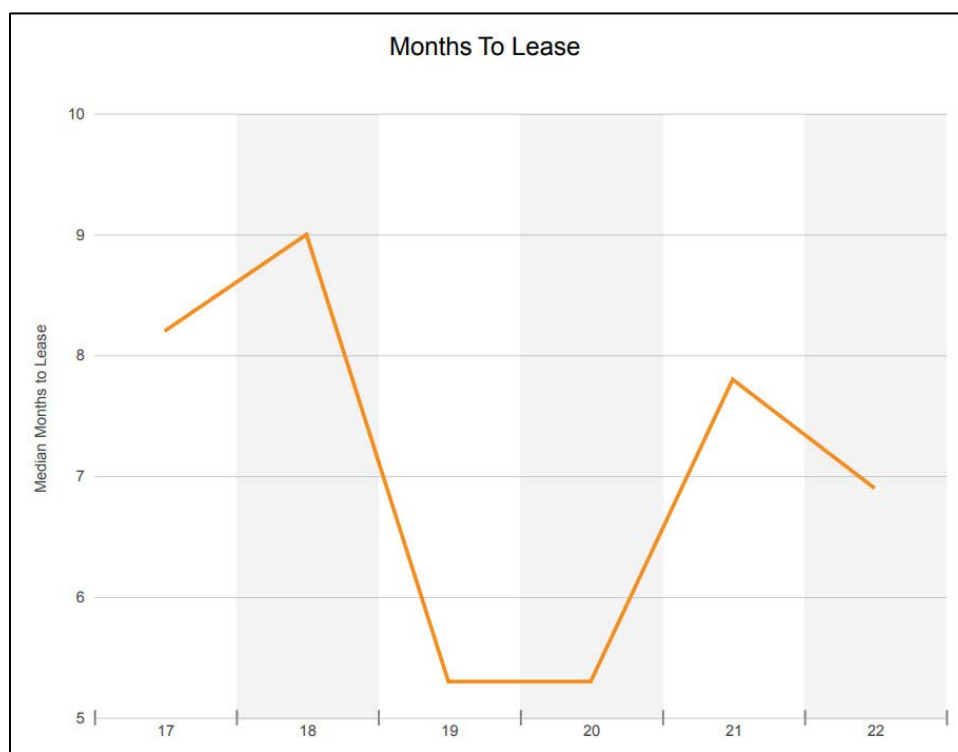
MARKET ANALYSIS/HIGHEST & BEST USE (continued)

Absorption, Deliveries, & Vacancy – The chart below is based on office/retail properties in the surveyed market area.



The survey period has seen positive net absorption in all years except 2020, when the COVID-19 pandemic stalled the positive trends. However, by 2021 and 2022 YTD, absorption is again strongly positive and exceeds new deliveries.

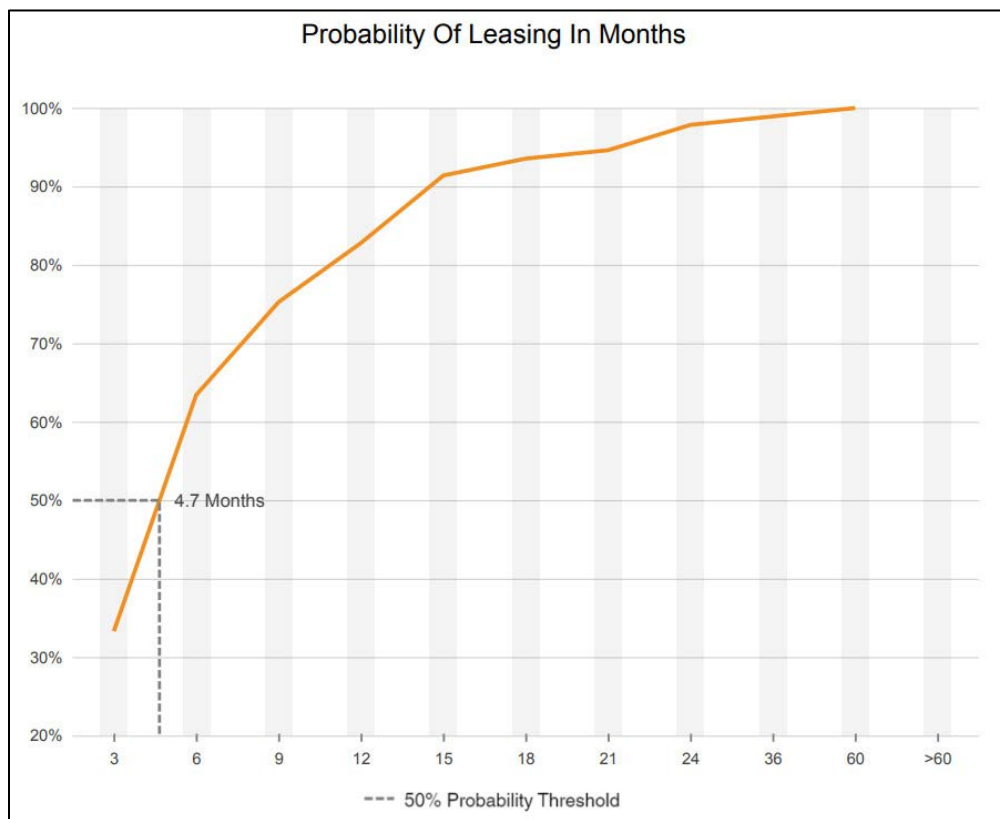
Market activity is further illustrated on the Months to Lease chart below.



Months to lease decreased sharply from 2018 to 2019, before climbing in 2020, with the onset of the COVID-19 pandemic. However, between 2021 and 2022, the months to lease has declined again, to about **seven months**.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

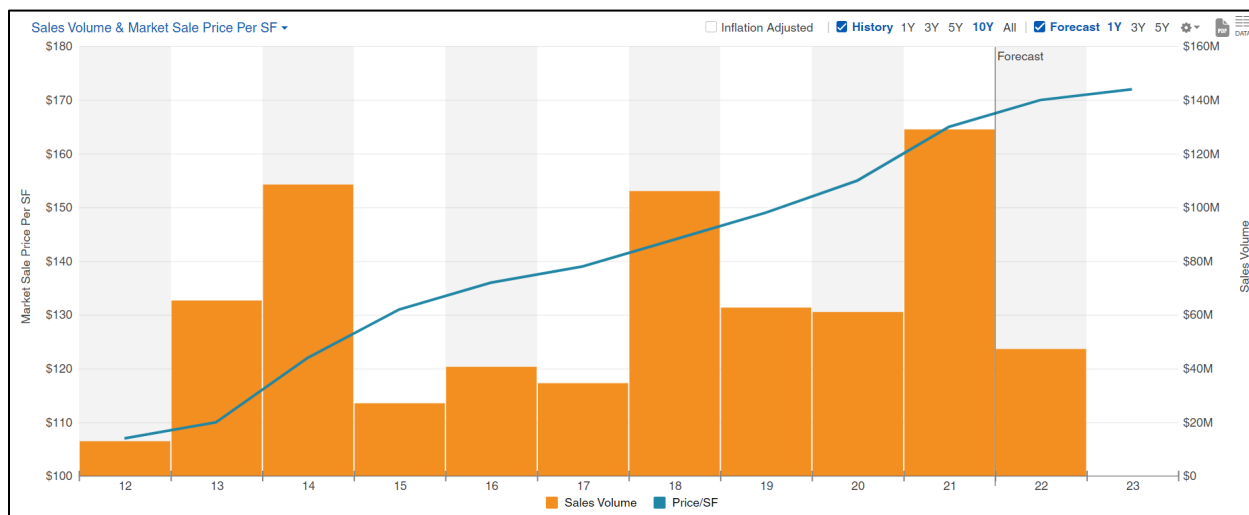
Within a one-year period, the probability of leasing office/retail space is about 82%. The probability of leasing within 18 months is about 95%. This suggests there is a reasonable opportunity of leasing the subject property if offered for lease and its marketing period would likely be within the overall average. There is a 50% probability of leasing space in roughly six months.



The subject's largest space has experienced multiple consecutive years of vacancy. Given this, an absorption period of **12 months** is estimated despite the statistics presented by Costar. This absorption period will be revisited in the lease-up cost analysis following the stabilized value conclusion.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

Sale Trends – The chart below illustrates the trends in average market sale price per SF and sales volume:



According to the CoStar analytics, the average market sale price per SF for office and retail properties 1,000 SF and larger along the Oregon coast has increased steadily since 2017, despite the COVID-19 pandemic. Between 2020 and 2022 YTD, the average sale price per SF has increased from about \$152 per SF to about \$170 per SF, an increase of about **11.8%**, or about **0.35% per month**.

Market Participants were also interviewed regarding the coastal market and sale price appreciation in improved commercial properties. Lisa Anderson, broker with SMI Commercial Real Estate, noted the greater region has seen commercial price appreciation. However, she noted the lack of transactions in smaller markets makes it more difficult to ascertain the degree of price appreciation. She cited a retail property her firm sold in Waldport in 2021, and noted she was unsure if it would sell for significantly more today.

Gail Stonebreaker with Windermere sold a restaurant in Gleneden Beach in September 2021. She thought the commercial market was "a little" stronger than last year, and expected if she had the listing today, it would sell for slightly more.

Alan Wells, broker with Commercial Associates, has sold/is currently marketing multiple office buildings in Newport in recent years. He noted one of his listings has been on the market for more than four years, but attributed that to the owner's inflated expectations of market sale/lease prices on the coast, rather than a lack of demand. Diana Abbott with Martek Real Estate noted an office she sold in Newport was listed for five years before selling in 2021. However, she attributed the long listing period to the seller's expectations, noting the seller rejected several offers during the listing period. The asymmetry of information can be common on the coast, which frequently has out-of-market investors and owners (such as from the Willamette Valley and Portland regions) coupled with local users. The coastal market consistently commands lower leasing and sale prices as compared to larger metro areas.

For the purposes of this analysis, a rounded market conditions adjustment of 3.00% per year (0.25% per month) will be applied to the comparable improved sales through the date of value.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

Since 2018, sales volume has ranged from just under \$50 million to over \$125 million in 2021. 2022 YTD is projected to have the lowest sales volume in the past 5 years.

MARKETABILITY CONCLUSION

Overall, the market for office/retail space along the Oregon Coast has experienced low vacancy in recent years, as well as decreasing marketing times and positive net absorption in 2022 YTD. Vacancy is projected to remain below the industry standard, generally reflecting frictional movement of tenants from one space to another, as opposed to tenants leaving the market altogether. Rents are forecasted to continue a steady climb in the coming years.

STRENGTHS, WEAKNESSES, OPPORTUNITIES & THREATS (SWOT ANALYSIS)

Strengths –

The subject's strengths include:

- Location along Bay Boulevard surrounded by tourist-friendly retail services;
- Waterfront view overlooking Yaquina Bay;
- Multi-tenant design demised into three retail spaces that could cater to a variety of businesses;
- Nearby public parking.

Weaknesses –

Weaknesses include:

- The fair to average condition limits marketability and will likely require landlord paid TIs to entice tenants to occupy the vacant space.

Opportunities –

Opportunities include:

- Assigning a local real estate broker to professionally market the vacant suites for lease and securing tenants to maximize income-generating ability.

Threats –

Threats include:

- Prolonged vacancy due to building condition/quality.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

HIGHEST AND BEST USE

Introduction

Highest and best use is a market driven concept which identifies the most profitable and competitive use to which a property can be put. It is further defined as follows:

*"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability."*²

The concept of highest and best use is fundamental to real property value. In one application of the concept, a site is valued as though vacant and available for development to its highest and best use. In another application, the highest and best use of the property as improved is estimated. A site may have one highest and best use as though vacant, while the improved site may have another optimal use.³

Highest and best use is essentially a market driven concept which identifies the ideal use(s) of a property which follow logical market criteria. It attempts to mirror the thinking of a buyer in the marketplace. Analysis pertaining to the legal, physical, financial and most productive uses of the site, both as though vacant and as improved, narrows development options to those best fitting the demand for the property. Once highest and best use is established, the appraisal process focuses on the identified sub-market, selecting parameters for meaningful analyses.

The highest and best use of the subject land and improvements has been tested separately against the four criteria in the following analysis.

Vacant Site

Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.⁴

Legally Permissible - Legal factors influencing the subject are primarily zoning regulations and City ordinances. The subject site is zoned **W-2 (Water-Related)** by the City of Newport. As a vacant site, legal uses support a variety of **water-related commercial uses**; further, this zone allows conditional approval of all uses in the **C-2** zone, which allows most retail/office uses, including hotels and general retail.

Physically Possible - The physical characteristics of the site, notably the bayfront location, generally support any of the permitted uses, with no adverse conditions noted. Surrounding uses include other seafood processing facilities as well as retail development such as shops and restaurants aimed to attract tourists. Further, there is a State of Oregon Division of State Lands Submerged and Submersible Land Lease associated with site, allowing for construction of improvements into the bay, past the actual property boundary. This suggests a **water related commercial use** is the most likely use of the vacant site.

² The Dictionary of Real Estate Appraisal, Fifth Edition. Chicago: Appraisal Institute, 2010.

³ The Appraisal of Real Estate, Fourteenth Edition. Chicago: Appraisal Institute, 2013.

⁴ The Dictionary of Real Estate Appraisal, Fifth Edition. Chicago: Appraisal Institute, 2010.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

Financially Feasible - Due to the site's physical characteristics, surrounding development, and legal considerations, the greatest financial return would likely come from an income producing property with a water-related use. The subject has good commercial potential based on surrounding land uses, the Yaquina Bay frontage, zoning, access, and frontage along Bay Boulevard in a corridor of tourist-oriented retail development. Therefore, development of the site with a legally and physically supported **water-related commercial use** is financially feasible.

Maximally Productive - Legal and physical factors support a commercial use of the vacant site. Surrounding development, noting the heavy influence of tourism and subject's Yaquina Bay and Bay Boulevard frontage, suggests a retail use is more feasible than office. Therefore, a **water and tourism-related retail use** accurately describes the maximally productive use of the site, as it represents a financially feasible, physically possible and legally permissible use.

Marketability - Due to the subject's Yaquina Bay location along Bay Boulevard in an area of intensive commercial/industrial development specifically catering to fish processing and tourism, the subject has high marketability for a **commercial use** consistent with the allowable uses of the W-2 zoning ordinance. Availability of similar commercial-related sites along Bay Boulevard is extremely limited. One previously developed site sold to a seafood company for redevelopment in 2015; the lack of sales activity of vacant sites is due to the area being predominantly built-up. Marketability factors support a **water and tourism-related retail use**.

Because of the subject's size and location, I anticipate a **marketing period of one year**, if listed at or near market value. This is consistent with marketing periods of similar properties in the subject's market area.

Highest and Best Use Conclusion As Vacant - Based upon past, present and prospective market activity in the subject's market area, it is my opinion that a **water and tourism-related retail use** is an adequate expression of the highest and best use of the vacant site.

"AS IMPROVED"

Highest and best use of a property as improved pertains to the use that should be made of an improved property in light of its improvements.

Legally Permissible - The subject site is zoned **W-2 (Water-Related)** by the City of Newport. The **existing multi-tenant retail use** is a conditional use and meets all known developmental standards, noting the lack of on-site parking is supplemented by the public parking across the street.

Physically Possible - The site is improved with the **Abbey Street Pier Building**, a 3,961 SF NRA multi-tenant retail building built in 1979 that reflects fair to average condition and quality. There is one current tenant that operates a glass retail shop. An ice cream parlor recently vacated the second ground floor space. There are also three individual restrooms accessible via exterior doors, and a mechanical room that houses the components for the pier's fire suppression system. Physical characteristics support the **existing multi-tenant retail use**.

MARKET ANALYSIS/HIGHEST & BEST USE (continued)

Financially Feasible – With the ice cream parlor tenant vacating, the majority of the subject's rentable area is vacant. Additionally, based on the analysis contained herein, the in-place lease rate for the glass shop is below market. In general, marketability factors suggest low vacancy and stable rents for tourist-oriented retail properties on the coast; however, the vacant spaces are not being actively marketed for lease by ownership, which has likely prolonged vacancy periods. Investing toward necessary maintenance/repairs and/or offering incentives in the form of free rent or landlord-paid TI's may expedite the process of filling the vacant spaces and raising rents to market rates. Overall, the **existing multi-tenant retail improvements** are financially feasible.

Maximally Productive - The maximally productive use is synonymous with the financially feasible use, the **existing multi-tenant retail improvements**.

Marketability - The subject's good quality and centralized location appeal to a broad tenant base. The marketability of the subject as a multi-tenant retail building has been discussed previously. Because of the subject's size and location, I anticipate a marketing period of **one year or less**, if listed at or near market value. This is consistent with marketing periods of similar properties in the subject's neighborhood.

Highest and Best Use Conclusion As Improved - Based upon past, present and prospective activity in the market area, it is my opinion that the highest and best use of the subject as improved is adequately expressed by the **existing multi-tenant retail improvements**.

VALUATION METHODS

SITE VALUE

In valuing the subject site, as though vacant as of the effective date of this report, the Sales Comparison Approach is utilized. In this approach, recent sales and/or listings of similar sites are compared to the subject using the adjustment process (if appropriate) to indicate value. Where good market activity and data is available, this approach best reflects market behavior and provides a useful estimate of value for the subject land.

COST APPROACH

The Cost Approach is based upon the principle that the value of property is significantly related to its physical characteristics and that no one would pay more than the cost to build a like facility in today's market on a comparable site. In this approach, the market value of the site is estimated and added to the depreciated value of the improvements. In addition, entrepreneurial profit is added. For proposed or newer properties, this approach may have significant relevance. For older properties or those with substantial depreciation, this approach has limited application. However, the Cost Approach may prove useful as an indication of potential supply, as measured by the amount of profit evident. These factors will be considered in addressing the emphasis placed on the Cost Approach.

INCOME APPROACH

This approach is predicated on the assumption that there is a definite relationship between the net income a property will earn and its value. Net income is the income generated before payment of any debt service. The process of converting it into value is called capitalization. Net income is divided by a capitalization rate. Factors such as risk, time, interest on the capital investment, upside potential and recapture of the depreciating asset are considered in the rate. Applying a capitalization rate based on indications from comparable sales reflects expectations of buyers and sellers in the market.

Another capitalization concept employed with the Income Approach is the Discounted Cash Flow Analysis or yield capitalization. It is developed by projecting cash flows over a holding period assuming variations in income, expenses, lease terms, reversion rates and internal rates. The net present value of the cash flows is a method of measuring anticipated future benefits.

SALES COMPARISON APPROACH

This approach analyzes sales of comparable properties with regard to the nature and condition of each sale. Logical adjustments and/or comparisons are made for varying physical characteristics. For land value, a common denominator is a price per square foot or price per acre; for improved properties, it may be the price per square foot, price per unit, or a gross income multiplier. This approach develops a good indication of value when sales of similar properties have occurred.

VALUATION METHODS (continued)

RECONCILIATION

This is the process by which the individual approach indications are weighed based on validity and applicability to the subject market. The indications often indicate different values. After factors influencing each approach are carefully considered (i.e. quality and quantity of data, sophistication of the market, etc.), a final point estimate of value is concluded.

In this report the Income Capitalization and Sales Comparison Approaches will be utilized to value the subject property.

The Cost Approach is excluded due the subjective nature of estimating depreciation in older properties. Its exclusion does not diminish the validity of the final value conclusion.

INCOME APPROACH

The first step in the Income Approach is to analyze current income or estimate the subject's potential gross income. This process is accomplished through a comparison of the subject with rental properties in similar locations offering similar utility. Vacancy allowance and operating expenses are deducted, based on market analysis and support from the subject's operating history. Finally, the resulting net operating income is converted to value using a capitalization rate. Then, adjustments may be made to establish the leased fee estate.

POTENTIAL GROSS RENTAL INCOME

To estimate market rent for the subject's rental space, the subject's actual rental achievements are compared with market rent comparables.

ACTUAL LEASING – Only one of the three retail suites are occupied while the other two are vacant.

Latta's of Oregon, Inc. (glass shop) leases the Bay Boulevard-facing first floor retail space. Per the lease, the suite size is "about 1,108 SF"; the appraiser's measurements indicate a suite size of 1,110 SF, with this size used herein. The lease commenced May 7, 2010, with two months' free rent and an initial 10-year term, expiring May 6, 2020. The tenant is currently month to month. Base rent is **\$1,223/month (\$1.10/SF)**.

The lease structure is **modified gross**, with the tenant responsible for its own electric/garbage, real property taxes, janitorial, and interior maintenance. The landlord is responsible for fire and extended perils insurance, exterior maintenance, structural maintenance, management, payments to the underlying ground lease, and water/sewer.

The other first floor retail space totals **602 rentable SF** (including the space's proportionate share of the common area single restroom) based on the appraiser's measurements. This was most recently leased and used as an ice cream parlor; however, the final rent payment (\$600) was received August 16, 2022 according to the property representative. The tenant has closed their business and the space is now effectively vacant.

The entire second floor is also vacant. Rentable area is equal to **2,249 SF** based on the appraiser's measurements. It was most recently occupied and used as an art gallery; however, the space has been vacant for approximately two years.

ANALYSIS OF COMPARABLES - The following analysis is conducted on a dollar per square foot per month basis, reflecting market behavior. The market rent is assigned to the rentable area of the space, which is typical in the market.

The following presentation summarizes the comparables found to be most similar to the subject property. Although I performed a thorough search for comparables in the subject's immediate Bayfront market, ultimately, the exploration yielded limited results. Therefore, the comparable search was expanded throughout the greater Central and North Oregon Coast, most notably to Lincoln City and Tillamook. Several brokers were interviewed and reported minimal activity for leasing retail space in Newport. Therefore the lease data does include some comparables for office space in the immediate area. Overall an adequate sampling of leases was found from which to compare to the subject.

INCOME APPROACH (continued)

Following the comparable discussion is a Lease Comparable Tabulation Chart and Adjustment Grid, which summarizes the leases used in this analysis. A Lease Comparable Location Map is also provided. The following narrative analyzes the comparables with respect to the subject. When necessary, the comparables have been adjusted to reflect a lease structure similar to the subject: **modified gross** with the tenants responsible for their share of real estate taxes, electricity, janitorial, and interior maintenance. The landlord is responsible for fire and extended perils insurance, water/sewer, exterior maintenance, and the underlying ground lease (as applicable).

The comparable leases indicate an adjusted rental range from **\$1.11 to \$2.08 per SF per month**. Each comparable is briefly discussed in the following narrative.

Multi-Tenant Commercial Property

Comparable 1

Lease Information

Tenant	Various
Lease Type	New
Tenant Size	1,294 SF
Start Date	2019 blended rates
Lease Term	2 Years (24 Months)
Rent	\$16.44/SF (Yr.) / \$1.37/SF (Mo.)
Expense Structure	NNN
Adjusted MG Rent	\$1.45/SF (Mo.)

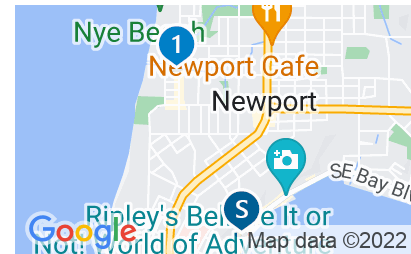
Property

Type	Retail
Net Rentable Area (NRA)	3,882 SF
Buildings	1 Building, 2 Floors
Year Built	1999
Zoning	C-2
Topography	Level
Corner	Yes



310 NW Coast St
Newport, OR 97365

County
Lincoln



Confirmation

Name	Chris Watkins
Phone Number	541-265-2544

Remarks

This is a two-story multi-tenant commercial property located in the heart of the Nye Beach neighborhood in Newport. The building was constructed in 1999 and reflects good condition and quality. The site benefits from a non-signalized corner orientation.

This is the 2019 blended lease rate for three tenants, including a candy shop and clothing store. Per the broker, two of the leases have two-year terms, with the remaining leases month-to-month. The structures are all triple net.

Office Building

Comparable 2

Lease Information

Tenant	Dr. Kenneth Bishop, Chiropractor
Lease Type	New
Tenant Size	995 SF
Start Date	12/1/2019
Lease Term	3 Years (36 Months)
Rent	\$15.67/SF (Yr.) / \$1.31/SF (Mo.)
Expense Structure	Modified Gross: tenant pays electric/janitorial
Adjusted MG Rent	\$1.11/SF (Mo.)
Options/Extensions	None
Escalation Detail	No escalation in Yr 2; \$100/mo. escalation in Yr 3

Property

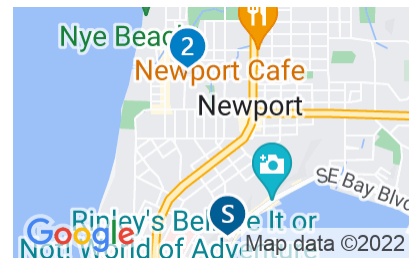
Type	Office
Gross Building Area (GBA)	8,933 SF
Net Rentable Area (NRA)	8,933 SF
Buildings	2 Buildings, 1 Floor
Parking	16 Spaces (1.8/1,000 SF NRA)
Year Built	1989
Land Area	0.5136 Acres (22,374 SF)
Site Coverage Ratio	26.58%
FAR	0.40
Building Class	C



530 NW 3rd St
Newport, OR 97365

County
Lincoln

APN
R501032, 11-11-05-CC-
40002-00 01



Confirmation

Name	Dr. Kenneth Bishop
Phone Number	541-270-4309
Affiliation	Lessee
Date	2/9/2022

Remarks

This reflects the lease to a chiropractor for a small office suite in Newport. Per the lessee, the lessor originally wanted \$1,800 per month (\$1.81/SF); the tenant and landlord eventually negotiated the resulting lease rate of \$1,300/month. The landlord pays all expenses except for unit electric and janitorial.

Two-Tenant Retail w/ Drive Thru

Comparable 3

Lease Information

Tenant	Maria's Taqueria
Tenant Type	Restaurant
Lease Type	New
Tenant Size	1,250 SF
Start Date	2/1/2020
Lease Term	5 Years (60 Months)
Rent	\$24/SF (Yr.) / \$2/SF (Mo.)
Expense Structure	NNN
Adjusted MG Rent	\$2.08/SF (Mo.)
Options/Extensions	1, 5-year
Average Escalations	2% (Yr.)
Escalation Detail	Renewal is at change in CPI

Property

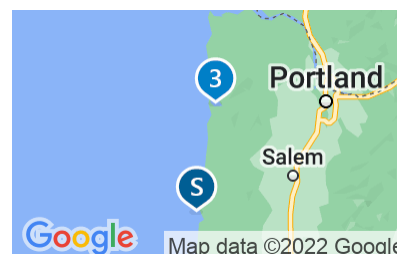
Type	Retail
Gross Building Area (GBA)	3,105 SF
Net Rentable Area (NRA)	3,105 SF
Buildings	1 Building, 1 Floor
Parking	17 Spaces (5.5/1,000 SF NRA)
Year Built	1995 (Renovated 2015)
Land Area	0.4059 Acres (17,680 SF)
Site Coverage Ratio	17.56%
FAR	0.18
Zoning	C-H
Shape	Rectangular
Topography	Level
Corner	Yes



1863 N Main Ave
Tillamook, OR 97141

County
Tillamook

APN
1S0919-C0-00103



Confirmation

Name	Michael Horwitz
Company	Capital Pacific
Phone Number	425-736-3406
Affiliation	Broker
Date	9/13/2022

Remarks

Fully occupied two-tenant retail property occupied by Subway (w/ drive thru) and Maria's Taqueria. Originally built in 1995. Recent updates include new HVAC, roof repairs, and a building expansion completed in 2015, and resealing of the parking lot in 2019. Exposure is at a non-signalized corner along Highway 101.

This is the lease to a local taco shop of a former Taco Del Mar location.

Professional Office Building

Comparable 4

Lease Information

Tenant	Butler/Armstrong
Tenant Type	Office
Lease Type	Renewal
Tenant Size	642 SF
Start Date	1/1/2021
Rent	\$14.04/SF (Yr.) / \$1.17/SF (Mo.)
Expense Structure	MG - tenant pays taxes, utilities, janitorial
Adjusted MG Rent	\$1.22/SF (Mo.)
Options/Extensions	None
Escalation Detail	None

Property

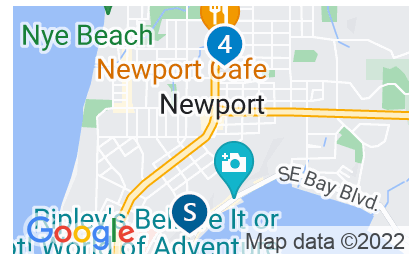
Type	Office
Gross Building Area (GBA)	4,400 SF
Net Rentable Area (NRA)	4,400 SF
Buildings	1 Building, 2 Floors
Foundation	Type Not Specified
Parking	19 Spaces (4.3/1,000 SF NRA)
Year Built	1997
Land Area	0.16 Acres (6,970 SF)
Site Coverage Ratio	31.56%
FAR	0.63



130 NE 4th St
Newport, OR 97365

County
Lincoln

APN
11-11-05-DC-11500-00



Confirmation

Name	Alan Wells
Company	Commercial Associates
Phone Number	541-754-6320
Affiliation	Broker
Date	9/9/2022

Remarks

This is the 2021 lease rate for a month-to-month office lease in a Newport office building. The tenant remains in the building in 2022.

Mixed Use Commercial/Residential Building

Comparable 5

Lease Information

Tenant	Bayside Nutrition
Tenant Type	MG
Lease Type	New
Tenant Size	1,268 SF
Start Date	6/1/2022
Lease Term	1 Year (12 Months)
Rent	\$17.52/SF (Yr.) / \$1.46/SF (Mo.)
Expense Structure	MG
Adjusted MG Rent	\$1.36/SF (Mo.)

Property

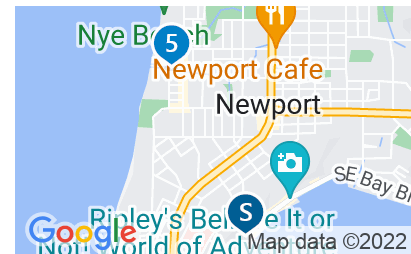
Type	Multi-Family, Retail
Gross Building Area (GBA)	2,068 SF
Net Rentable Area (NRA)	2,068 SF
Buildings	1 Building, 2 Floors
Year Built	1930 (Renovated Unknown)
Land Area	0.17 Acres (7,405 SF)
Site Coverage Ratio	17.12%
FAR	0.28
Shape	Generally Rectangular
Topography	Level
Corner	No



735 NW Beach Drive
Newport, OR 97365

County
Lincoln

APN
11-11-05-CC-09900-00, 11-
11-05-CC-09800-00



Confirmation

Name	Freddy Saxton
Company	Advantage Real Estate
Phone Number	541-961-2085
Affiliation	Broker
Date	11/23/2022

Remarks

Mixed use building with a 1,268 SF retail space on the ground floor and two apartment units on the second floor totaling an additional 800 SF. Located in the heart of Nye Beach. The separate 75' x 75' vacant lot is zoned C-2 and all utilities available at the street. Built in 1930 but well maintained and reflecting average condition. Street parking only.

Modified gross lease with the landlord paying taxes and building maintenance while the tenant pays all other expenses. The tenant leases the space on an annual basis and originally moved in to the space in June 2020.

Bar & Grill

Comparable 6

Lease Information

Tenant	The Sea Spritz
Tenant Type	Restaurant
Lease Type	New
Tenant Size	2,558 SF
Start Date	11/1/2022
Lease Term	5 Years (60 Months)
Rent	\$17.36/SF (Yr.) / \$1.45/SF (Mo.)
Expense Structure	NNN
Adjusted MG Rent	\$1.53/SF (Mo.)
Options/Extensions	None
Escalation Detail	Annual escalation of \$50 - \$100 per month

Property

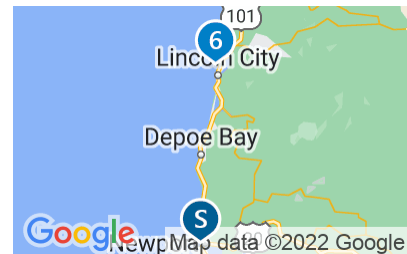
Type	Retail, Restaurant
Gross Building Area (GBA)	2,558 SF
Net Rentable Area (NRA)	2,558 SF
Buildings	1 Building, 1 Floor
Parking	6 Spaces (2.3/1,000 SF NRA)
Year Built	1950 (Renovated 2022 full renovation)
Land Area	0.15 Acres (6,534 SF)
Site Coverage Ratio	39.15%
FAR	0.39



1330 NE Hwy 101
Lincoln City, OR 97367

County
Lincoln

APN
07-11-10-DC-03500-00



Confirmation

Name	Korey Hazard
Company	Taylor & Taylor
Phone Number	541-961-7519
Affiliation	Broker
Date	9/12/2022

Remarks

This is the signed lease for a single-tenant bar and grill in Lincoln City. The broker reported the landlord completely remodeled and upgraded the space prior to securing the tenant.

INCOME APPROACH (continued)

The following narrative compares and contrasts the comparables relative to the subject property:

- **Expense Structure** – The subject has a modified gross expense structure, in which the tenants are responsible for their share of real estate taxes, electricity, janitorial, and interior maintenance, while the landlord is responsible for fire and extended perils insurance, water/sewer, exterior maintenance, and the underlying ground lease (as applicable). The comparables have varying expense structures. All have been adjusted, as applicable, to the subject's modified gross structure.
- **Location** – The subject is located along Bay Boulevard in Newport, an area of intense commercial development. It is also located on the east side of Bay Boulevard and benefits from a waterfront view amenity overlooking Yaquina Bay. Given this, the comparables are generally considered inferior to the subject with regard to location to account for the view amenity.
- **Parking** – The subject has no on-site parking but a public parking lot is located adjacent to the west. The comparables have on-site parking ranging between 2.3 to 4.9 spaces per 1,000 SF, all deemed slightly superior.
- **Condition** – The subject exhibits fair to average condition, with opportunities for updates. Comparables 1, 3, 5, and 6 are all deemed superior.
- **Quality** – The subject reflects average quality and wood frame construction. Comparable 6 was recently remodeled/upgraded prior to the tenant moving in and is deemed superior regarding quality.
- **Utility** – The subject possesses retail utility but could also be suitable for a service-oriented office user. Comparables 3 and 6 are utilized as restaurants and possess commercial kitchens. The restaurant buildout is superior.
- **Size (SF)** – The subject suites range in size from 602 to 2,249 SF. Comparable 5 is the largest space in the data set, which may have placed some downward pressure on its rent rate per SF, particularly when compared to the subject's two ground floor suites. No other adjustments are necessary for size.

LEASE RATE CONCLUSION

The comparables are arrayed below, illustrating the subject's competitive position.

Lease Comparable Array		
Comparable	Adjusted Rent/SF	Indication
3	\$2.08	High
6	\$1.53	High
1	\$1.45	High
5	\$1.36	Slightly High
SUBJECT		
4	\$1.22	Slightly Low
2	\$1.11	Slightly Low

Based on the physical and locational factors affecting rent, the subject is bracketed by Comparables 4 and 5, suggesting a narrowed range of **\$1.22 to \$1.36 per SF**.

INCOME APPROACH (continued)

The subject benefits from its waterfront view amenity and location along Bay Boulevard, the primary commercial corridor for tourists where surrounding development includes a mix of retail/restaurant businesses and commercial fishing.

Brodie Becksted, Principal Broker with Ocean Equity, was unaware of any recent leases in Newport but opined a rate range of \$1.60 to \$2.00/SF/month full service as a general rule of thumb for retail properties in the subject area.

However, based on the in-place rent, the fair to average condition of the improvements, and the qualitative adjustments applied to the comparable leases, the subject property would likely garner market rents below the range indicated by Mr. Becksted.

The **glass shop space on the first floor (1,110 SF)** has an in-place rent of \$1.10/SF/month. No documentation was provided beyond the original lease agreement which expired in 2020; the tenant is assumed to be operating month to month. The rent rate has escalated by approximately \$115/month since the original lease commenced in 2010. Overall market rent near the middle of the narrowed range of **\$1.30/SF/month** is concluded.

The **former ice cream parlor (602 SF)** was being leased for \$600/month (\$1.00/SF/month) prior to the tenant vacating. Due to economies of scale, the small size would likely place upward pressure on the rental rate. It faces away from Bay Boulevard but has windows overlooking the pier and Yaquina Bay beyond. Overall market rent near the upper end of the narrowed range of **\$1.35/SF/month** is concluded.

The entire **second floor space (2,249 SF)** has been vacant for several years and was formerly utilized as an art gallery. The prolonged marketing period can likely be attributed to ownership opting not to professionally market the space for lease. This space is not ADA-accessible; however, it has excellent second floor views overlooking the Bay and has an open floor plan with unique architectural finishes, noting the vaulted ceilings and exposed wood beams, which could cater to a variety of uses. Considering the larger size compared to the first floor spaces, market rent near the low end of the overall range of **\$1.20/SF/month** is concluded and will be applied.

The rent conclusions for the respective suites indicate a blended market rent equal to **\$1.25/SF/month**.

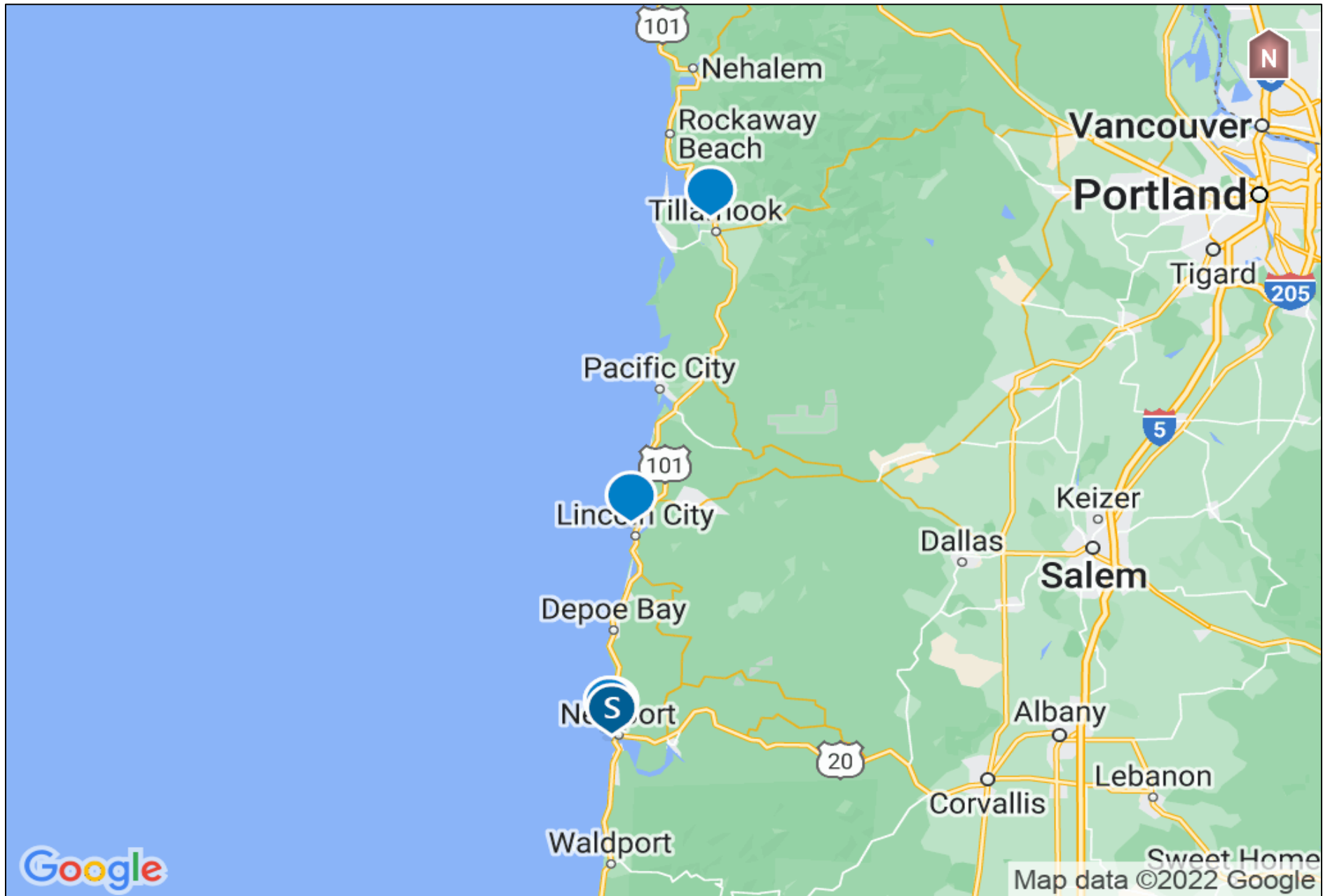
Potential Gross Income					
Glass Shop (mkt)	1,110 SF x	\$1.30 /SF x	12 mo. =		\$17,316
Former Ice Cream Parlor (mkt)	602 SF x	\$1.35 /SF x	12 mo. =		\$9,752
Former Art Gallery (mkt)	2,249 SF x	\$1.20 /SF x	12 mo. =		\$32,386
PGI	3,961 SF x	\$1.25 /SF x	12 mo. =		\$59,454

Potential gross income is concluded following the Lease Comparable Tabulation Chart and Location Map.

LEASE COMPARABLE TABULATION CHART AND ADJUSTMENT GRID

Characteristics	Subject	Comparable 1		Comparable 2		Comparable 3		Comparable 4		Comparable 5		Comparable 6	
Name	Abby St. Pier Building	Multi-tenant Retail		Chiropractor Office		Maria's Taqueria		Butler/Armstrong		Bayside Nutrition		Bar & Grill	
Address	669 SW Bay Blvd. Newport, Oregon	310-316 NW Coast Street Newport, Oregon		530 NW 3rd St, Suite A Newport, OR		1863 Main Ave N Tillamook, OR		130 NE 4th Street Newport, OR		735 NW Beach Drive Newport, OR		1330 NE Hwy 101 Lincoln City, OR	
Lease Date		2019 Blended Lease Rate		Dec-19		Feb-20		Jan-21		Jun-22		Nov-22	
Size (SF)	602 to 2,249	1,294 Average		995		1,250		642		1,268		2,558	
Rent/SF/Month		\$1.37 Average		\$1.31		\$2.00		\$1.17		\$1.46		\$1.45	
Rent/SF/Year		\$16.44 Average		\$15.68		\$24.00		\$14.02		\$17.55		\$17.36	
Expense Structure	MG	NNN		MG		NNN		MG		MG		NNN	
Tenant Pays	Taxes, elec, int. maint.	All expenses		Electric, janitorial		All expenses		Taxes, utilities, int. maint.		ins, utilities		All expenses	
Term		2 Years / Month-to-Month		3 years		5 years		Month-to-month		1 year		5 years	
Renewal		Various		N/A		1, 5-year		N/A		None		None	
Escalation		Various		\$100 in yr 3		2%/year; renewal at CPI		N/A		None		annual: \$50 - \$100/month	
Tenant Improvements		Unknown		None		None		None		None		None; owner had finished reno	
Concessions		None		None		None		None		None		None	
Rentable Building Area (SF)	3,961	3,882		5,947		3,105		4,400		2,068		2,558	
Year Built	1979	1999		1989		1995		1997		1930/renovated		1950/2022 full renovation	
Parking Ratio	Street parking only	4.9 spaces/1,000 SF		2.7 spaces/1,000 SF + street		4.5 spaces/1,000 SF		2.3 spaces/1,000 SF		3.9 spaces/1,000 SF		2.3 spaces/1,000 SF	
Rent Adjustment		Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)
Conditions of Lease		Arm's Length	\$0.00	Arm's Length	\$0.00	Arm's Length	\$0.00	Arm's Length	\$0.00	Arm's Length	\$0.00	Arm's Length	\$0.00
Expense Structure		MG	\$0.08	MG	-\$0.20	MG	\$0.08	MG	\$0.05	MG	-\$0.10	MG	\$0.08
Other (Parking; Amort. TIs)		None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00
Market Conditions	No Quantitative Adj.	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00	None	\$0.00
Adjusted Rent/SF/Mth			\$1.45		\$1.11		\$2.08		\$1.22		\$1.36		\$1.53
Adjusted Rent/SF/Yr			\$17.40		\$13.28		\$24.96		\$14.62		\$16.35		\$18.32
Qualitative Adjustment		Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)
Location	Newport, Oregon	Inferior	-	Inferior	-	Inferior	-	Inferior	-	Inferior	-	Inferior	-
Parking	Street parking only	Superior	+/=	Superior	+/=	Superior	+/=	Superior	+/=	Superior	+/=	Superior	+/=
Condition	Fair to Average	Superior	+	Similar	=	Superior	+	Similar	=	Superior	+	Superior	+
Quality	Average	Similar	=	Similar	=	Similar	=	Similar	=	Similar	=	Superior	+
Utility	Retail	Retail	=	Office	=	Restaurant	+	Office	=	Retail	=	Restaurant	+
Size	602 to 2,249	Similar	=	Similar	=	Similar	=	Similar	=	Similar	=	Larger	-/=
Comparability			+/=		-/=		++		-/=		+/=		++
Conclusion			Slightly High Indicator		Slightly Low Indicator		High Indicator		Slightly Low Indicator		Slightly High Indicator		High Indicator

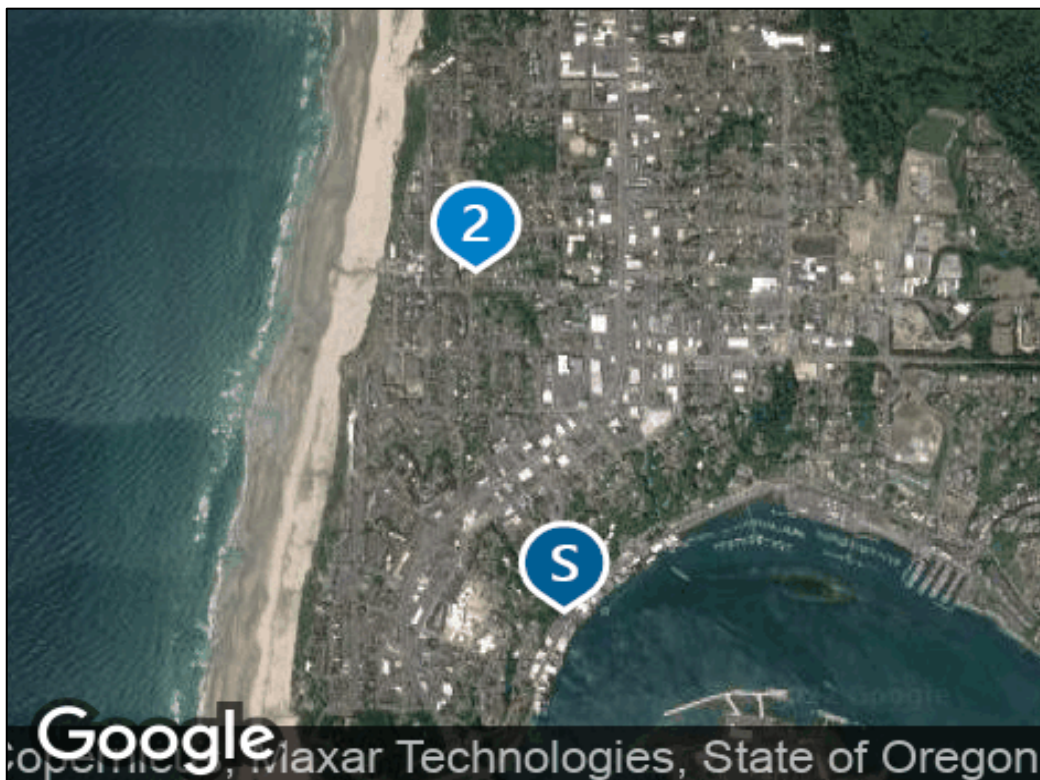
LEASE COMPARABLE MAP



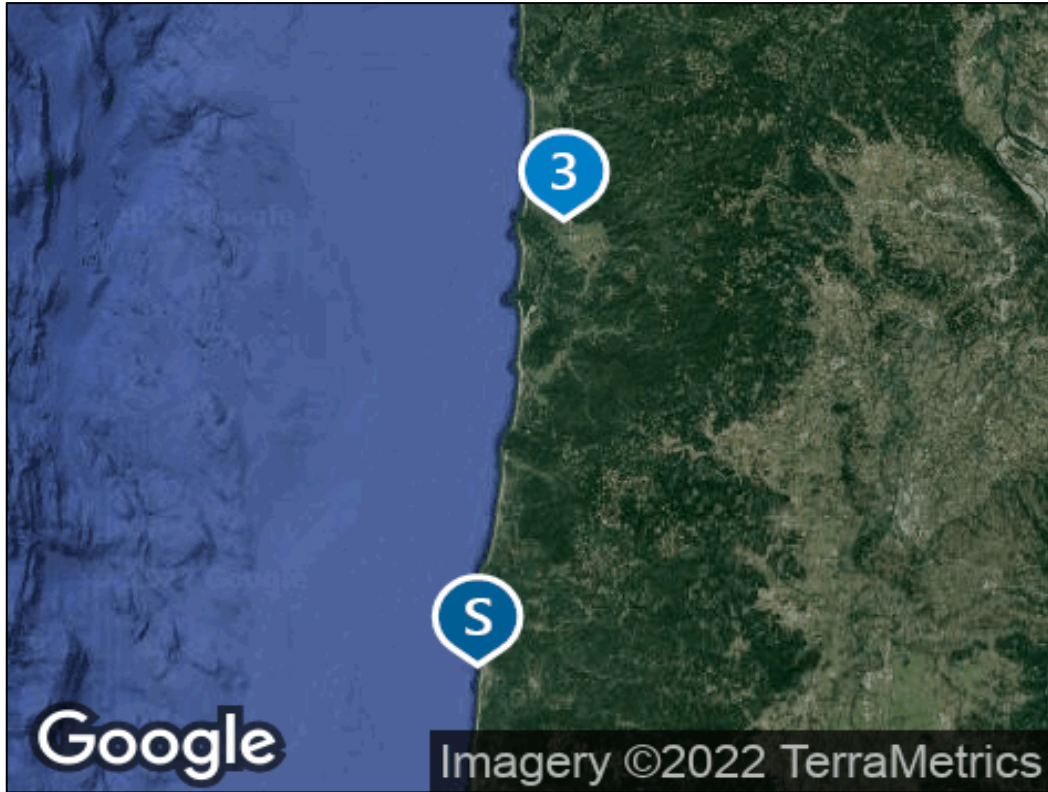
LEASE COMPARABLE DRIVE-TO MAP – COMP #1



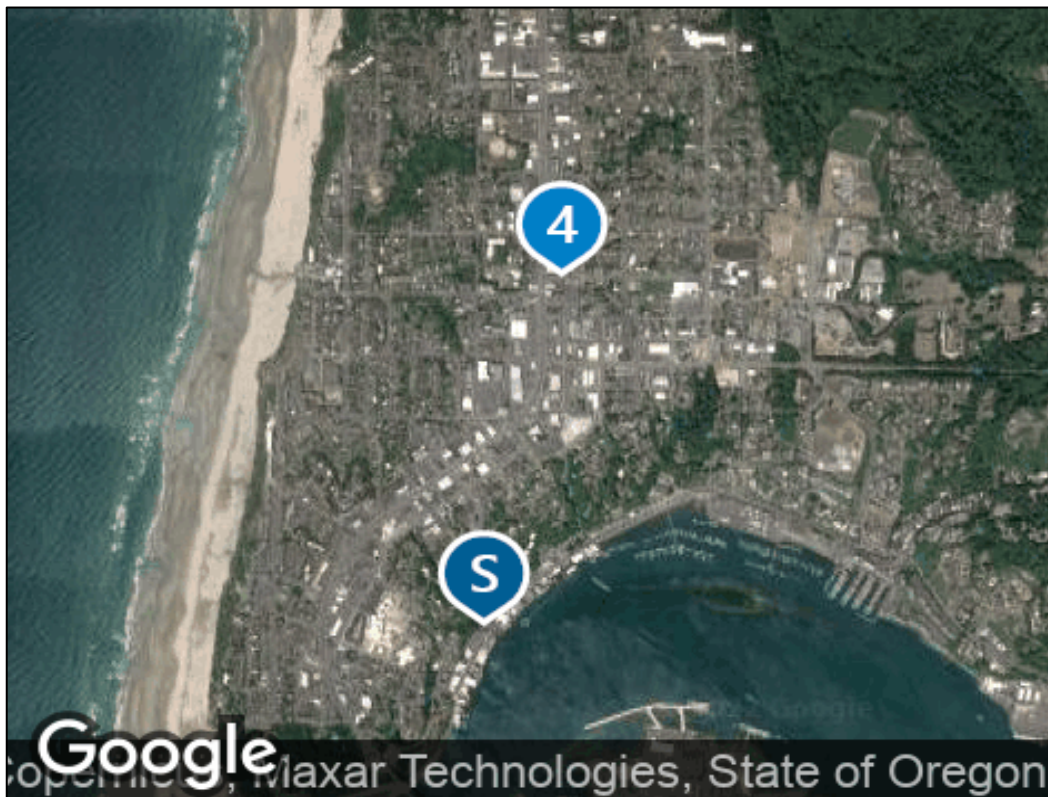
LEASE COMPARABLE DRIVE-TO MAP – COMP #2



LEASE COMPARABLE DRIVE-TO MAP – COMP #3



LEASE COMPARABLE DRIVE-TO MAP – COMP #4



LEASE COMPARABLE DRIVE-TO MAP – COMP #5



LEASE COMPARABLE DRIVE-TO MAP – COMP #6



INCOME APPROACH (continued)

POTENTIAL GROSS INCOME CONCLUSION

Rental Income Conclusion -- Two sources were analyzed regarding appropriate market rent levels: the subject's actual leasing activity and rent comparables. Regarding the actual leasing activity, one of the three suites are occupied and the tenant is paying base rent equal to \$1.10/SF/month. The rental rate has increased by just \$115/month since the lease commenced in 2010, indicating it is below market. This was supported by the comparables and a market rent of \$1.30/SF/month was concluded. The current tenant is secured on a short term lease that is effectively month-to-month; therefore, no rent loss is applied.

Market rent for the two vacant suites were concluded at \$1.35/SF/month for the smaller 602 SF first floor space and \$1.20/SF/month for the second floor space.

Applying the concluded rents against the rentable area of 3,961 SF, results in a potential gross income, as detailed in the following chart, of:

Potential Gross Income					
Glass Shop (mkt)	1,110 SF x	\$1.30 /SF x	12 mo. =	\$17,316	
Former Ice Cream Parlor (mkt)	602 SF x	\$1.35 /SF x	12 mo. =	\$9,752	
Former Art Gallery (mkt)	2,249 SF x	\$1.20 /SF x	12 mo. =	\$32,386	
PGI	3,961 SF x	\$1.25 /SF x	12 mo. =	\$59,454	

VACANCY AND CREDIT LOSS

This expense category accounts for the time between tenants, and possible prolonged vacancies under slow market conditions. This assignment reflects the probable vacancy during the economic life of the property, not necessarily the current vacancy.

Typical vacancy and credit loss allocations assigned by buyers and sellers of average quality, well-located commercial properties that have not experienced historical vacancy problems are 5%. As discussed in the Market Analysis, the subject's market area has experienced recent vacancy rates well below the market standard of 5%, although the vacancy rates indicated by Costar may overstate the lack of supply as many lease agreements on the coast are signed between ownership and tenant with no broker representation.

Based upon the above information and considering the subject has dealt with vacancy historically, a vacancy and credit loss allocation of **5.00%** will be used.

EFFECTIVE GROSS INCOME

The **effective gross income** is calculated as follows:

Potential Gross Income		=	\$59,454
Less, Vacancy & Credit Loss	-5.0% x	\$59,454 =	(\$2,973)
Effective Gross Income			\$56,481

INCOME APPROACH (continued)

ESTIMATED OPERATING EXPENSES

The subject's estimated market rents have been based upon a **modified gross** expense structure, with the landlord responsible for fire and extended perils insurance, water/sewer, the Department of State Lands land lease, exterior repairs and maintenance, management and structural maintenance/reserves costs, which are discussed in the following narrative.

Fire and Extended Perils Insurance -

Properties similar to the subject incur insurance expenses ranging from less than 1% to 3% of effective gross income. The costs are dependent upon the property's size, age, condition, and construction characteristics. The property representative reported an actual expense of **\$2,544.58 (\$0.64/SF)** for the current year. This is above the expense comparables, which range from \$0.17 to \$0.36 per SF. However, none of the comparables are located on the Bayfront, which may result in an increased expense. Therefore, most emphasis is placed on the actual expense. For the purposes of this analysis, an expense of **\$2,545, or \$0.64 per SF** is concluded. The expense is equivalent to 4.51% of EGI.

FIRE/EXTENDED PERILS INSURANCE	
	/year
Comparable 1	N/A
Comparable 2	\$0.36
Comparable 3*	\$0.70
Comparable 4	\$0.25
Comparable 5	\$0.13
Comparable 6*	\$0.70
Comparable 7	\$0.09
Comparable 8	\$0.25
Comparable 9	\$0.31
Comparable 10	\$0.14
Comparable 11^	\$0.81
Average	\$0.37
Average w/out Liability/EQ	\$0.22
* Liability Coverage Included.	
^ includes Fire, EQ, Liability	

Water/Sewer - Utility expenses can vary dramatically from year to year and from property to property. Per the property representative, average water usage in 2021/2022 was **9,670 gallons of water usage** per month. This is **high** noting the subject units' use types. Commercial water/sewer comparables were found and range from \$0.09 to \$0.24 per SF, averaging \$0.17 per SF. A water/sewer expense slightly above the comparables but below the subject's actual expense of **\$0.25 per SF** is concluded.

Department of State Lands (DSL) Lease — A portion of the subject pier is located on land leased from the Department of State Lands. The original lease document reports a leased area of 3,750 SF, including the adjacent public pier. The lease was renewed in late 2018 for 18 years; the lease rate is based on a flat fee calculated by the DSL and escalating 3% per year.

However; the subject's leased area does not include the entire pier, and was previously calculated to be 2,658 SF. The Department of State Lands lease rate, for the subject supporting site only, is calculated below for 2022 and will be used herein:

State Lands Lease		Per SF
Lease Rate	2022 lease rate	\$0.6918
x leased area - SUPPORTING SITE ONLY		2,658
2022 Department of State Lands Rent - Supporting Site Only		\$1,839

INCOME APPROACH (continued)

Repairs and Maintenance – This expense category is typically dependent upon the property's size, age, condition, and construction characteristics. The subject's actual repairs/maintenance expenditures were not provided. The property representative indicated no major repairs have been completed in recent years.

Expense comparables for this expense are shown at right and range from \$0.42 - \$2.32 per SF, averaging \$1.18/SF.

Considering the subject's fair to average condition and average wood-frame construction quality, and noting the landlord is responsible for exterior repairs and maintenance only, an expense of **\$0.075 per SF** is concluded.

REPAIRS/MAINTENANCE	
	/year
Comparable 1	\$0.74
Comparable 2	\$1.60
Comparable 3	\$1.58
Comparable 4	\$0.94
Comparable 5	\$1.32
Comparable 6	\$0.42
Comparable 7	\$0.64
Comparable 8	\$1.00
Comparable 9	\$2.32
Comparable 10	\$1.09
Comparable 11	\$1.32
Average	\$1.18

Management & Administration – The subject has been owner-managed, with no management expense reported. Property management companies in the subject's market area generally charge 2% to 6% of effective gross income for industrial and commercial properties. The management costs are dependent upon the property's size, number of tenants, and lease structure.

Given the subject's three-tenant design, and modified gross expense structure, an expense of **3.00% of EGI** is considered appropriate and will be used in this analysis.

Reserves for Replacement - Reserves for replacement expense is not a typical annual cash expenditure, but rather, the annualized cost of major expenses in the future, such as the replacement of the roof cover, heating systems, asphalt paving, and other structural components. The reserves for replacement allowance buyers and sellers for this type of property typically allocate is 2 to 6% of effective gross income, depending on the age and condition of the facility.

Based on the quality of the subject improvements, as well as the repairs and maintenance allocation already deducted, a reserve for replacement allocation of **5.00% of EGI** is reasonable.

INCOME APPROACH (continued)

Total Expenses are summarized below:

	\$/SF	\$	% EGI
F&E Insurance	\$0.64	\$2,545	4.51%
Water/Sewer	\$0.25	\$990	1.75%
Land Lease	\$0.46	\$1,839	3.26%
Repairs and Maintenance	\$0.75	\$2,971	5.26%
Management	\$0.43	\$1,694	3.00%
Reserves for Replacement	\$0.71	\$2,824	5.00%
	\$3.25	\$12,862	22.77%

Net operating income is summarized below:

Effective Gross Income	\$56,481
Less, Expenses	(\$12,862)
Net Operating Income	\$43,619
Per SF	\$11.01

OVERALL CAPITALIZATION RATE

The final step in the Income Approach is to capitalize the net operating income by an appropriate overall rate. Overall capitalization rates vary based upon many factors including age, quality, condition, strength of tenants, vacancy history, anticipated tenant turnover expenses, appreciation potential, and general perceived risk in maintaining the estimated stabilized net operating income of the property.

The following chart summarizes market comparables.

CAPITALIZATION RATE COMPARABLES

No	Location	Property Type	Sale Date	Year Built	Size (SF)	Sale Price	NOI	OAR	Indicator
1	Coldwell Banker Office 1815 NW Hwy 101 Lincoln City, OR	Single Tenant Prof. Office	Jun-20	1946	3,277	\$660,000 \$201.40	\$40,546 \$12	6.14%	Low
2	Avery Building 120 NE Avery Street Newport, OR	Multi-tenant Office	Dec-20	1994	20,740	\$3,315,000 \$159.84	\$245,287 \$12	7.40%	High
3	Two Tenant Retail 1863 Main Ave Tillamook, OR	Multi-tenant Retail	Jan-21	1995	3,105	\$1,125,000 \$362.32	\$81,697 \$26	7.26%	High
4	Multi-tenant Commercial 440 NE Commercial Street Waldport, OR	Multi-tenant Office/retail	Jun-21	1985	4,800	\$265,444 \$55.30	\$17,591 \$4	6.63%	High
5	Multi-tenant Commercial 1000 Main Ave N Tillamook, OR	Multi-tenant Office/retail	Nov-21	1984	24,899	\$800,000 \$32.13	\$57,928 \$2	7.24%	High
6	Two-tenant office building 14 SW Nye St Newport, OR	Multi-tenant Prof. Office	Jan-22	1977	2,539	\$378,500 \$149.07	\$24,000 \$9	6.34%	Low
								Min 6.14%	
								Max 7.40%	
								Average 6.84%	

INCOME APPROACH (continued)

The comparables indicate a range from **6.14% to 7.40%**. The net operating income of each comparable is based on similar expense structure to that of the subject. Each of the comparables has varying physical and financial characteristics and brackets the subject in terms of age, condition, quality, location, durability of income stream, and overall market appeal. Overall, these sales are reasonably comparable to the subject from an investor's perspective. All of the sales transacted during/after the COVID-19 pandemic, suggesting they reflect changes in market conditions due to this event.

Comparable 1 (6.14%) is the seller leaseback sale of a single tenant realtor office in Lincoln City. Per the broker (also an entity of the selling ownership), the in place lease (carried forward to the new ownership) was slightly below market, which provided upward potential for a higher renewal. It is a **low indicator**.

Comparable 2 (7.40%) is the sale of a multi-tenant professional office building leased to government tenants (including the Oregon DHS). Its larger size placed upward pressure on the capitalization rate, noting the difficulty of leasing large offices in the Oregon coast market. It is a **high indicator**.

Comparable 3 (7.26%) is the sale of a two-tenant retail property in Tillamook. Tenants included two restaurants (Subway and a local taco shop). The high NOI per SF increases investment risk, making this a **high indicator**.

Comparable 4 (6.63%) is the sale of a multi-tenant office/retail strip center in Waldport. The low NOI per SF decreases risk (and also suggested there was upward potential from raising the in-place rents). However, this is offset by the inferior location and condition, making this a **high indicator**.

Comparable 5 (7.24%) is the sale of a multi-tenant commercial building in Tillamook. Its tenant mix included a restaurant, retail, and offices in a strip-mall type development. In-place rents were reportedly slightly below market. However, the large size for the local market increased risk, making this a **high indicator**.

Comparable 6 (6.34%) is the sale of a two-tenant professional office building in Newport. The property benefited from upward potential from leasing out some additional basement storage (not reflected in the NOI at the time of sale) and renewing the in-place tenants' leases at slightly higher rates, making this a **low indicator**. NOTE: This property sold leased on month-to-month terms with the in-place tenants, who will be vacating for future owner-user occupancy.

The comparables are arrayed below from high to low, illustrating the subject's perceived placement amongst the array:

Comparable Capitalization Rate Array		
Comparable	OAR %	Indication
1	7.40%	High
6	7.26%	High
4	7.24%	High
5	6.63%	High
SUBJECT		
3	6.34%	Low
2	6.14%	Low

The subject's income stream has been based on market rent and expenses. The Bayfront location along Bay Boulevard in Newport in the heart of a destination retail area are

INCOME APPROACH (continued)

taken into consideration and present strong upside potential. The concluded market rents only consider a minor \$10/SF TI allowance and have potential to rise if the landlord opts to invest further toward interior updates/renovations to the vacant spaces and implements a routine maintenance plan for the exterior.

Concluding a capitalization rate of **6.50%** based on comparable sales is reasonable considering all factors.

INCOME CAPITALIZATION APPROACH CONCLUSION

Dividing the estimated net operating income by the concluded overall capitalization rate, results in a **stabilized** market value of the subject property (assuming market rents), by the Income Capitalization Approach, of **\$670,000**.

Net Operating Income	\$43,619
Divided by OAR	6.50%
STABILIZED Market Value - Rounded	\$670,000
Per SF	\$169.15

Lease-up costs: 2,851 vacant SF – The previously concluded stabilized value assumes that the subject is operating at market lease rates and market occupancy.

Two of the three retail suites totaling 2,851 SF were vacant and not being marketed for lease. Therefore; a deduction must be made for costs to the property owner to achieve stabilization. These costs include:

- Rent loss over the lease up period to reach stabilized occupancy;
- Leasing commissions (5% over 36-month term);

A landlord-paid tenant improvement allowance of \$10/SF will also likely be necessary to entice a tenant to lease the spaces, noting the fair to average condition.

Overall, an **absorption period of 12 months** is estimated based on statistics presented in the Market Analysis and lease-up data. The lease-up analysis assumes the first floor retail space (602 SF) will be leased at the six-month period and the second floor space (2,249 SF) will be absorbed in the final period at the end of the 12-month lease-up phase.

Leasing Commissions: 5% over 5 year term													
Tenant Improvements/SF: \$10.00													
		2022		2023									
		Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct
		PERIOD	PERIOD	PERIOD	PERIOD	PERIOD	PERIOD	PERIOD	PERIOD	PERIOD	PERIOD	PERIOD	PERIOD
		1	2	3	4	5	6	7	8	9	10	11	12
Area to Absorb (SF):		2,851	2,851	2,851	2,851	2,851	2,851	2,249	2,249	2,249	2,249	2,249	0
2ND FLOOR SPACE 2,249 SF		0	0	0	0	0	0	0	0	0	0	0	2,249
Rent Loss:	\$1.20 SF/Mo	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$2,699	\$0
Leasing Commissions:	5% 36 mo. Term	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,858
Tenant Improvements:	\$10 per SF	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$22,490
1ST FLOOR SPACE 602 SF		0	0	0	0	0	602	0	0	0	0	0	0
Rent Loss:	\$1.35 SF/Mo	\$813	\$813	\$813	\$813	\$813	\$813	\$0	\$0	\$0	\$0	\$0	\$0
Leasing Commissions:	5% 36 mo. Term	\$0	\$0	\$0	\$0	\$0	\$1,463	\$0	\$0	\$0	\$0	\$0	\$0
Tenant Improvements:	\$10 per SF	\$0	\$0	\$0	\$0	\$0	\$6,020	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL LEASE-UP COSTS:		\$69,394											

Because the lease-up period is not greater than one year from the date of value, no discount is applied. Total lease-up costs are \$69,394, or **\$70,000**, rounded.

INCOME APPROACH (continued)

Deducting the costs to reach stabilization from the previously concluded stabilized value results in an **“as if” market value in leased fee/leasehold**, via the Income Approach, as of November 2, 2022, of (\$670,000 - \$70,000):

\$600,000

■ INCOME APPROACH SUMMATION TABLE ■

Potential Gross Income				
Glass Shop (mkt)	1,110 SF x	\$1.30 /SF x	12 mo. =	\$17,316
Former Ice Cream Parlor (mkt)	602 SF x	\$1.35 /SF x	12 mo. =	\$9,752
Former Art Gallery (mkt)	2,249 SF x	\$1.20 /SF x	12 mo. =	\$32,386
PGI	3,961 SF x	\$1.25 /SF x	12 mo. =	\$59,454
Less, Vacancy and Credit Loss	5.0%		=	(\$2,973)
Effective Gross Income			=	\$56,481
		\$/SF	\$	% EGI
F&E Insurance		\$0.64	\$2,545	4.51%
Water/Sewer		\$0.25	\$990	1.75%
Land Lease		\$0.46	\$1,839	3.26%
Repairs and Maintenance		\$0.75	\$2,971	5.26%
Management		\$0.43	\$1,694	3.00%
Reserves for Replacement		\$0.71	\$2,824	5.00%
		\$3.25	\$12,862	22.77%
Total Expenses			=	(\$12,862)
Net Operating Income (NOI)			=	\$43,619
Per SF			=	\$11.01
Capitalization of Income				
NOI	Divided By	OAR	=	Value
\$43,619	Divided By	6.50%	=	\$671,062
Estimated Stabilized Market Value (Rounded)			=	\$670,000
per SF				\$169.15
Lease-up Costs (Vacant SF)			=	-\$70,000
Estimated "As If" Market Value (Rounded)			=	\$600,000
per SF				\$151.48

SALES COMPARISON APPROACH

In this section, the market value of the subject property will be estimated by direct comparison analysis, which compares improved sales to the subject property on a price per square foot basis. The price per square foot is based upon the physical characteristics of the property, and care must be taken in the comparable selection process. The comparables are analyzed considering such factors as location, site coverage/parking, exposure, access, condition, quality, utility, and size.

A survey of the market area was conducted and included CoStar, LoopNet, Regional Multiple Listing Service, Flex Multiple Listing Service, County assessor's records, and interviews with several local real estate professionals and developers familiar with the subject property type. A limited number of sales of retail properties with similar characteristics in the immediate Newport market were found. Therefore the search was expanded to include retail buildings north of the subject along the Oregon Coast, specifically in the markets of Pacific City and Lincoln City. One small commercial building built out as an office from the Newport market was also included. An adequate sampling of comparables sales was found, from which to conclude a credible value opinion. General analysis reflecting market behavior is utilized to determine which comparables are superior or inferior to the subject. This analysis establishes value parameters for the subject, allowing for a final conclusion of value. Following the comparable discussion is an Improved Sales Tabulation Chart and Adjustment Grid, which summarizes the sales used in this analysis. An Improved Sales Location Map is also provided.

ADJUSTMENTS

QUANTITATIVE ADJUSTMENTS

Property Rights Conveyed – Properties are sold with a specific bundle of rights and typically reflect various forms of ownership interest. This analysis generally focuses on the **leased fee** value of the property, assuming stabilized occupancy and market rents. Therefore, the comparable sales are analyzed on a leased fee basis. All of the comparables were purchased for future owner occupancy; no adjustment is necessary.

Financing Terms – All of the comparable sales sold via conventional financing or cash, all assumed to be cash equivalent. No adjustment is necessary.

Conditions of Sale – The comparables generally reflect arm's length negotiations. Therefore, no adjustment is made.

Market Conditions - The comparables indicate an unadjusted range in sale price of \$128 to \$165 per SF, selling between December 2020 and September 2022. An adjustment for market conditions (time) is considered. As discussed in the Market Analysis, a positive market conditions adjustment of **+0.25% per month** is applied to the comparable sales through the date of value.

QUALITATIVE ADJUSTMENTS – The comparables are compared and contrasted to the subject on a qualitative basis. Categories include location, site coverage/parking, access, exposure, condition, quality, utility, and size. Each category is analyzed and the comparable is concluded to be similar, inferior or superior to the subject. The categories are reconciled, resulting in reasonable, low or high indicators for the subject.

The comparables are briefly discussed on the following pages, culminating in a conclusion of value.

Newport Retail Building

Comparable 1

Sale Information

Buyer	Luke & Christina Simonsen	
Seller	George & Valerie Valenzuela	
Sale Date	12/4/2020	
Transaction Status	Recorded	
Sale Price	\$400,000	\$128 /SF NRA
Analysis Price	\$423,000	\$135 /SF NRA
Rights Transferred	Fee Simple	
Marketing Time	133 days	

Property

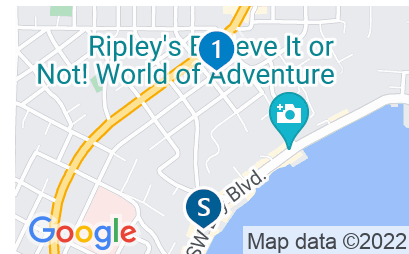
Type	Retail
Gross Building Area (GBA)	3,136 SF
Net Rentable Area (NRA)	3,136 SF
Buildings	1 Building, 2 Floors
Parking	7 Spaces (2.2/1,000 SF NRA)
Year Built	1928
Land Area	0.2135 Acres (9,300 SF)
Site Coverage Ratio	22.67%
FAR	0.34
Shape	Rectangular
Topography	Level to Sloping
Corner	Yes



255 SW 9th Street
Newport, OR 97365

County
Lincoln

APN
11-11-08-BD-14500-00, 11-
11-08-BD-14400-00



Confirmation

Name FlexMLS/Deed/local news outlets

Remarks

Converted residence historically used as a retail store on the first floor with an open floor plan that could cater to a variety of uses. Located along 9th Street, one block south of Oregon Coast Highway in Newport. Includes a 2BR/1BA apartment unit on the second floor. Seven off-street parking spaces are available along 9th Street.

This sold for -3.6% below the asking price after a marketing period of 133 days. The buyer is an owner user who will be re-opening their brewery business (Bier One Brewing) into the property following completion of renovations over a six-month period between December 2020 and June 2021 after they vacated their former Newport location.

Single-tenant Retail Building

Comparable 2

Sale Information

Buyer	Tustumena LLC	
Seller	Bainbridge Investments LLC	
Sale Date	2/25/2021	
Transaction Status	Recorded	
Sale Price	\$415,000	\$132 /SF NRA
Analysis Price	\$436,788	\$139 /SF NRA
Rights Transferred	Fee Simple	
Marketing Time	133 days	



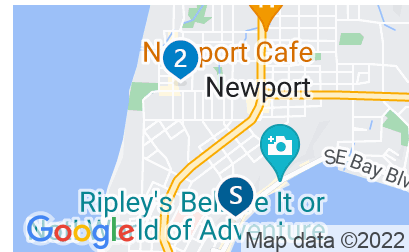
Property

Type	Retail
Gross Building Area (GBA)	3,142 SF
Net Rentable Area (NRA)	3,142 SF
Buildings	1 Building
Foundation	Type Not Specified
Year Built	1925 (Renovated 2020)
Land Area	0.08 Acres (3,485 SF)
Site Coverage Ratio	90.16%
FAR	0.90
Shape	L-Shaped
Topography	Level
Corner	Yes

588 W Olive St
Newport, OR 97365

County
Lincoln

APN
11-11-08-BB-03800-00



Confirmation

Name FlexMLS/Deed/local news sources

Remarks

Single-tenant retail building located in the Nye Beach neighborhood of Newport at the corner of Olive Street and High Street. Historically used as a discount retail store before undergoing renovations in 2019/2020 that included new siding, vinyl windows, ductless heating with A/C, new electrical, and updated insulation. Grandfathered retail use but the site is zoned residential. Street parking only.

Sold for -2.4% below the asking price after a 133 day marketing period. The buyer is a future owner user who will complete their own interior renovations and convert the retail space into an aesthetic medicine treatment clinic.

Twist Wine Retail Building

Comparable 3

Sale Information

Buyer	HAT GIRL LLC	
Seller	FROG PROPERTIES	
Sale Date	4/27/2021	
Transaction Status	Recorded	
Sale Price	\$550,000	\$153 /SF NRA
Analysis Price	\$576,125	\$160 /SF NRA
Recording Number	2021-3765	
Rights Transferred	Fee Simple	
Conditions of Sale	Typical	
Marketing Time	1225 days	

Property

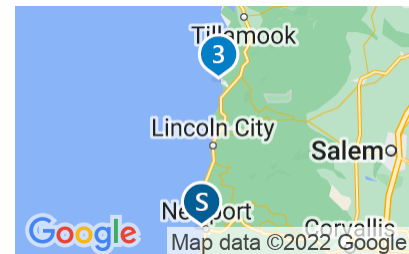
Type	Retail
Gross Building Area (GBA)	3,600 SF
Net Rentable Area (NRA)	3,600 SF
Buildings	1 Building
Parking	11 Spaces (3.1/1,000 SF NRA)
Year Built	1998
Land Area	0.29 Acres (12,632 SF)
Site Coverage Ratio	14.25%
FAR	0.28
Zoning	C-2
Shape	Generally Rectangular
Topography	Level
Corner	No



34930 Brooten Road
Pacific City, OR 97112

County
Tillamook

APN
4S1019-CC-07700, 4S1019-
CC-07800



Confirmation

Name	VP for Dennis Regen
Company	Taylor & Taylor Realty
Phone Number	541-992-16722
Affiliation	Broker
Date	9/12/2022

Remarks

Two-story retail building located along Brooten Road in the beachfront town of Pacific City, situated approximately 30 minutes north of Lincoln City. Built in 1998 and reflects good condition. An asphalt-paved parking lot is positioned west of the improvements and striped for four spaces while an additional seven spaces in a gravel lot are located north of the building. Within walking distance of the beachfront. Formerly used as an art gallery but suitable for a variety of retail uses.

This sold for -8.2% below the asking price after a multi-year marketing period. Per the broker representative, it was purchased for owner-occupancy for future use as a wine tasting shop. The seller was reportedly willing to wait for an offer they liked which resulted in the prolonged marketing period.

Pacific City Retail/Residential Building

Comparable 4

Sale Information

Buyer	Geoffrey & Patt Williams	
Seller	Rick Lablue Living Trust	
Sale Date	10/12/2021	
Transaction Status	Recorded	
Sale Price	\$535,000	\$165 /SF NRA
Analysis Price	\$552,388	\$170 /SF NRA
Rights Transferred	Fee Simple	
Marketing Time	92 days	

Property

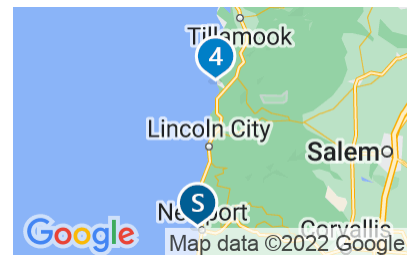
Type	Retail
Gross Building Area (GBA)	3,245 SF
Net Rentable Area (NRA)	3,245 SF
Buildings	1 Building
Parking	5 Spaces (1.5/1,000 SF NRA)
Year Built	1994
Land Area	0.22 Acres (9,583 SF)
Site Coverage Ratio	20.51%
FAR	0.34
Zoning	C-2
Shape	Generally Rectangular
Topography	Level
Corner	No



35350 Brooten Rd
Pacific City, OR 97112

County
Tillamook

APN
4S1030-BB-06200



Confirmation

Name FlexMLS/Deed/local news sources

Remarks

Commercial retail building with an upstairs 3BR/1BA apartment which includes a large deck facing the Nestucca River and Pacific Ocean beyond. Attached two-car carport in addition to off-street parking. Ground level retail space has an open floor plan with track lighting and carpet throughout.

This sold for -2.7% below the asking price after a marketing period of 92 days. The buyers are the owners of the Pacific City Inn, an 18-unit hotel located adjacent to the north of the subject. The buyer's future plans for the property are unknown.

Two-tenant office

Comparable 5

Sale Information

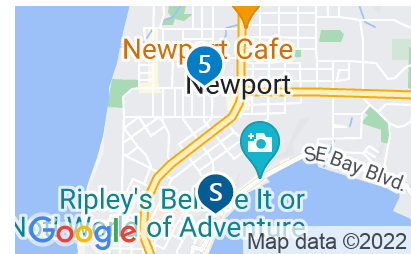
Buyer	CHRISTIAN SCIENCE SOCIETY OF NEWPORT, OREGON	
Seller	BRENNEMAN, JOHN D. & BRENNEMAN, JANET K.	
Sale Date	1/3/2022	
Transaction Status	Recorded	
Sale Price	\$378,500	\$149 /SF NRA
Analysis Price	\$387,963	\$153 /SF NRA
Recording Number	2022-000019	
Rights Transferred	Fee Simple	
Marketing Time	251 days	



14 SW Nye St
Newport, OR 97365

County
Lincoln

APN
11-11-08-BA-14301-00



Income Analysis

Occupancy	100.0%	
Net Operating Income	\$24,000	\$9.45 /SF NRA
Cap Rate	6.34%	

Property

Type	Office
Gross Building Area (GBA)	2,539 SF
Net Rentable Area (NRA)	2,539 SF
Buildings	1 Building, 1 Floor
Parking	7 Spaces (2.8/1,000 SF NRA)
Year Built	1977
Land Area	0.14 Acres (6,098 SF)
Site Coverage Ratio	41.64%
FAR	0.42

Confirmation

Name	Freddy Saxton
Company	Advantage Real Estate
Phone Number	541-961-2085
Affiliation	Agent
Date	2/11/2022

Remarks

Small commercial building located within close proximity to the courthouse, library, and post office in Newport, one block west of Oregon Coast Highway. It is demised into two spaces; a 1,464 SF space with a reception area, four private offices, and one bathroom, and a smaller 1,075 SF space. Seven off-street parking spaces.

This sold to an owner-user; per the broker, the in-place office tenants (who had month-to-month lease terms at the time of sale) will be vacating and the buyer (a religious organization) will move in during Spring 2022.

Taft Retail Building

Comparable 6

Sale Information

Buyer	Taft Holdings LLC	
Seller	Diamond Head Holdings	
Sale Date	9/7/2022	
Transaction Status	Recorded	
Sale Price	\$362,000	\$137 /SF NRA
Analysis Price	\$363,810	\$137 /SF NRA
Rights Transferred	Fee Simple	
Marketing Time	40 days	

Property

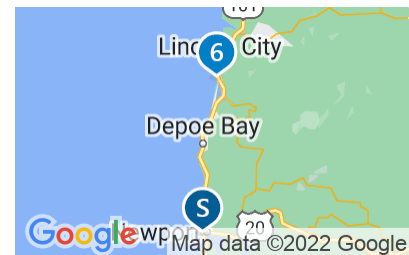
Type	Retail
Gross Building Area (GBA)	2,652 SF
Net Rentable Area (NRA)	2,652 SF
Buildings	1 Building
Parking	15 Spaces (5.7/1,000 SF NRA)
Year Built	1930
Land Area	0.24 Acres (10,454 SF)
Site Coverage Ratio	15.42%
FAR	0.25
Zoning	TVC
Shape	Rectangular
Topography	Level
Corner	No



4756 SE Highway 101
Lincoln City, OR 97367

County
Lincoln

APN
07-11-27-DC-01800-00, 07-
11-27-DC-01901-00



Confirmation

Name FlexMLS/Deed/local news sources

Remarks

Commercial retail building with frontage along Highway 101 in the Taft district of Lincoln City. Parking lot is striped to accommodate 15 vehicles. Ground floor was formerly used for CBD retail sales while the second floor consisted of a 2BD/1BR apartment.

This property sold for \$450,000 (\$170/SF) in August 2021 but was then re-listed in July 2022 and re-sold for \$362,000 (\$137/SF). Between the August 2021 and July 2022 sales, ownership gutted the interior and had planned for a renovation before opting to re-sell the property for unknown reasons. The new buyer is the co-owner of the local restaurant Hilltop Inn.

SALES COMPARISON APPROACH (continued)

The following narrative compares and contrasts the comparables relative to the subject property based on:

- **Location** – The subject is located in Newport. It benefits from its location along Bay Boulevard with a waterfront view amenity overlooking Yaquina Bay. All six comparables are deemed inferior to account for the waterfront view amenity.
- **Site Coverage/Parking** – The subject's site coverage (57.6%) is bracketed by the comparables. There is no off-street parking; however, a public parking lot is nearby and within walking distance. Five of the six comparables have superior site coverage ratios and offer off-street parking. Comparable 2 does not have off-street parking and has a high site coverage ratio of 90.2%. The subject has several covered walking areas in addition to the presence of the adjacent public pier which is not factored into its site coverage and allows for increased pedestrian traffic in the area. Comparable 2 is deemed inferior due to the high site coverage.
- **Access/Exposure** – The subject has adequate access and good exposure noting its frontage along Bay Boulevard. Comparable 1 and Comparable 5 have frontage along secondary connector streets and are deemed inferior with regard to exposure. The remaining comparables have exposure along primary arterials in their respective cities and no adjustments are applied.
- **Condition** – The subject was constructed in 1979 and reflects fair to average condition. Comparables 3 and 4 were both constructed in the 1990's and deemed superior. Comparable 2 underwent several renovations in 2019/2020 and it is also deemed superior. Comparable 6 was not gutted at the time of sale and is deemed inferior regarding condition.
- **Quality** – The subject consists of wood-frame construction reflecting average quality. This is similar to all but Comparables 1 and 6, each of which were built between 1928 and 1930 and are dated structures that had not been adequately maintained prior to selling.
- **Utility** – The subject reflects retail utility. Comparables 1 and 4 include residential components in the form of single apartment units on the upper floors. The income-generating ability from the apartments is typically viewed as safer investments when compared office/retail properties due to the low vacancy. These are deemed slightly superior to account for the apartment components.
- **Size (SF)** – The subject size is similar to the comparables, which range from 2,539 to 3,600 SF NRA. Comparables 5 and 6 are each at least 33% smaller in size, which likely placed some upward pressure on the sale price per SF (superior).

SALES COMPARISON APPROACH (continued)

The comparables are arrayed below, illustrating the competitive position of the subject.

Comparable Improved Sales Array		
Comparable	Adjusted Price/SF	Indication
4	\$170	High
3	\$160	High
SUBJECT		
5	\$153	Low
2	\$139	Low
6	\$137	Low
1	\$135	Low

Based on the physical and locational characteristics influencing value, the subject is bracketed by Comparables 5 and 3, suggesting a narrowed range of **\$153 to \$160 per SF**.

Considering the subject's qualitative characteristics, including the 1979 construction, retail utility, and location in Newport along Bay Boulevard with a waterfront view amenity overlooking Yaquina Bay, a rounded unit value of **\$158.00 per SF** is concluded. This equates to a concluded stabilized market value for the subject of (3,961 SF x \$158/SF) \$625,838, rounded to **\$625,000**.

ANECDOTAL DATA

Two sales occurred in September 2022 along Bay Boulevard in Newport that were improved with dilapidated structures and positioned on very small tax lots. Each property was purchased for land value according to the listing agent. Considering this, the sales were excluded as comparables but will be analyzed to provide further insight into the subject's market value.

- **620 SW Bay Boulevard (pictured at right)** is a three-story, 6,300 SF retail structure positioned on a single tax lot totaling 2,614 SF of land area. It was purchased by an adjacent property owner as a teardown for future expansion of an existing restaurant (Mo's Chowder House). The building was constructed in 1886 and historically had been used as a gift shop on the first floor. The September 2022 sale price of \$446,250 reflects a **land sale value of \$171/SF**.
- The property adjacent to the north of 620 SW Bay Boulevard (TL 5200) was also acquired in a separate September 2022 transaction from a different seller by the same buyer who is planning the restaurant expansion. The property was improved with a small shack structure of no contributory value and also reflects a land sale. With a site size of 1,307 SF, the purchase price of \$210,000 reflects a **land sale value of \$161/SF**.



SALES COMPARISON APPROACH (continued)

The subject improvements are in fair to average condition yet still contribute value to the property due to the very small site size of 3,270 SF. The concluded stabilized market value of \$625,000 reflects a **sale price per land SF for the subject of \$191/SF**. This is above the recent land sale values along Bay Boulevard, which is warranted considering the superior condition of the subject improvements and the subject's positioning on the east side of Bay Boulevard, with a more direct waterfront view. The concluded market value via the sale comparables is supported, but the Bay Boulevard sales do provide modest insight into market trends for properties in the subject's immediate area.

SALES COMPARISON APPROACH CONCLUSION

After analyzing the comparable sales, the indicated **stabilized** market value via the Sales Comparison Approach, was (\$158/SF x 3,961 SF) **\$625,000, rounded**.

Recall absorption costs to reach stabilization were estimated at the conclusion of the Income Approach to total **-\$70,000**.

Deducting the absorption costs from the stabilized value results in an "as if" market value of the leased fee interest via the Sales Comparison Approach of:

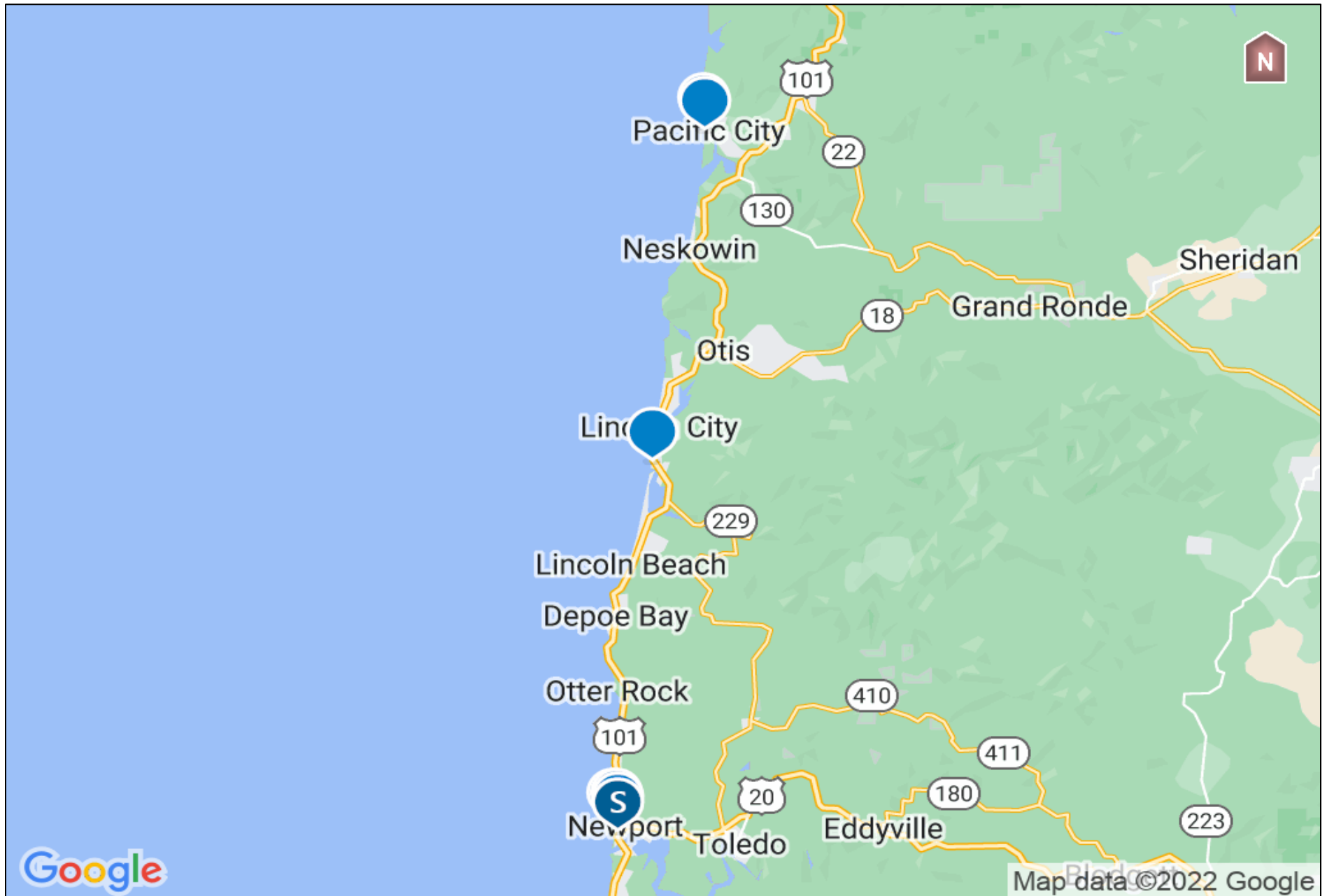
Leased Fee/Leasehold Market Value: Sales Approach	
Stabilized Value	\$625,000
Total Absorption Costs	-\$70,000
"As If" Leased Fee Value	\$555,000
per SF NRA	\$140.12

\$555,000

IMPROVED SALES TABULATION CHART AND ADJUSTMENT GRID

Characteristics	Subject	Comparable 1		Comparable 2		Comparable 3		Comparable 4		Comparable 5		Comparable 6	
Name	Abby St. Pier Building	Retail/Residential Building		Newport Retail		Twist Wine Retail Building		Retail/Residential Building		Two-tenant office		Taft Retail Building	
Address	669 SW Bay Blv d. Newport, Oregon	255 SW 9th Street Newport, OR		588 W Olive Street Newport, OR		34930 Brooten Road Pacific City, OR		35350 Brooten Road Pacific City, OR		14 SW Nye St Newport, OR		4756 SE Highway 101 Lincoln City, OR	
Sale Date		Dec-20		Feb-21		Apr-21		Oct-21		Jan-22		Sep-22	
Sale Price		\$400,000		\$415,000		\$550,000		\$535,000		\$378,500		\$362,000	
Price/SF (Unadjusted)		\$128		\$132		\$153		\$165		\$149		\$137	
List Price		\$415,000		\$425,000		\$598,876		\$550,000		\$425,000		\$399,000	
List Price vs. Sale Price (% change)		-3.6%		-2.4%		-8.2%		-2.7%		-10.9%		-9.3%	
Days on Market		133		133		1,225		92		251		40	
Site Area (SF)	3,271	9,300		3,485		12,632		9,583		6,098		10,454	
Building Size (SF NRA)	3,961	3,136		3,142		3,600		3,245		2,539		2,652	
Site Coverage (%)	57.6%	33.7%		90.2%		14.2%		20.5%		41.6%		15.4%	
Year Built	1979	1928		1925/2020 reno.		1998		1994		1977		1930	
Parking	Street parking only	2.23 spaces/1,000 SF		Street parking only		3.06 spaces/1,000 SF		1.54 spaces/1,000 SF		2.76 spaces/1,000 SF		5.66 spaces/1,000 SF	
Buyer Motivation		Owner-user		Owner-user		Owner-user		Owner-user		Owner-user		Owner-user	
Value Adjustment		Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)	Description	Adj (+/-)
Property Rights Conveyed		Fee Simple	\$0	Fee Simple	\$0	Fee Simple	\$0	Fee Simple	\$0	Fee Simple	\$0	Fee Simple	\$0
Financing Terms		Conventional	\$0	Conventional	\$0	Conventional	\$0	Conventional	\$0	Conventional	\$0	Conventional	\$0
Conditions of Sale		Arm's Length	\$0	Arm's Length	\$0	Arm's Length	\$0	Arm's Length	\$0	Arm's Length	\$0	Arm's Length	\$0
Expenditures after purchase		None	\$0	None	\$0	None	\$0	None	\$0	None	\$0	None	\$0
Transactional Adj - Subtotal			\$400,000		\$415,000		\$550,000		\$535,000		\$378,500		\$362,000
Market Conditions	+0.25% per month	5.75%	\$23,000	5.25%	\$21,788	4.75%	\$26,125	3.25%	\$17,388	2.50%	\$9,463	0.5%	\$1,810
Adjusted Price			\$423,000		\$436,788		\$576,125		\$552,388		\$387,963		\$363,810
Adjusted Price/SF			\$135		\$139		\$160		\$170		\$153		\$137
Qualitative Adjustment		Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)	Comparison	Rating (+/-)
Location	Newport, Oregon	Inferior	-	Inferior	-	Inferior	-	Inferior	-	Inferior	-	Inferior	-
Site Coverage (%) / Parking	57.6% Street parking only	Superior	+	Inferior	-	Superior	+	Superior	+	Superior	+	Superior	+
Access/Exposure	Bay Boulevard	Inferior	-	Similar	=	Similar	=	Similar	=	Inferior	-	Similar	=
Condition	Fair to Average	Similar	=	Superior	+	Superior	+	Superior	+	Similar	=	Inferior	-
Quality	Average	Inferior	-	Inferior	-	Similar	=	Similar	=	Inferior	-	Inferior	-
Utility	Retail	Retail/Residential	+/=	Retail	=	Retail	=	Retail/Residential	+/=	Office	=	Retail	=
Size (SF NRA)	3,961	Similar	=	Similar	=	Similar	=	Similar	=	Smaller	+	Smaller	+
Comparability			-		--		+		++		-		-
Conclusion			Low Indicator		Low Indicator		High Indicator		High Indicator		Low Indicator		Low Indicator
Confirmation		FlexMLS		FlexMLS		FlexMLS		FlexMLS		FlexMLS		FlexMLS	
Source		Agent		Agent		Agent		Agent		Agent		Agent	
Agent, Grantor or Grantee		Freddy Saxton		Freddy Saxton		VP for Dennis Regen		Freddy Saxton		Freddy Saxton		VP for Dennis Regen	
Name		541-961-2085		541-961-2085		541-992-1672		541-961-2085		541-961-2085		541-992-1672	
Phone/Email		Phone		Phone		Phone		Phone		Phone		Phone	
Confirmed													

IMPROVED SALES MAP



IMPROVED SALES DRIVE-TO MAP – COMP #1



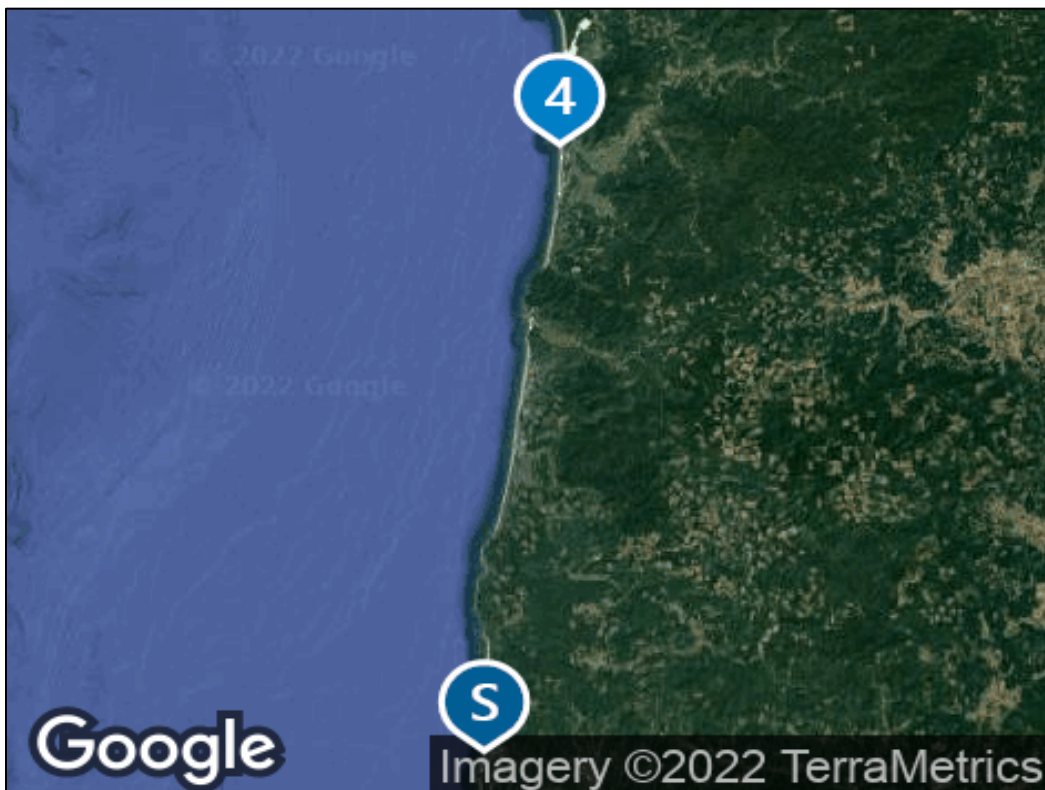
IMPROVED SALES DRIVE-TO MAP – COMP #2



IMPROVED SALES DRIVE-TO MAP – COMP #3



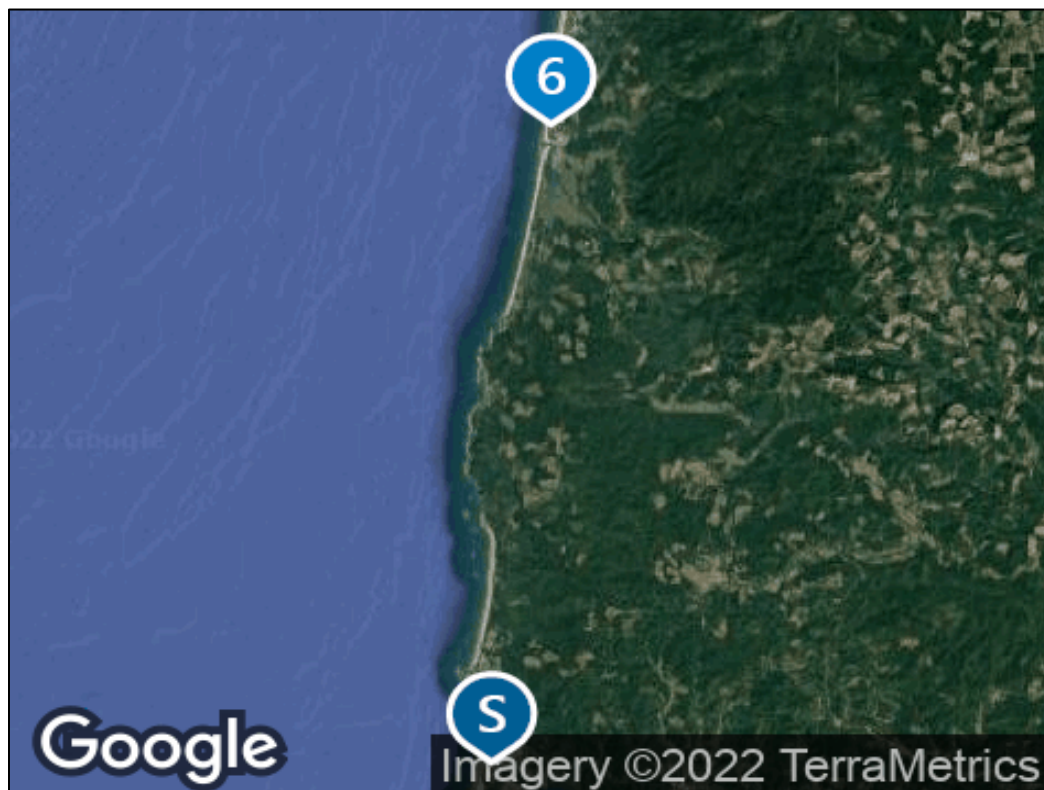
IMPROVED SALES DRIVE-TO MAP – COMP #4



IMPROVED SALES DRIVE-TO MAP – COMP #5



IMPROVED SALES DRIVE-TO MAP – COMP #6



ANALYSIS OF VALUE CONCLUSIONS

The Analysis of Value Conclusions is the final step in the appraisal process and involves the weighing of the individual valuation techniques in relationship to their substantiation by market data, and the reliability of each valuation technique to the subject property.

Indicated Values—

Cost Approach:Not presented

Income Approach:\$600,000

Sales Comparison Approach:\$555,000

The following analysis summarizes the conclusions and explains the amount of weight applied to each value indication.

The **Income Capitalization Approach** to value is generally considered to be the best and most accurate measure of the value of income-producing properties, as the value estimate by this approach is based upon the premise that these properties are owned for their income-producing ability. In the case of the subject property, the improvements are being partially leased and the ownership position is receiving income. Two of the three retail suites were vacant while one space was being leased on a short-term agreement. Comparable information for market rent, vacancy and credit loss, and overall capitalization rates were good, with the estimate for each of these line items considered reliable. Considering this, and that it is a widely used approach by knowledgeable buyers and sellers when analyzing this type of property, the Income Capitalization Approach is given **primary weight** in this analysis.

The **Sales Comparison Approach** included six comparable sales from which to derive a value indication for the subject property. The price per square foot unit of comparison based on comparable property sales was used in this analysis and was determined to be the best unit of comparison in this approach. Although most of the sales were relatively current, all six sales were acquired by owner users, whereas the subject's most likely buyer is an investor based on its multi-tenant design, although the subject could potentially be renovated and owner-occupied if it were to be made available for sale, considering the lack of existing tenancy. No recent improved sales along Bay Boulevard with similar waterfront views were noted through market research. These factors limited the reliability of this approach and **secondary emphasis** is placed on it. It is noted that the comparable sales did provide valuable information regarding activity in the market and various investor expectations utilized in other sections of the report.

ANALYSIS OF VALUE CONCLUSIONS (continued)

With primary emphasis placed on the Income Capitalization Approach, generally supported by the Sales Comparison Approach, the concluded **“as if” market value** of the **leased fee/leasehold** interest in the subject property, as of November 2, 2022, was:

SIX HUNDRED THOUSAND DOLLARS

\$600,000

This appraisal is based on the hypothetical condition that the subject improvements were partitioned from the surrounding public pier as of the date of value.

The concluded value is predicated on the following extraordinary assumptions:

- The appraiser’s estimated subject site size at partition completion, including the allocation between the leased and owned site components, is generally accurate;
- The City of Newport will retain access to the mechanical room for pier maintenance.

These assumptions may have affected the assignment results. If determined to be false, the value conclusion herein will need to be revisited.

CERTIFICATION OF APPRAISAL

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- I have performed no services as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this agreement.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective personal interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I, Katherine Powell Banz, MAI, have made a personal exterior inspection of the property that is the subject of this report. I have also inspected the interior via a 2019 inspection and current photographs of the building interior. All comparable data included herein was inspected in person or via photographs.
- Tyson Giza provided significant professional assistance to the person signing this report.
- The reported analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I, Katherine Powell Banz, MAI, have completed the continuing education program for Designated Members of the Appraisal Institute.



Katherine Powell Banz, MAI
OR Certified General Real Estate Appraiser
License No. C000897
Expiration Date: August 31, 2024

December 2, 2022
Date

PURCHASE ORDER - CITY OF NEWPORT



CITY OF NEWPORT

169 SW Coast Hwy
Newport, OR 97365
OrCPP #KN0010

PURCHASE ORDER

P.O. Date: 10/3/22PO #: 22-026Vendor Name: Powell Banz ValuationDeliver to: City of NewportAddress: 201 Ferry Street SE, Suite 300Address: 169 SW Coast HwyCity/State/Zip: Salem, Oregon 97301City/State/Zip: Newport, OR 97365Phone/FAX: 503.371.2403/503.371.2613Phone/FAX: 541.574.0626/541.574.0644Contact Name: Katherine Powell Banz, MAIContact Name: Derrick I Tokos, AICPEmail: kbanz@powellbanz.comDepartment: Community Development

Description of items/services ordered:

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1.00	1	Appraisal of properties located at 669 SW Bay Blvd,	11,400.00	11,400.00
		415-425 SW Coast Hwy, and 641 SW Coast Hwy/626-636		0.00
		SW 9th St per the terms of a Professional Service Agreement		0.00
		dated 9/27/22, Bid #B4345 (enclosed)		0.00
TOTAL COST:				11,400.00

THIS PURCHASE ORDER INCORPORATES THE TERMS ON THE REVERSE SIDE AND THE CITY'S REQUEST FOR PROPOSAL AND CONTRACTOR'S RESPONSE THERETO, OR, IN THE ALTERNATIVE, THE CITY'S SOLICITATION DOCUMENT AND CONTRACTORS' BID. BY ITS SIGNATURE HEREUNDER, CONTRACTOR AGREES TO PERFORM THE SERVICES/PROVIDE THE PRODUCTS DESCRIBED IN SUCH DOCUMENTS, FOR THE FEE/AMOUNT SET FORTH THEREIN. THE CONTRACTOR WILL COMPLY FULLY WITH ALL TERMS AND CONDITIONS OF THE DOCUMENTS, THE NEWPORT MUNICIPAL CODE AND STATE AND FEDERAL LAW. IF THIS PURCHASE IS PLACED AGAINST STATE OF OREGON PRICE AGREEMENT # _____ OR COOPERATIVE PROCUREMENT ORGANIZATION _____

Member # _____ Agreement # _____. THE CONTRACT TERMS AND CONDITIONS AND SPECIAL TERMS AND CONDITIONS CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY THIS REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING TERMS AND CONDITIONS EXPRESS OR IMPLIED.

Account Coding:

Fund	GL Dept	Expense Account	Project Code	Amount
101	1400	60100		11,400.00
			Total	11,400.00

Circle Numbers that apply:

Procurement Method: Solicitation Method: 7 - ITB

1 - Three informal Bids 4 - Emergency 8 - RFQ/RFI/RFP
2 - Three written Bids 5 - Sole Source 9 - Exemption Code:
3 - Formal Bids 6 - Special #1 : _____

Notes/Special Instructions:

Authorizations:

[Signature] 10/3/22
Department Director Date

[Signature] 10-3-22
Finance Director Date

[Signature] 10-3-22
City Manager Date

[Signature] 10/4/2022
Contractor's Authorized Signature Date

Katherine Powell Banz, MAI

Contractor's Printed Name

Powell Banz Valuation, LLC

Name of Company

SUBMIT THIS FORM FOR SIGNATURE ALONG WITH QUOTATION DOCUMENTATION PRIOR TO PURCHASE OF NON ROUTINE GOODS OR SERVICES COSTING \$5,000 OR MORE.

TERMS OF CITY'S PURCHASE ORDER

1. In the course of providing Services under this Purchase Order, Contractor may have contact with the public. Contractor will maintain good relations with the public. The City may treat the failure to maintain good relations with the public as a non-curable breach of this Purchase Order and may disqualify Contractor from future work for the City.
2. Contractor shall be compensated as described in the Purchase Order. Unless otherwise set forth in the Purchase Order, Contractor shall begin Services on the Effective Date and shall complete Services no later than such date set forth in the Purchase Order or as agreed upon in writing by the parties.
3. Contractor certifies that: (a) Contractor is an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. In the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding. (b) Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265. (c) No employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with this Agreement, except as specifically declared in writing. (d) Contractor currently has a City business license or will obtain one prior to delivering Services under this Agreement.
4. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed with good workmanship and in accordance with generally accepted professional practices and standards of the industry in which Contractor operates as well as the requirements of applicable federal, state and local laws. Contractor's work will conform to the requirements of this Purchase Order. Acceptance of Contractor's work by City shall not operate as a waiver or release of this warranty. Contractor is fully liable for the acts and omissions of Contractor and Contractor's subcontractors which cause any damage, injury, death, property damage or loss to any person or property. Contractor will indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this Agreement, but only to the extent attributable to Contractor's acts or omissions. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.
5. Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.
6. At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the Agreement pursuant to this Section due to no fault of Contractor, City shall pay Contractor for all approved and undisputed services rendered up to the date of termination. City may modify or terminate this Agreement without cause effective upon delivery of written notice to Contractor, or at such later date as may be established by City.
7. For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.
8. Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, earthquake, fire, flood, epidemic, quarantine restriction, strike, freight embargo, unusually severe weather; provided that the parties so disabled shall notify the other party in writing of the cause of delay. Each party shall make reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.
9. Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations, including, but not limited to those in Exhibit A. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.
10. Contractor will perform additional work as may be necessary to correct errors in Services performed under this Agreement without undue delay and without additional cost.
11. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon. In any action arising under this Agreement, the prevailing party shall be entitled to such sum as the court may award as reasonable attorney fees and court costs, including any appeal. Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, some provisions of which are attached to this Agreement as Exhibit A. All Contractor's work product accomplished under this Agreement, whether in the form of designs, drawings, as-builts, diagrams, specifications, reports, or other writings, shall become the exclusive property of the City. The City is the owner of any copyrights thereto, upon City's final payment to Contractor. This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

EXHIBIT A

ORS 279B.220 Conditions concerning payment, contributions, liens, withholding. The contractor shall: 1. Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract. 2. Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. 3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. 4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. 5. In addition to the conditions specific in subsection 1-4 above, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place. (ORS 279C.505).

ORS 279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints. 1. If the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing a municipality, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. 2. If the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within thirty days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived. 3. If the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. 4. The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

ORS 279B.230 Condition concerning payment for medical care and providing workers' compensation. (see ORS 279C.530 for public improvement contracts) 1. The contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. 2. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

ORS 279B.020, 279B.235; 279C.520, 279C.540 Condition concerning hours of labor. 1. An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. 2. A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055 (or 279C.100) the employee shall be paid at least time and a half pay: (a) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (b) For all overtime in excess of ten hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (c) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020 (or 279C.540). 3. In the case of public contracts for personal services as described in ORS 279A.055 (or 279C.100), the contract shall contain a provision that the contractor's employees who work under the public contract shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. 4. Persons employed under the public contract shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

ORS 279C.830 Relating to prevailing rate of wage in public works contracts. 1. In the event this contract is a public works contract, the parties shall state in the contract the existing state prevailing rate of wage and if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that must be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract. When the prevailing rates of wage are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. 2. Every contract and subcontract shall contain a provision that the workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. 3. Contractor will pay to the Commissioner of the Bureau of Labor and Industries (BOLI) a fee as provided in ORS 279C.825(1). The fee shall be paid to the commissioner under the administrative rule of the commissioner. 4. Every contract for public works, or in connection with a public works contract, shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).



POWELL BANZ
VALUATION

September 27, 2022

Bid Number: B4345

Derrick Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
d.tokos@newportoregon.gov

Dear Mr. Tokos:

Thank you for considering Powell Banz Valuation, LLC for the appraisal assignment identified in the attached Professional Service Agreement. Please sign one copy of the agreement and return it via fax or e-mail, thereby indicating your authorization for us to proceed with this assignment.

The following is a list of information we will need to begin our analysis. Please forward with the agreement as soon as possible.

- Signed Professional Service Agreement
- Property contact for site inspections
- Lease documents and any addendums
- Current rent roll
- Operating expenses for the prior three years, presented annually
- Building plans (if available)

Our ability to honor the terms of this agreement will require your response by September 29, 2022. If you have questions regarding the enclosed, please feel free to contact me. We look forward to working with you.

Respectfully,

POWELL BANZ VALUATION, LLC

Katherine Powell Banz, MAI
Principal
+1 (503) 371-2403
kbanz@powellbanz.com

**Professional Service Agreement****Bid Number: B4345****Property:** Newport Commercial Properties**Location:** Various locations, see attached**Client:** City of Newport**Contact:** Derrick Tokos, AICP

Scope of Work:	Three Appraisal Reports prepared in accordance with the Appraisal Institute and Uniform Standards of Professional Appraisal Practice. The reports will present the "As-Is" Market Value of the subject properties as of the date of inspection.
Intended Use:	Decision making for potential sale and purchase.
Intended Users:	Client and the client's legal & accounting professionals.
Copies:	One (1) Electronic Final Appraisal in PDF format. Two (2) hard copies (upon request). Additional copies will be billed at a rate of \$75 each.
Professional Fee:	\$11,400.00
Retainer:	\$0.00
Terms:	Commencement of the appraisal process will begin upon receipt of the signed Professional Service Agreement, retainer and any requested materials. The fee for the appraisal is due upon delivery of the report. Past due accounts will accrue a late payment charge of 1.5% per month, compounded monthly. In the event that either party commences any legal action relating to the provisions of the Agreement, including collection, the prevailing party shall be entitled to its actual attorney's fees and costs, including those incurred upon appeal. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon, and the venue of any action arising from this agreement shall be in Marion County, Oregon.
Delivery:	Six to seven weeks from the return of the Professional Service Agreement and requested items.
Modification or Cancellation:	<i>Changes in the Scope of Work, pre-trial conferences, trial preparation and testimony will be billed separately at the stated hourly rates below.</i> If the assignment is cancelled prior to completion, for any reason, the client will be billed at a minimum \$500 or for all time expended prior to cancellation. Billing rates are \$150 per hour for associate time, \$200 per hour for senior associate time, \$250 per hour for designated associate time and \$300 per hour for principal time. If the client delays completion of the assignment beyond 90 days, the fee will be renegotiated.
Hazardous Waste Disclaimer:	Powell Banz Valuation, LLC does not assume any duty to analyze or examine the property or adjacent property for the possible presence of toxic or hazardous substances or materials and accepts no liability regarding the issue. This appraisal report will contain a comprehensive disclaimer to this effect.

Professional Service Agreement**Bid Number: B4345****Property:** Newport Commercial Properties**Location:** Various locations, see attached**Client:** City of Newport**Contact:** Derrick Tokos, AICP**POWELL BANZ**
VALUATION

Liability: Powell Banz Valuation, LLC's responsibilities are rendered and limited to the client. Liability is limited to the fee actually received for the services requested herein.

I, Katherine Powell Banz, MAI, Principal of Powell Banz Valuation, LLC, agree to the above terms, assuming the Professional Service Agreement is returned by September 29, 2022.

I, Derrick Tokos, AICP, on behalf of City of Newport, agree to the above stated terms and authorize Powell Banz Valuation, LLC to prepare the above referenced appraisal.

 September 27, 2022
Katherine Powell Banz, MAI _____ Date

Derrick Tokos, AICP _____ Date

Property	Address	Account Number	Map & Tax Lot	Fee
Abbey Street Pier Building	669 SW Bay Boulevard	R357311, R366804, R530598, R530599	11-11-08-CA-1300, 1300-L2, 1300-L3, 1300-L4	\$3,800
Guan & Zhu Property	415/425 SW Coast Highway	R104392, R111587	11-11-08-BD-09200, 9401	\$4,400
Vacant Lot	641 SW Coast Highway, 626/636 SW 9th Street	R220091, R222471, R217750	11-11-08-CA-15700, 15800, 15600	\$3,200
Total Fee				\$11,400

TAXES, ASSESSMENT DATA, DEED & LEGAL DESCRIPTION



Property Owner Property Address
R357311 CITY OF NEWPORT 669 SW BAY BLVD

2022 In Process Real Market Value
\$897,230

2022 GENERAL INFORMATION

Property Status A Active
Property Type Commercial
Legal Description TWNSHP 11, RNG 11, ACRES 0.03,
PARTIALLY NON-ASSESSABLE, MISC 8-108
MF245-2077
Alternate Account Number -
Neighborhood N226: BAY BOULEVARD BAYFRONT
COMMERCIAL
Map Number 11-11-08-CA-01300-00
Property Use 942: PART EX - CITY PROP
Levy Code Area 104
Zoning W-2

RELATED PROPERTIES

Linked Properties R366804, R530584,
R530598

2022 OWNER INFORMATION

Owner Name CITY OF NEWPORT
Mailing Address CITY MANAGER 169 SW COAST HWY
NEWPORT, OR 97365

EXEMPTIONS/DEFERRALS

EXEMPTION CODE	EXEMPTION DESCRIPTION	EXPIRATION YEAR
CITY	CITY: CITY OWNED	-

2022 IMPROVEMENTS

⌵ Expand/Collapse All

☐ Improvement #1 Improvement Type
 - C: COMMERCIAL

ID	SEGMENT TYPE	SEGMENT CLASS	YEAR BUILT	AREA	DETAILS
1	Building	-	1979	1,885	✕ Details
2	Building	-	1800	2,267	✕ Details

2022 LAND SEGMENTS

STATE CODE	SEGMENT TYPE	LAND SIZE
L1	CSBF: COM DEV BAYFRONT SITE	0.01 Acres
L2	CSBF: COM DEV BAYFRONT SITE	0.02 Acres
L3	CSD: COMMERCIAL SITE DEVELOPMENT	-
TOTALS		1306.80 Sq. ft / 0.03 acres

CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$651,460	\$245,770	\$897,230	\$0	\$0
2021	\$429,010	\$237,140	\$666,150	\$0	\$0
2020	\$381,340	\$215,590	\$596,930	\$0	\$0
2019	\$133,190	\$108,500	\$241,690	\$0	\$0
2018	\$105,440	\$108,500	\$213,940	\$0	\$0
2017	\$105,440	\$108,500	\$213,940	\$0	\$0
2016	\$101,000	\$108,500	\$209,500	\$0	\$0
2015	\$139,890	\$138,000	\$277,890	\$0	\$0

TOTAL TAXES DUE

Current Year Due

Past Years Due

Total Due

Payment History for R357311 not found.

Please contact the Assessor's office if you have further questions.

LINCOLNPROD PROPERTY RECORD CARD

Property ID: R357311

Map and Taxlot: 11-11-08-CA-01300-00

Tax Year: 2022

Run Date: 10/5/2022 9:16:54 AM

COMMERCIAL IMPROVEMENTS

No.	Business Name	Occupancy	Class	Occ %	Stories	Hgt	Rank	Yr Blt	Eff Yr	Area	Perim	Adjustment Code-%	NBHD %	Total Adj %	RCN	% Comp	RMV
1.1		353-Retail Store		100	1		2.0	1979					4.100	4.100			651,460
1.2		353-Retail Store		100	1		2.0	1800		2,267			4.100	4.100			
Total RMV:																	651,460

COMMERCIAL ADDITIONS

No.	Type	Desc	Value
-----	------	------	-------

COMMERCIAL BASEMENTS

No.	Bsmt Type	Area	Depth
-----	-----------	------	-------

COMMERCIAL COMMENTS

ComImp - 2520048 - ABBEY STREET PIER EXEMPT PORTION

LINCOLNPROD PROPERTY RECORD CARD

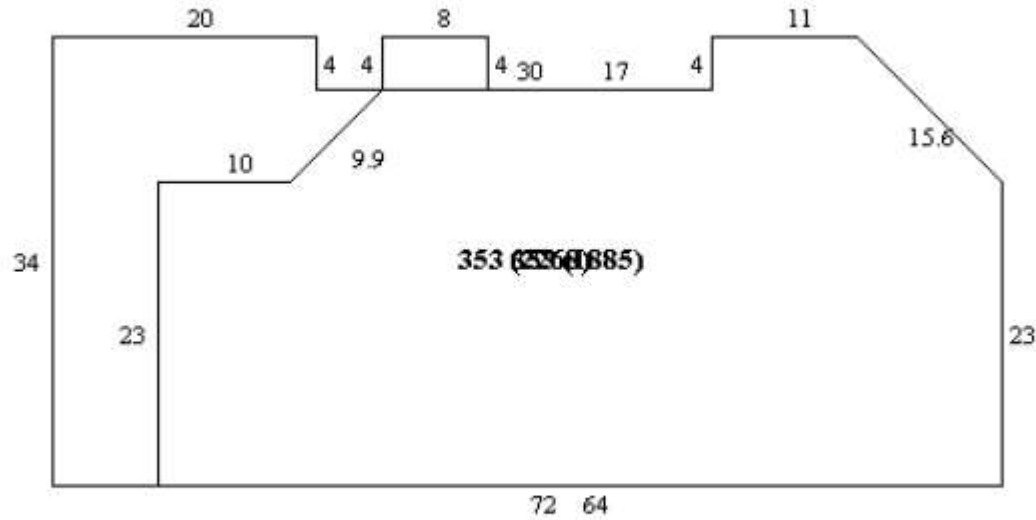
Property ID: R357311

Map and Taxlot: 11-11-08-CA-01300-00

Tax Year: 2022

Run Date: 10/5/2022 9:16:54 AM

Situs: 669 SW BAY BLVD



No Image Available

SKETCH VECTORS: A0CR64U23VL11U11L11D4L17U4L8D4VD7L7L10D23,A0L8CR72U23VL11U11L11D4L30U4L20D34

SKETCH COMMENTS:

Property	Owner	Property Address	2022 In Process Real Market Value
R530584	DEPT OF STATE LANDS OR/CITY OF NEWPORT, LEASE	-	\$141,790

2022 GENERAL INFORMATION

Property Status	A Active
Property Type	Commercial
Legal Description	TWNSHP 11, RNG 11, TRACT ABBEY ST PIER,LEASE ONLY, M-9700
Alternate Account Number	-
Neighborhood	N226: BAY BOULEVARD BAYFRONT COMMERCIAL
Map Number	11-11-08-CA-01300-L1
Property Use	943: EX - LEASED TO CITY
Levy Code Area	104
Zoning	W-2

RELATED PROPERTIES

Linked Properties R357311

2022 OWNER INFORMATION

Owner Name	DEPT OF STATE LANDS OR/CITY OF NEWPORT, LEASE
Mailing Address	CITY MANAGER 169 SW COAST HWY NEWPORT, OR 97365

EXEMPTIONS/DEFERRALS

EXEMPTION CODE	EXEMPTION DESCRIPTION	EXPIRATION YEAR
CITY	CITY: CITY OWNED	-

2022 IMPROVEMENTS

⌄ Expand/Collapse All

Improvement #1 Improvement Type
 - C: COMMERCIAL

ID	SEGMENT TYPE	SEGMENT CLASS	YEAR BUILT	AREA	DETAILS
1	Non-Building	-	1800	2,325	⌵ Details

CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$141,790	\$0	\$141,790	\$0	\$0
2021	\$93,380	\$0	\$93,380	\$0	\$0
2020	\$83,000	\$0	\$83,000	\$0	\$0
2019	\$83,000	\$0	\$83,000	\$0	\$0
2018	\$65,710	\$0	\$65,710	\$0	\$0
2017	\$65,710	\$0	\$65,710	\$0	\$0
2016	\$62,940	\$0	\$62,940	\$0	\$0

TOTAL TAXES DUE
Current Year Due
Past Years Due
Total Due

Payment History for R530584 not found.
Please contact the Assessor's office if you have further questions.

Run Date: 10/5/2022 9:19:39 AM

PROPERTY SITUS ADDRESS		GENERAL PROPERTY INFORMATION		VALUE HISTORY						
Maintenance Area: 5-09		Prop Class:	943	Year	Land RMV	Imp RMV	Total RMV	Total AV	LSU Value	
		NBH Code:	N226							
		Prop Type Code:	COM							
		Last Appr Date:								
		Appraiser:								
OWNER NAME AND MAILING ADDRESS		Zoning:								
DEPT OF STATE LANDS OR CITY MANAGER 169 SW COAST HWY NEWPORT, OR 97365		Code Area:	104							
		Related Accts:								
		Owner Comment:								
LEGAL DESCRIPTION		Road Access:	PVD							
TWNShp 11, RNg 11, TRACT ABBey ST PIER,LEASE ONLY, M-9700										
ASSESSMENT INFORMATION										
Land Non-LSU:				Prior MAV:			CPR:			
Land LSU:				Prior AV:			EX. MAV:			
Improvement:				141,790			AV +3%:			
RMV Total:							LSU:			
							New M50 AV:			
SALES INFORMATION										
Date		Type	Sale Price	Adj Sale Price		Validity		Inst. Type		
								Sale Ref		

Acres: 0 Sqft:
Effective Acres: 0

BUILDING PERMITS AND INSPECTIONS					
Type	Appraiser	Issue Date	Date Checked	% Comp	Comment

PARCEL COMMENTS	EXEMPTIONS		Exceptions			
GenLink- R357311-L; GenCom- 2016-17 JV#364 FROM TL1300 (EXN), ENTERED 3-21-16.; Prop-Note- DOCK OF ABBEY STREET PIER	Code	Exempt RMV	Code	Year	Amount	Method
	CITY					

MARKET LAND INFORMATION									LAND SPECIAL USE						
Type	Table	Method	Acres	Base Value	Adjustment Code - %		NBHD %	Total Adj %	Final Value	Code	SAV	Unt Pr	MSAV	Unt Pr	LSU

LINCOLNPROD PROPERTY RECORD CARD

Property ID: R530584

Map and Taxlot: 11-11-08-CA-01300-L1

Tax Year: 2022

Run Date: 10/5/2022 9:19:39 AM

COMMERCIAL IMPROVEMENTS

No.	Business Name	Occupancy	Class	Occ %	Stories	Hgt	Rank	Yr Blt	Eff Yr	Area	Perim	Adjustment Code-%	NBHD %	Total Adj %	RCN	% Comp	RMV
1.1		163-Site Improvemen		100	1		2.0	1800					4.100	4.100			141,790
Total RMV:																	141,790

COMMERCIAL ADDITIONS

No.	Type	Desc	Value
-----	------	------	-------

COMMERCIAL BASEMENTS

No.	Bsmt Type	Area	Depth
-----	-----------	------	-------

COMMERCIAL COMMENTS

ComImp - 2881065 - DOCK AT ABBEY STREET PIER (PORTION OVER DSL LAND)

Property	Owner	Property Address	2022 In Process Real Market Value
R366804	CITY OF NEWPORT/MATHEWS DON & FRAN, LEASE	669 SW BAY BLVD	\$111,680

2022 GENERAL INFORMATION

Property Status	A Active
Property Type	Commercial
Legal Description	TWNSHP 11, RNG 11, BLOCK BAY LATTE, LEASE ONLY, PARTIALLY NON- ASSESSABLE, M-9703
Alternate Account Number	-
Neighborhood	N226: BAY BOULEVARD BAYFRONT COMMERCIAL
Map Number	11-11-08-CA-01300-L2
Property Use	201: C - IMPROVED PROPERTY
Levy Code Area	104
Zoning	W-2

RELATED PROPERTIES

Linked Properties R357311

2022 OWNER INFORMATION

Owner Name	CITY OF NEWPORT/MATHEWS DON & FRAN, LEASE
Mailing Address	345 SW BAY BLVD NEWPORT, OR 97365

2022 IMPROVEMENTS

⌵ Expand/Collapse All

<input type="checkbox"/> Improvement #1	Improvement Type
-	C: COMMERCIAL

ID	SEGMENT TYPE	SEGMENT CLASS	YEAR BUILT	AREA	DETAILS
1	Building	-	1979	465	⌵ Details
2	Non-Building	-	1800	-	⌵ Details

2022 LAND SEGMENTS

STATE CODE	SEGMENT TYPE	LAND SIZE
L1	CSBF: COM DEV BAYFRONT SITE	0.02 Acres
L2	CSD: COMMERCIAL SITE DEVELOPMENT	-
TOTALS		871.20 Sq. ft / 0.02 acres

CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$86,850	\$24,830	\$111,680	\$0	\$63,670
2021	\$57,200	\$23,960	\$81,160	\$0	\$61,820
2020	\$50,840	\$21,780	\$72,620	\$0	\$60,020
2019	\$50,840	\$21,780	\$72,620	\$0	\$58,280
2018	\$40,240	\$21,780	\$62,020	\$0	\$56,590
2017	\$40,240	\$21,780	\$62,020	\$0	\$54,950
2016	\$38,550	\$21,780	\$60,330	\$0	\$53,350
2015	\$347,070	\$112,000	\$459,070	\$0	\$414,370

SALES HISTORY

SALE DATE	SELLER	BUYER	INST #	SALE PRICE	INST TYPE
	CITY OF NEWPORT	CITY OF NEWPORT/MATHEWS DON & FRAN, LEASE	M-9703	-	L LEASE (LONG OR SHORT TERM)

	TOTAL TAXES DUE
	Current Year Due
	Past Years Due

Total Due

TAXYEAR	RECEIPT NUMBER	TRANSACTION DATE	PAYMENT AMOUNT
2021	LINC-413	7-7-2022	\$382.90
2021	1689031	5-26-2022	\$377.86
2021	1685051	2-17-2022	\$377.86
2021	1680419	11-29-2021	\$377.87
2020	1636720	6-14-2021	\$388.77
2020	1635589	5-18-2021	\$368.91
2020	1624749	11-24-2020	\$368.91
2019	1568625	11-21-2019	\$1,027.62
2018	1510836	11-19-2018	\$996.17
2017	1461593	11-21-2017	\$987.42
2016	1408076	11-22-2016	\$966.51
2015	1323961	11-3-2015	\$7,168.28
2014	1269399	11-4-2014	\$7,007.09
2013	1245179	11-19-2013	\$6,547.22
2012	1173764	11-8-2012	\$6,569.44
2011	1141562	11-17-2011	\$6,368.28
2010	1069323	11-10-2010	\$6,205.05
2009	1017858	11-12-2009	\$6,015.82
2008	972316	11-13-2008	\$5,915.90
2007	911367	11-7-2007	\$5,715.96
2006	891825	12-12-2006	\$5,685.10

2005	807828	11-3-2005	\$5,362.17
2004	802371	6-14-2005	\$73.05
2004	801716	5-25-2005	\$5,698.24
2003	720747	11-13-2003	\$5,196.04
2002	682402	11-18-2002	\$5,139.36
2001	630737	11-15-2001	\$5,036.18
2000	575262	11-14-2000	\$4,911.07
1999	540324	11-18-1999	\$4,722.13
1998	501140	12-2-1998	\$4,130.35
1997	452188	12-18-1997	\$4,219.85
1996	402622	11-15-1996	\$4,357.10
1995	376880	12-22-1995	\$20.04
1995	376211	12-11-1995	\$4,510.00
1994	305030	10-31-1994	\$4,461.34
1993	267911	11-9-1993	\$4,703.97

LINCOLNPROD PROPERTY RECORD CARD

Property ID: R366804

Map and Taxlot: 11-11-08-CA-01300-L2

Tax Year: 2022

Run Date: 10/5/2022 9:18:54 AM

PROPERTY SITUS ADDRESS

669 SW BAY BLVD
Maintenance Area: 5-09

GENERAL PROPERTY INFORMATION

Prop Class: 201
NBH Code: N226
Prop Type Code: COM
Last Appr Date:
Appraiser:
Zoning:
Code Area: 104
Related Accts: P69095

VALUE HISTORY

Year Land RMV Imp RMV Total RMV Total AV LSU Value

OWNER NAME AND MAILING ADDRESS

CITY OF NEWPORT
345 SW BAY BLVD
NEWPORT, OR 97365

Owner Comment:

Road Access: PVD,CB,SW

LEGAL DESCRIPTION

TWN5HP 11, RNG 11, BLOCK BAY
LATTE,LEASE ONLY, PARTIALLY NON-
ASSESSABLE, M-9703

ASSESSMENT INFORMATION

Land Non-LSU:	24,830	Prior MAV:	61,820	CPR:
Land LSU:		Prior AV:	61,820	EX. MAV:
Improvement:	86,850	AV +3%:	63,675	LSU:
RMV Total:	111,680	Except RMV:		New M50 AV: 63,670

SALES INFORMATION

Date	Type	Sale Price	Adj Sale Price	Validity	Inst. Type	Sale Ref
				NON_SALE	L LEASE (LONG O	M-9703

Acres: 0 Sqft:

Effective Acres: 0

BUILDING PERMITS AND INSPECTIONS

Type	Appraiser	Issue Date	Date Checked	% Comp	Comment
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PARCEL COMMENTS

GenLink- R357311-L; GenFlag- 2009 VALUE CHANGE,2016 VALUE CHANGE; GenCom- 2016-17 JV#370 CREATE 3 NEW LEASE ACCTS
FROM TL1300, ENTERED 3-21-16. PARTIALLY NON-ASSESSABLE/NON-A; Prop-Note- ABBEY ST PIER RETAIL;CITY OF
NEWORT;PARTIALLY ADVALOREM/NON-ASSESSABLE

EXEMPTIONS

Code Exempt RMV

Exceptions

Code	Year	Amount	Method
RC	2016	-362570	4

MARKET LAND INFORMATION

Type	Table	Method	Acres	Base Value	Adjustment Code - %	NBHD %	Total Adj %	Final Value
CSBF: COM DEV BAYFRONT S 5BFF		FF	0.020	171,500	PRO-12			23,460
CSD: COMMERCIAL SITE DEV	NOSC	LT		5,000	EFF-200,PRO-12			1,370
Total Acres: 0.020								Total Market Land Value: 24,830

LAND SPECIAL USE

Code	SAV	Unt	Pr	MSAV	Unt	Pr	LSU
Total LSU:							

LINCOLNPROD PROPERTY RECORD CARD

Property ID: R366804

Map and Taxlot: 11-11-08-CA-01300-L2

Tax Year: 2022

Run Date: 10/5/2022 9:18:54 AM

COMMERCIAL IMPROVEMENTS																	
No.	Business Name	Occupancy	Class	Occ %	Stories	Hgt	Rank	Yr Blt	Eff Yr	Area	Perim	Adjustment Code-%	NBHD %	Total Adj %	RCN	% Comp	RMV
1.1		353-Retail Store		100	1		2.0	1979					4.100	4.100			75,340
1.2		163-Site Improvement		100	1		2.0	1800					4.100	0.492			11,510
																Total RMV:	86,850

COMMERCIAL ADDITIONS			
No.	Type	Desc	Value

COMMERCIAL BASEMENTS		
No.	Bsmt Type	Area

COMMERCIAL COMMENTS
ComImp - 2535587 - MATHEWS LEASE

Property	Owner	Property Address	2022 In Process Real Market Value
R530598	CITY OF NEWPORT/LATTAS OF OREGON INC, LEASE	-	\$267,360

2022 GENERAL INFORMATION

Property Status	A Active
Property Type	Commercial
Legal Description	TWNSHP 11, RNG 11, BLOCK LATTAS FUUSED GLASS,LEASE ONLY, M-9704
Alternate Account Number	-
Neighborhood	N226: BAY BOULEVARD BAYFRONT COMMERCIAL
Map Number	11-11-08-CA-01300-L3
Property Use	201: C - IMPROVED PROPERTY
Levy Code Area	104
Zoning	W-2

RELATED PROPERTIES

Linked Properties R357311

2022 OWNER INFORMATION

Owner Name	CITY OF NEWPORT/LATTAS OF OREGON INC, LEASE
Mailing Address	810 SE 5TH ST NEWPORT, OR 97365

2022 IMPROVEMENTS

⤴ Expand/Collapse All

☐ Improvement #1 Improvement Type

- **C: COMMERCIAL**

ID	SEGMENT TYPE	SEGMENT CLASS	YEAR BUILT	AREA	DETAILS
1	Building	-	1979	1,108	⌵ Details
2	Non-Building	-	1800	1,573	⌵ Details

2022 LAND SEGMENTS

STATE CODE	SEGMENT TYPE	LAND SIZE
L1	CSBF: COM DEV BAYFRONT SITE	0.02 Acres
L2	CSD: COMMERCIAL SITE DEVELOPMENT	-
TOTALS		871.20 Sq. ft / 0.02 acres

CERTIFIED / IN PROCESS VALUES

YEAR	IMPROVEMENTS	LAND	RMV	SPECIAL USE	ASSESSED VALUE
2022 (In Process)	\$207,350	\$60,010	\$267,360	\$0	\$152,680
2021	\$136,540	\$57,900	\$194,440	\$0	\$148,240
2020	\$121,380	\$52,640	\$174,020	\$0	\$143,930
2019	\$121,380	\$52,640	\$174,020	\$0	\$139,740
2018	\$96,090	\$52,640	\$148,730	\$0	\$135,670
2017	\$96,090	\$52,640	\$148,730	\$0	\$131,720
2016	\$92,040	\$52,640	\$144,680	\$0	\$127,890

TOTAL TAXES DUE
Current Year Due
Past Years Due
Total Due

TAXYEAR	RECEIPT NUMBER	TRANSACTION DATE	PAYMENT AMOUNT
2020	1609439	11-17-2020	\$12,084.59
2016	1582923	7-15-2020	\$0.01
2016	1582922	7-14-2020	\$3,694.27

LINCOLNPROD PROPERTY RECORD CARD

Property ID: R530598

Map and Taxlot: 11-11-08-CA-01300-L3

Tax Year: 2022

Run Date: 10/5/2022 9:20:18 AM

PROPERTY SITUS ADDRESS

Maintenance Area: 5-09

GENERAL PROPERTY INFORMATION

Prop Class: 201

NBH Code: N226

Prop Type Code: COM

Last Appr Date:

Appraiser:

Zoning:

Code Area: 104

Related Accts: P528991

Owner Comment: TAX PHONE REQUEST

Road Access: PVD

OWNER NAME AND MAILING ADDRESS

CITY OF NEWPORT

810 SE 5TH ST

NEWPORT, OR 97365

LEGAL DESCRIPTION

TWN5HP 11, RNG 11, BLOCK LATTAS FUSED
GLASS,LEASE ONLY, M-9704

VALUE HISTORY

Year	Land RMV	Imp RMV	Total RMV	Total AV	LSU Value
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ASSESSMENT INFORMATION

Land Non-LSU:	60,010	Prior MAV:	148,240	CPR:	
Land LSU:		Prior AV:	148,240	EX. MAV:	
Improvement:	207,350	AV +3%:	152,687	LSU:	
RMV Total:	267,360	Except RMV:		New M50 AV:	152,680

SALES INFORMATION

Date	Type	Sale Price	Adj Sale Price	Validity	Inst. Type	Sale Ref
------	------	------------	----------------	----------	------------	----------

Acres: 0 Sqft:

Effective Acres: 0

BUILDING PERMITS AND INSPECTIONS

Type	Appraiser	Issue Date	Date Checked	% Comp	Comment
------	-----------	------------	--------------	--------	---------

PARCEL COMMENTS

GenLink- R357311-L; GenFlag- 2016 VALUE CHANGE; GenCom- 2016-17 JV#370 NEW LEASE FROM TL 1300, ENTERED 3-21-16. JV#370
FOR 16/17; Prop-Note- LATTAS OF OREGON LEASE ABBEY STREET PIER

EXEMPTIONS

Code	Exempt RMV
------	------------

Exceptions

Code	Year	Amount	Method
RCC	2016	124170	6

MARKET LAND INFORMATION

Type	Table	Method	Acres	Base Value	Adjustment Code - %	NBHD %	Total Adj %	Final Value
CSBF: COM DEV BAYFRONT S 5BFF		FF	0.020	171,500	PRO-29			56,700
CSD: COMMERCIAL SITE DEV	NOSC	LT		5,000	PRO-29,EFF-200			3,310
Total Acres: 0.020								Total Market Land Value: 60,010

LAND SPECIAL USE

Code	SAV	Unt	Pr	MSAV	Unt	Pr	LSU
Total LSU:							

LINCOLNPROD PROPERTY RECORD CARD

Property ID: R530598

Map and Taxlot: 11-11-08-CA-01300-L3

Tax Year: 2022

Run Date: 10/5/2022 9:20:18 AM

COMMERCIAL IMPROVEMENTS																	
No.	Business Name	Occupancy	Class	Occ %	Stories	Hgt	Rank	Yr Blt	Eff Yr	Area	Perim	Adjustment Code-%	NBHD %	Total Adj %	RCN	% Comp	RMV
1.1		353-Retail Store		100	1		2.0	1979					4.100	4.100			179,530
1.2		163-Site Improvement		100	1		2.0	1800					4.100	1.189			27,820
																Total RMV:	207,350

COMMERCIAL ADDITIONS			
No.	Type	Desc	Value

COMMERCIAL BASEMENTS		
No.	Bsmt Type	Area

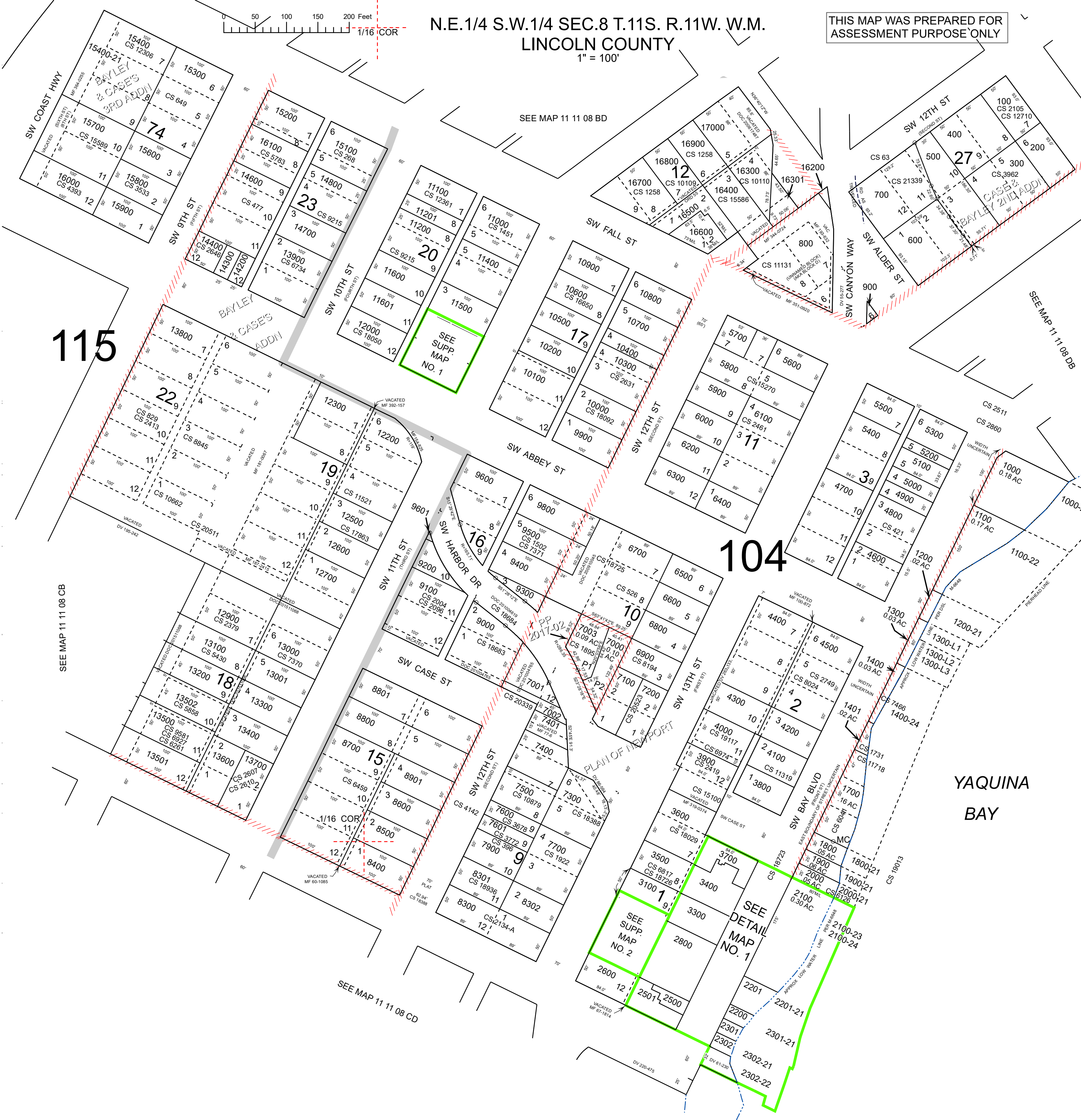
COMMERCIAL COMMENTS
ComImp - 2881093 - LATT'S OF OREGON LEASE 1108SQFT

N.E.1/4 S.W.1/4 SEC.8 T.11S. R.11W. W.M.
LINCOLN COUNTY
1" = 100'

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

11 11 08 CA
NEWPORT

- Cancelled
- 1000-22
- 1100-21
- 1100-23
- 1300-21
- 1300-L4
- 1400-21
- 1400-22
- 1400-23
- 1500
- 1600
- 1600-21
- 1900-22
- 2100-21
- 2100-22
- 2100-L1
- 2200-21
- 2300
- 2300-21
- 2400-21
- 2401
- 2401-21
- 2401-22
- 2401-23
- 2700
- 2900
- 3000
- 3200
- 3700-21
- 3800-21
- 7402
- 7800
- 8000
- 8100
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- 8900
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- 11300
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- 11900
- 12100
- 12301
- 12400
- 12800
- 13800-21
- 14000
- 14100
- 14500
- 14900
- 15000
- 15300-21
- 15500
- 15600-42
- 15700-20



Revised: SAO
01/19/2022

NEWPORT
11 11 08 CA

***DEPARTMENT OF STATE LANDS LEASE & RENEWAL
AGREEMENT***

**STATE OF OREGON
DIVISION OF STATE LANDS
SUBMERGED AND SUBMERSIBLE LAND LEASE**

ML-10492

The Oregon State Land Board and the Division of State Lands (STATE) hereby lease to the person(s) herein named (LESSEE), the following described lands on the terms and conditions stated herein, to wit:

NAME of LESSEE:
City of Newport

ADDRESS:
810 SW Alder Street
Newport OR 97365

Legal classification of LESSEE is a "Municipal Corporation",

Land situated in Lincoln County more fully described as follows:

All state-owned submerged lands in the Yaquina Bay in Section 8, Township 11 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon, more particularly described as follows:

Commencing at a point on the intersection of the Southerly line of Tax Lot 1300 (Lincoln county Assessor's Map Number 11-11-8CA Newport) and the line of pre-fill Mean High Tide on the right bank of the Yaquina Bay;

thence riverward along a line perpendicular to the thread of the stream to the line of pre-fill Mean Low Tide and the TRUE POINT OF BEGINNING

thence continuing riverward along said perpendicular line a distance of 75 feet;

thence upstream and 75 feet parallel to said line of pre-fill Mean Low Tide a distance of 50 feet;

thence shoreward along a line perpendicular to the thread of the stream a distance of 75 feet to the line of pre-fill Mean Low Tide;

thence downstream along said line of pre-fill Mean Low Tide a distance of 509 feet, more or less, to the TRUE POINT OF BEGINNING, containing 3,750 square feet, more or less and as shown on the attached Exhibit "A".

Total number of acres: 3,750 square feet more or less.

Hereinafter referred to as "leasehold".

RECEIVED

DIVISION OF STATE LANDS
RENTALS \$2,416.00

SECTION 1 - LEASE TERM AND RENEWAL

- 1.1 Term: This Lease shall continue for a period of ~~15~~ ^{18.5} years commencing on November 1, 2000 the month and date of which shall be known as the LEASE ANNIVERSARY DATE, and expiring on October 31, 2018, the month and date of which shall be known as the LEASE EXPIRATION DATE.
- 1.2 Renewal: LESSEE shall have an option to renew this Lease for an additional period of 15 years after the original and each renewal lease term provided that LESSEE has submitted a completed lease renewal application form to the STATE not less than one hundred and eighty (180) days prior to LEASE EXPIRATION DATE. Upon receipt of such application, this Lease shall be renewed by the STATE unless:
- 1.2.1 The STATE determines, in its sole discretion, that the LESSEE has not complied with the terms of this Lease, the applicable statutes and Oregon Administrative Rules; or
 - 1.2.2 The LESSEE is no longer the preference right holder as defined by applicable state law, or
 - 1.2.3 The STATE determines that the renewal of this Lease for all or portions of the leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.
- 1.3 STATE shall provide LESSEE two (2) years advance written notice of its intent to not renew this Lease for all or portions of the leasehold pursuant to the provisions of this Section. In the event that the STATE determines not to renew this Lease, but less than two (2) years remain in the Lease term, the STATE shall utilize the holdover provisions (Section 7.11) of this Lease to complete the two (2) year notice period and to allow the LESSEE sufficient time to vacate the authorized area and to relocate any sublessees in an orderly fashion.

SECTION 2 - AUTHORIZED USES

- 2.1 Purpose: This Lease shall grant the LESSEE the right to use the above described land for the specific purpose(s) described below in accordance with these LEASE TERMS and CONDITIONS, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Commercial and Retail Building
(Non-Marine Use)

SECTION 3 - ANNUAL LEASE RENTAL PAYMENT CALCULATION AND ADJUSTMENTS

- 3.1 Annual Lease Rental Payment: The Lease rental payment to be paid by LESSEE to STATE shall be \$1,313.00 for the first year of the Lease as provided in Section 3.1.1 based on the Riparian Land Value as shown below. Receipt of the first year's Lease rental payment is hereby acknowledged.

3.1.1 The initial annual Lease rent payment shall be calculated as follows:

Use Class	Area (square ft.)	Rate Choice	Annual Rent
Non Marine Use	3,750 square feet	Riparian Land Value	\$1,313.00
TOTAL			\$1,313.00

- 3.2 Annual Lease Rental Payment Adjustment: The annual lease rental payment shall be adjusted annually in accordance with the provisions of the Oregon Administrative Rule in effect at the time. The second year's rent shall be \$1,353.00. The third year's rent shall be \$1,393.00. Each payment shall be due on the Lease Anniversary Date as shown in Section 1.1.

SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 Modification of Leasehold Area or Use: LESSEE may request that the STATE expand or reduce the size, or change the use of the leasehold using a form provided by the STATE. However, no such change shall occur unless authorized in writing by the STATE.

4.1.1 The STATE may amend this Lease to reduce the leasehold area as requested if the portion of the leasehold is not in use, or does not contain any leasable structures. Structures and improvements within the vacated leasehold area shall be treated as in Section 9.3. If the modification results in a reduction of rental(s) due hereunder, such reduction shall become effective commencing on the first (1st) full year after the later of: (1) the date of the change of area or use, or (2) the date of the issuance of the STATE's written approval.

4.1.2 Requests to change an authorized use, or increase the leasehold shall be processed and reviewed in the same manner as a new lease application.

SECTION 5 - RESERVATIONS AND RESTRICTIONS

- 5.1 Compliance: The STATE shall have access to the leasehold at all reasonable times for the purpose of evaluating and ensuring compliance with the terms and

conditions of this Lease. The State shall have the right to examine pertinent records of LESSEE for the purpose of ensuring compliance with the Lease.

5.2 Reservations: The STATE reserves:

- 5.2.1 The right to lease and dispose of all coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes together with the right to explore, mine, develop, produce and remove such minerals and other deposits with the right of ingress and egress thereto, and to terminate this Lease as to all or any portion of the leasehold when required for these purposes with one hundred twenty (120) days prior written notice to LESSEE or as otherwise provided in law.
- 5.2.2 The right to enter in and upon the leasehold at any time for purposes of inspection or management.
- 5.2.3 The right at any time to grant easements across the premises for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, with right of ingress and egress thereto. The STATE shall include in any such grant of easement a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with LESSEE's use(s) authorized in the Lease.
- 5.2.4 All rights not expressly granted to LESSEE are reserved by the STATE.

5.3 Public Access and Recreational Use Reservation: All state-owned submerged and submersible land shall remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by the STATE to public entry pursuant to the provisions of applicable Oregon Administrative Rules. LESSEE may request the STATE to close the leasehold to public entry or restrict recreational use by the public on all or portions of the leasehold to protect persons or property from harm arising from or in connection with the LESSEE's activities.

This reservation shall not grant the public any right to use or occupy LESSEE-owned property or structures authorized under this lease without LESSEE's permission.

5.4 Restriction on Use: In connection with use of the leasehold, the LESSEE shall:

- 5.4.1 Comply with all applicable local, state and federal laws and regulations affecting the leasehold and the use thereof, including local comprehensive land use planning and zoning ordinances, and correct at the LESSEE's own expense any failure of compliance

created through the LESSEE's fault or by reason of the LESSEE's use;

- 5.4.2 Dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the leasehold. If LESSEE allows debris, garbage or other refuse to accumulate within the leasehold, the STATE shall have the right to remove the debris, garbage and other refuse, and collect the cost of such removal from LESSEE;
 - 5.4.3 Not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the leasehold except with written permission of the STATE. The LESSEE shall promptly report to the STATE the cutting or removal of vegetation by other persons;
 - 5.4.4 Conduct all operations within the leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or growth of noxious weeds;
 - 5.4.5 Maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the leasehold in a good state of repair; and
 - 5.4.6 Not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.
- 5.5 Waste Water Disposal: In addition to any other applicable laws and regulations, LESSEE shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and disposal for on water boat and floating structures.
- 5.6 Hazardous Materials: LESSEE shall use, place, store or release, or allow to be used, placed, stored or released, any material that may pose a danger to the public, wildlife, or its habitat, including, but not limited to, hazardous wastes, pesticides, or toxic substances only in strict compliance with all laws and manufacturer's instructions and shall take all necessary precautions to protect the leasehold and its soil and vegetation. LESSEE shall keep and maintain accurate and complete records of the amount of such materials stored and/or used on the leasehold and shall immediately notify STATE of any potential risk to the leasehold, adjacent lands, waters, structures or property.

SECTION 6 - REQUIREMENTS

- 6.1 Assignment and Sublease: Except as noted in Section 6.2, the LESSEE may not assign or sublease nor enter into any third party agreement without first obtaining the prior written consent of the STATE pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be received by the STATE, in writing at least thirty (30) calendar days prior to the effective date of

sublease or assignment. The STATE shall make a good faith effort to complete its review of such applications within thirty (30) days. If the application is incomplete, or if the STATE requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended. The STATE reserves the right to condition its consent as it deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest shall be required to comply with all of LESSEE's obligations under this Lease, and the applicable Oregon Administrative Rules. LESSEE shall remain liable for the performance of the obligations under this Lease unless the STATE's written consent expressly releases LESSEE from further liability hereunder. For the purposes of this section, if LESSEE is a corporation or partnership, the transfer of any corporate stock or partnership interest (including by operation of law) shall be deemed an assignment subject to the provisions of this Section if the result of said transfer shall be the change of management control or controlling interest of LESSEE.

- 6.1.1 LESSEE may not grant a mortgage or security interest in this Lease without prior written consent of the STATE which shall not be unreasonably withheld. Any subsequent assignment by the creditor or civil recovery shall require the prior written approval of the STATE.

- 6.2 Permitted Assignments and Subleases: Notwithstanding the provisions of Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of the LESSEE's interest in the Leased Premises shall be allowed without further STATE approval:

- 6.2.1 Subleases of portions of the LESSEE's interest in the leasehold area, in the ordinary course of LESSEE's business for the purposes approved under this Lease as specified in Section 2.1.
- 6.2.2 Subleases of the entire leasehold for a term that is less than one year for the purpose specified in Section 2.1.
- 6.2.3 The transfer or ownership of the Lease caused by the death of the LESSEE shall be considered an assignment requiring the STATE's approval. However, a transfer of ownership to a spouse or immediate family member is an assignment that does not require the STATE's prior approval.

- 6.3 Condition of Premises and Improvements: The leasehold area has been inspected and is accepted in its present condition, and LESSEE takes the leasehold and improvements, if any, AS IS. The STATE has made no oral representations concerning the condition of the leasehold, nor its fitness or suitability for any purpose.

- 6.4 Liability: LESSEE agrees to defend and hold STATE harmless from any and all claims suffered or alleged to be suffered within the leasehold or arising out of the LESSEE's operations on the premises. Further, LESSEE shall be responsible for the payment of any fines or penalties charged against the leasehold as a

result of LESSEE's action in not complying with laws or regulations affecting the leasehold.

- 6.5 Assessments: LESSEE shall pay all taxes and/or assessments that may be legally charged on public lands or related improvements which are levied against the property subject to this Lease, whether or not such taxes and/or assessments have been levied against the leasehold or STATE by the assessing agency.
- 6.6 Bond: The STATE reserves the right to require the LESSEE to furnish to the STATE a surety bond or an equivalent cash deposit or certificate of deposit which names the State of Oregon as co-owner to ensure that the LESSEE will perform in accordance with all terms and conditions of the Lease.

SECTION 7 - MISCELLANEOUS

- 7.1 No Partnership: The STATE is not a partner nor in a joint venture with LESSEE in connection with the business carried on under this Lease and shall have no obligation with respect to LESSEE's debts or other liabilities.
- 7.2 Non-Waiver: Waiver by either party of strict performance or any provisions of this Lease shall not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 7.3 Binding Interest: This Lease shall be binding upon and inure to the benefit of the parties, and the respective heirs, administrators, successors, and assigns of the parties hereto.
- 7.4 Notices: Any official STATE notice required under this Lease shall be sent by certified mail and shall expressly be deemed to be delivered after the certified letter is mailed to the address given by the LESSEE in the signature block of this Lease or as shown on the most recent written notice of record with this Lease. LESSEE shall provide the STATE with a written notice of any change of address, change in corporation/partnership/ownership, or change in person(s) authorized to represent the LESSEE. The STATE shall provide written acknowledgment of such LESSEE written notices and retain copies of both the LESSEE notice(s) and STATE acknowledgment(s) with this Lease. LESSEE's failure to receive such written acknowledgment within thirty (30) days of the date LESSEE sent the original notice shall be constructive notice to LESSEE that: (1) the STATE has not properly received the notice, and (2) that such attempted notice shall be of no force and effect until such time as the notice is actually received and acknowledged by STATE.
- 7.5 Liens: In the event liens or other charges are placed on the leasehold premises, including land or improvements, arising out of LESSEE's actions directly or indirectly, the LESSEE shall immediately cause such liens to be discharged. The STATE may terminate this Lease if LESSEE fails to discharge such liens or charges or provide the STATE with a sufficient bond covering the full amount of

the lien after ten (10) days notice to do so by the STATE. LESSEE shall pay and indemnify the STATE for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether such costs, damages or charges are incurred prior or subsequent to any termination of this Lease.

7.6 Default: The following shall be events of default:

- 7.6.1 Failure of the LESSEE to pay any rent, tax, reimbursement or other charge or payment due hereunder within twenty (20) days of the date such payment is due. For the purposes of this subsection, if the due date for such payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, such payment shall be due on the date set forth in the notice from the STATE to the LESSEE informing the LESSEE of its obligation to pay such charge or payment.
- 7.6.2 Failure of LESSEE to comply with applicable laws, Oregon Administrative Rules or any non-payment related terms or conditions or obligations of the Lease within thirty (30) days after written notice by the STATE specifying the nature of the deficiency. Upon timely request from the LESSEE, the STATE may in its good faith discretion permit the deadline for curing such non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the thirty (30) day period, (2) the interests of the STATE will not be harmed by an extension, (3) such default was not due to the willful acts or gross negligence of the LESSEE, and (4) the STATE and the LESSEE are able to mutually agree upon a written plan and timeline for remediation.
- 7.6.3 Insolvency of LESSEE; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days. If LESSEE consists of two (2) or more individuals or business entities, the events of default specified in this paragraph shall apply to each individual unless within ten (10) days after an event of default occurs the remaining individuals produce evidence satisfactory to STATE that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned in compliance with Section 6.1 of this Lease, the events of default so specified in this subsection shall apply only with respect to the one then exercising the rights of LESSEE under the Lease.

7.6.4 Notwithstanding the above, if the STATE in good faith believes that a material default has occurred which may imperil the STATE's rights in the land or its fiduciary duties under law, the STATE may declare an immediate default without any right of LESSEE to cure the deficiency.

7.7 Termination Upon Default: In the event of a default by LESSEE, the STATE shall have the right to terminate this Lease if it has given LESSEE notice of the default and of the STATE's intent to terminate this Lease if the default is not completely cured by the deadline contained in the notice and if the listed default has not been cured by the stated deadline. The deadline contained in the notice must be at least twenty (20) calendar days from the date the notice is sent by certified mail, or if earlier, the date LESSEE actually receives said notice. The STATE shall be entitled to recover from LESSEE all costs arising out of the re-entry and all costs of re-letting the premises. The STATE shall be entitled to recover the amount of unpaid rent required to be paid under the Lease from the date of default until a new Lease has been, or with the exercise of reasonable efforts could have been, secured, if the STATE was determined to re-let the leasehold. All improvements located thereon shall be disposed of as provided by Section 9.3 of this Lease. If the LESSEE owns a floating home and has placed such home on the property pursuant to the provisions of Section 2.1 of this Lease, the lease termination provisions of ORS 90.630 shall apply to the extent that they are inconsistent with the provisions of this Lease.

7.8 STATE's Right to Cure Defaults:

7.8.1 If the LESSEE fails to perform any obligation under this Lease, the STATE shall have the option to perform the obligation of the Lease after thirty (30) days written notice to the LESSEE. All of the STATE's expenditures to carry out the obligation shall be reimbursed by the LESSEE on demand with interest at the rate of one percent (1%) per month accrued from the date of expenditure by the STATE.

7.8.2 In the event any violation or breach of the provision of this Lease is causing damage to the leasehold or the LESSEE is utilizing the leasehold in a manner not permitted by the provision of this Lease, or in any case damages are occurring to the leasehold, the STATE may immediately enter upon the leasehold and take such action as necessary to cease such damages or use. In the event the damage or use is occurring by reason of a violation or breach of the provisions of this Lease, the LESSEE shall be liable for all costs incurred by the STATE by reasons of such violations. The STATE, at its option, may send notice to the LESSEE of such violations and LESSEE shall immediately cease such use or violation and correct such violation.

7.9 Termination Upon Mutual Consent: This Lease may also be terminated by mutual written consent of LESSEE and STATE.

- 7.10 Weed Control: The LESSEE shall control noxious weeds including aquatic weeds, plant pests and diseases within the leasehold as directed by the local county weed control district, the Oregon Department of Agriculture and/or any other governmental authority which may now or in the future have authority with regard to the prevention and/or control of noxious weeds, plant pests and/or diseases, or as may be authorized or directed by the STATE.
- 7.11 Holdover: If LESSEE does not vacate the leasehold at the time required at expiration or upon termination of a Lease, STATE shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and rental. The STATE shall have the option to unilaterally establish a new rental for the month-to-month tenancy, with said rental payable in advance. If a month-to-month tenancy results from holdover by LESSEE under this paragraph, the tenancy shall be terminable at the end of any monthly rental period upon written notice from STATE given not less than thirty (30) days prior to the termination date which shall be specified in the notice.
- 7.12 Governing Law: This Lease and all matters related to the rights and responsibilities hereunder are governed by and subject to the laws of the State of Oregon and the administrative rules of the Division of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties hereunder, and such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease.
- 7.13 Binding on Successors: This Lease shall be binding on and shall inure to the benefit of the successors and assigns of the parties hereto, but nothing in this section shall be construed as a consent by STATE to any disposition or transfer of the Lease or any interest herein by LESSEE except as otherwise expressly provided in this Lease.
- 7.14 Nondiscrimination: The leasehold shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 7.15 Right To Sue More Than Once: STATE may sue periodically to recover damages for the period corresponding to the remainder of the lease term and no action for damages shall bar later actions for damages subsequently accruing.
- 7.16 Remedies Cumulative: The remedies contained in this Lease shall be in addition to, and shall not exclude any other remedy available at law or in equity, and exercise by either party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same default or breach by the other party.

- 7.17 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party shall be entitled to recover all costs and disbursements incurred, including such sum as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings.
- 7.18 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 7.19 Compliance With Applicable Law: The STATE's performance under this Contract is conditioned on the LESSEE's compliance with the provision of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.
- 7.20 Late Charges and Interest: It is understood by both parties that late payments by the LESSEE of rent and other charges due hereunder will cause the STATE to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. As such, the parties agree that, notwithstanding other remedies permitted hereunder, if the LESSEE has not made full payment of amounts due within twenty (20) days of the date such payment is due, LESSEE shall pay an additional charge equal to five percent (5%) of the amount of the late rent or other charge. In addition, all amounts due and owing under this agreement, including late charges, shall bear interest at the lower of: (1) the highest interest rate allowable by law, or (2) twelve percent (12%) per year.

SECTION 8 - INSURANCE

- 8.1 Commercial General Liability: LESSEE shall obtain at LESSEE's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage with an insurance company acceptable to the STATE. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Lease and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$1,000,000, when applicable.
- 8.2 Revisions/Amendments/New Requirements: The amounts and types of insurance (including those specified in Section 8) and the party responsible for procuring the insurance shall be established and reviewed when circumstances warrant. The requirements may be revised or amended by the STATE periodically at the STATE's sole discretion after STATE:
- (a) consults with its insurance advisor;
 - (b) consults with LESSEE;
 - (c) considers the commercial reasonableness of any requirements, amendments or revisions; and

- (d) considers the STATE's need for adequate insurance protection and the STATE's fiduciary obligations.

Within thirty (30) days notice to LESSEE of the STATE'S revision or amendment of the insurance requirements, LESSEE shall provide the STATE with satisfactory evidence that the LESSEE has obtained new insurance coverage which conforms with the revised/amended insurance requirements. If mutually agreed in writing, LESSEE may have additional time to obtain such insurance.

- 8.3 Named Insured Parties: The liability insurance coverages required for performance of the Lease shall include the State of Oregon, the Division of State Lands and their sections, officers and employees as additional insured but only with respect to the LESSEE's activities to be performed under this Lease.
- 8.4 Certificate(s) of Insurance: As evidence of the insurance coverages required by this Lease, the LESSEE shall furnish certificate(s) of insurance to the STATE prior to the issuance of this Lease, and not less often than annually thereafter and as reasonably requested by STATE. The certificate(s) will specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease shall be obtained from acceptable insurance companies or entities. The LESSEE shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

SECTION 9 - IMPROVEMENTS

- 9.1 Authorized Improvements or Structures: No improvement that exceeds fifteen thousand dollars (\$15,000) in cost or value may be constructed or placed upon the leasehold unless the LESSEE shall have first obtained the prior written authorization of the STATE. Approval for improvements consistent with the purposes of this Lease shall not be unreasonably withheld or delayed. All improvements must be consistent with the authorized use(s) of this Lease as stated in Section 2.1.
- 9.2 Unauthorized Improvements or Structures: Unauthorized improvements shall, at the election of the STATE, either be removed from the leasehold by LESSEE (or if STATE so elects, by the STATE at LESSEE's cost and expense), or remain within the leasehold.
- 9.3 Removal of Structures and Improvements: Any LESSEE-owned structure or improvement must be removed within ninety (90) days of the termination of the Lease or modification of the lease as in Section 4.1.1 unless otherwise agreed by the parties as in the case of a structure exempt from authorization under OAR 141-082-0030(4). LESSEE shall be responsible for any damage done to the leasehold as a result of the removal of the structure improvements. Any structure or improvements remaining on the leasehold after the ninety (90) day period may at the option of the STATE become the property of STATE, unless otherwise agreed by the parties.

The LESSEE expressly agrees to all covenants herein and binds him/herself for the payment of the rental herein before specified.

DIVISION OF STATE LANDS

[Signature]
Authorized Signature

Jan 4, 2001
Date

Division of State Lands
775 Summer ST NE, STE 100
Salem, OR 97301-1279

LESSEE

[Signature] City Manager
Signature/Title

(Note requirement below)

11/28/00
Date

City of Newport
810 S.W. Alder St., Newport OR 97365
Mailing Address

Note: If the LESSEE is a corporation, the signer warrants that s/he has the authority to sign the lease on behalf of the corporation by resolution of its Board of Directors, or through delegation of authority to the signer.

STATE OF OREGON)
)ss
County of Lincoln)

The foregoing instrument was acknowledged before me this 28th day of NOVEMBER, 2000, by SAM SASAKI (officer or agent of corporation), the CITY MANAGER (title of officer or agent) of CITY OF NEWPORT corporation, a OREGON (state or place of incorporation) corporation, on behalf of corporation.



[Signature]
Signature
My commission expires 12-16-2004

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

I, the undersigned, hereby swear or affirm under penalty of perjury that to the best of my knowledge, I am not in violation of any Oregon Tax Laws.

For the purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Signature: Sam Sasaki

Date: 11/28/00

Printed Name: SAM SASAKI

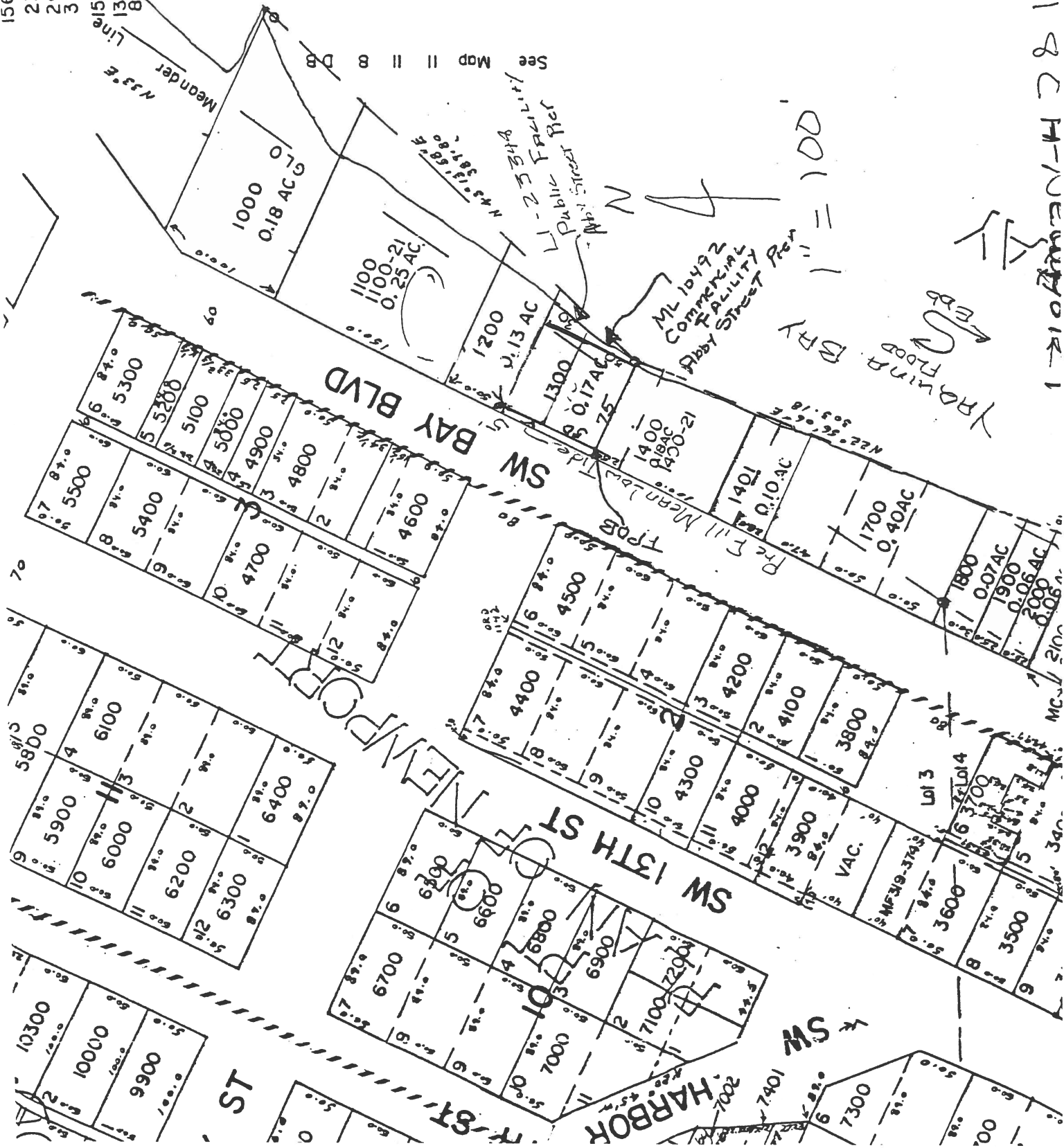
Title: City Manager

J:\AttachmentAwes\ML Waterway Lease Exhibit A.doc\ML-10492.doc

1560C-V2	3000
230C-A1	15000
2900	7402
3200	15500
15700-A1	11700
13800-21	12301
8900	12400
	12800
	15300-2
	11900
	2100-A1
	2401-21
	2300

11-16-88
STEVE MORGAN

11 218C H-Neuro 1





Derrick Tokos

From: TAYLOR Jacob <Jacob.Taylor@state.or.us>
Sent: Wednesday, May 15, 2019 4:17 PM
To: Derrick Tokos; 'TAYLOR Jacob'
Cc: Steven Rich
Subject: RE: Abbey Street Pier Lease (ML-10492/11546-ML)

Derrick,

I looked through my shelf and found your file. I apologize for the delay, there has been some turnover in this position over the past year. There is a new agreement that is waiting for the appropriate signature before I can send it out. My supervisor will be back on Monday and ill make sure this is the first thing he sees when he gets back.

I can answer any questions you may have on it. Your first years rent will be \$2,304.75 and will increase by 3% each year.

If you would like to you can give me a call and we can discuss it in further detail.

Sincerely,

Jacob Taylor, Proprietary Coordinator
 Aquatic Resource Management Program
 Oregon Department of State Lands
Phone (503) 986-5303
 Field Cell (503) 302-3852
 Fax (shared) 503-378-4844
www.oregon.gov/DSL

775 Summer St. NE, Suite 100
 Salem, OR 97301

From: Derrick Tokos <D.Tokos@NewportOregon.gov>
Sent: Wednesday, May 15, 2019 3:53 PM
To: 'TAYLOR Jacob' <Jacob.Taylor@state.or.us>
Cc: Steven Rich <S.Rich@NewportOregon.gov>
Subject: Abbey Street Pier Lease (ML-10492/11546-ML)

Hi Jacob,

I received your email regarding the Bay Street pier and will get back to you shortly. On a different note, we submitted a renewal on the other public access pier back in October of 2018, but have not received an updated agreement. It is the Abbey Street Pier where we own the adjacent commercial building (see lease numbers above).

Is there a new agreement that you can email? If not, can you tell me if the amount of the annual rent has changed?

I am having a conversation with our elected officials on Monday about whether or not they want to renew the leases in the commercial building or potentially sell the structure. The lease info is relevant to that discussion.

Thanks,

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov



Waterway Lease Application Form

Date Received:

242

www.oregon.gov/dsl

(West of the Cascade Crest) WESTERN REGION Department of State Lands 775 Summer Street NE, Suite 100 Salem, OR 97301-1279 503-986-5200 FAX: 503-378-4844	Mail completed application with the applicable non-refundable application fee, made payable to: Oregon Department of State Lands. We accept Visa and Master Card, please call (503) 986-5200	(East of the Cascade Crest) EASTERN REGION Department of State Lands 1645 NE Forbes Road, Suite 112 Bend, OR 97701 541-388-6112 FAX: 541-388-6480
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<input type="checkbox"/> Modification	<input type="checkbox"/> \$ 375.00 (Reduction in Lease area)	<input type="checkbox"/> New \$750.00
	<input type="checkbox"/> \$ 750.00 (Increase in Lease area)	
<input type="checkbox"/> Renewal	<input checked="" type="checkbox"/> \$ 375.00 (with No Changes)	

Existing Department of State Lands No. 11546-ML

AGENCY WILL ASSIGN NO. _____

1 - APPLICANT INFORMATION

Applicant's Name: <u>City of Newport</u>	Home /Cell Phone:
Address: <u>169 SW COAST HIGHWAY</u>	Business Phone: <u>541.574.0613</u>
<u>NEWPORT, OREGON 97365</u>	Fax: <u>541.574.0609</u>
	Email: <u>P.hawker@newportoregon.gov</u>
Co-Applicant's Name: <u>N/A</u>	Home /Cell Phone:
Address:	Business Phone:
	Fax:
	Email:
Authorized Agent's Name: <u>N/A</u>	Home /Cell Phone:
Address:	Business Phone:
	Fax:
	Email:
Riparian Property Owner Name:	Home /Cell Phone:
(if different than applicant) <u>N/A</u>	Business Phone:
Address:	Email:
	Fax:

2 - PROJECT LOCATION

Street, Road or other descriptive location		Legal Description			
<u>ABBEY STREET PIER</u>		Township	Range	Section	Quarter
		<u>11S</u>	<u>11W</u>	<u>8</u>	<u>SW</u>
In or Near (City or Town)	County	Tax Map #			
<u>NEWPORT</u>	<u>LINCOLN</u>	<u>11-11-8CA</u>			
Waterway:	River Mile:	County Property Tax Account #			
<u>YAQUINA BAY</u>	<u>1.4</u>	<u>R357311, R366804</u>			

3 - PROJECT PURPOSE & DESCRIPTION

Activity Type (Check all that apply):	Area requested (length x width)
a) <input type="checkbox"/> Log rafts/log storage areas	_____
b) <input type="checkbox"/> Commercial marina and floating home moorages	_____
c) <input type="checkbox"/> Noncommercial marina and owner-oriented floating home moorages	_____
d) <input type="checkbox"/> Marine industrial; marine services; fish processing facilities	_____
e) <input checked="" type="checkbox"/> Non-marine uses (restaurant, retail sales, offices, motel, residences, etc.)	4,000 SF
f) <input type="checkbox"/> Historical vessel moorages	_____
g) <input type="checkbox"/> Other (Research)	_____

SEE ATTACHMENT A

Are you aware of any Endangered Species on the project site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are you aware of any Cultural Resources on the project site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the project site near a State Scenic Waterway?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

4 - PROJECT PURPOSE & DESCRIPTION

<input checked="" type="checkbox"/> Existing Facility	<input type="checkbox"/> Proposed for Construction
Project Purpose and Need: Public Pier	
Project Description:	
Estimated Start Date:	Estimated Completion Date:

5 - ADDITIONAL INFORMATION

Names, addresses and phone numbers for adjacent property owners. 541.574.0603	
City of Newport, 169 SW Coast Highway, Newport 97365	
MO's ANNEX, 657 SW Bay Blvd., Newport - 541.265.7512	
Have you applied for Corps of Engineers or Department of State Lands permits for this project? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, what identification number(s) were assigned by the respective agencies: N/A	
Corps #	State of Oregon #

6 - CITY/COUNTY PLANNING DEPARTMENT AFFIDAVIT

244

(to be completed by local planning official)

- ☐ This project is not regulated by the local comprehensive plan and zoning ordinance.
☒ This project has been reviewed and is consistent with the local comprehensive plan and zoning ordinance.
☐ This project has been reviewed and is **not** consistent with the local comprehensive plan and zone ordinance.
☐ Consistency of this project with the local planning ordinance cannot be determined until the following local approval(s) are obtained:

☐ Conditional Use Approval☐ Development Permit☐ Plan Amendment☐ Zone Change☐ Other _____An application ☐ has ☐ has not been made for local approvals checked above.

Signature of local planning official

Title

City / County

Print/Type Name

Date

7 - BUSINESS INFORMATION**LIMITED LIABILITY COMPANY:** Complete the following

- Do you have authority from the Oregon Secretary of State to do business in the State of Oregon? ☐ Yes ☐ No
Is the LLC presently in good standing with the Oregon Secretary of State? ☐ Yes ☐ No
In what state is the LLC primarily domiciled? _____
Is the LLC name and the Oregon business address the same as stated in this application? ☐ Yes ☐ No
If no, state the legal Name: _____
Address: _____

Street or Box Number

City

State

Zip Code

Additionally, a LIMITED LIABILITY COMPANY must submit the following with the application:

A certified copy of the company's Articles of Organization

A copy of the company's operating agreement

CORPORATION: Complete the following:

- Do you have authority from the Oregon Secretary of State to do business in the State of Oregon? ☒ Yes ☐ No
Is the corporation presently in good standing with the Oregon Secretary of State? ☒ Yes ☐ No
In what state are you incorporated? OREGON
Is the legal corporation name and Oregon business address the same as stated in this application? ☒ Yes ☐ No
If no, state the legal Corporate Name: _____
Address: _____

Street or Box Number

City

State

Zip Code

PARTNERSHIP OR JOINT VENTURE: Complete the following

NAME	BUSINESS ADDRESS	% SHARE	DIVISION

TRUST: Complete the following for each beneficiary of the Trust:

NAME	BUSINESS ADDRESS

OR identify the Trust document by title, document number, and county where document is recorded:

TITLE	DOCUMENT NUMBER	COUNTY

A resolution that the individual designated to sign is authorized to act on behalf of the company in this matter.

8 - LESSEE CHOICE (Refer to OAR 141-082-0305)

- ☒ Calculate my rent under the Flat Rate Method.
- ☐ Calculate my rent based on 5% of the riparian land value.
- ☐ Calculate my rent based on 3% of the gross annual boat slip rental income.
(Attach monthly income statements for all boat slip rental and boat rental income)

9 - FOR A COMPLETE APPLICATION, PLEASE SUBMIT ALL THE FOLLOWING:

- a) A street or highway location map with road directions to the site from the nearest main highway or road.
- b) Assessor map that contains the riparian uplands. Do not mark on this map.
- c) A copy of the current year's property tax statement which identifies the present owner's name(s), land values, land size and tax account numbers of the riparian uplands.
- d) A legal description of the lease area with an accurate delineation of the area relative to the tax lot boundaries of the upland parcel. (The department may require a survey for this purpose).
- e) A separate drawing of all existing and proposed structures for the lease area. Label each separate activity type stated in Section 3 and show the dimensions of each area by length and width, as stated in Section 3.
- f) Lessee Choice for the calculations of the annual lease fee, Section 8.
- g) Enclose applicable non-refundable application fee, made payable to: Oregon Department of State Lands.

10 - APPLICANT SIGNATURE

I hereby request a state authorization for 18 (number) years.

Application is hereby made for the activities described herein. I certify that I am familiar with the information contained in the application, and, to the best of my knowledge and belief, this information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the authorization requested before commencing the project. I understand that payment of the required state application fee does not guarantee authorization.

Spencer R. Nebel
Print /Type Name

City Manager
Title

[Signature]
Applicant Signature

10-16-18
Date

I appoint the person named below to act as my duly authorized agent.

Print /Type Name

Title

Authorized Agent Signature

Date

ATTACHMENT A

LIST OF ENDANGERED SPECIES ON PROJECT SITE

11546-ML

Occurs Regularly

Coho Salmon (Oregon Coast population segment)

Occurs Less Frequently or in Low Numbers

Eulachon Smelt
Green Sturgeon
Marbled Murrelet

Possible

Southern Resident Killer Whale

Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R357311	Neighborhood:	N226	Owner and	CITY OF NEWPORT
Map Taxlot:	11-11-08-CA-01300-00	Property Class:	942	Mailing Address:	CITY MANAGER 169 SW COAST HWY NEWPORT, OR 97365
Tax Map:	11s11w08CA			Site Address(es):	669 SW BAY BLVD ;663 SW BAY BLVD ;673 SW BAY BLVD
Web Map:	View Map				
Info:	TWNShp 11, Rng 11, Acres 0.01, Partially Non- Assessable, Misc 8-108 MF245-2077				
Tax Code:	104				
Acres:	0.01				

Improvements						Value History			
Description	Area	Yr Built	Found Heat	Plumb BDMS	Value	YearImp.	Land	Total Market	Total Assessed
MAIN AREA	1885 sq ft	1979			\$105,440	2017	105,440	108,500	213,940
MAIN AREA 2ND FLOOR	2267 sq ft				\$0	2016	101,000	108,500	209,500
Foundation Code List	Heating/AC Code List	Plumbing Code List				2015	139,890	138,000	277,890
						2014	139,890	138,000	277,890
						2013	116,830	115,000	231,830
						2012	131,430	115,000	246,430
						2011	131,430	115,000	246,430

Land				Related Accounts			Disclaimer
Description	Acres	Market Value	Special Use Value	R366804	R530584	R530598	For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. Tax data exported 10/2017.
COM DEV BAYFRONT SITE	0.01	108,500		R530599			

Today's Date: 10/16/2018

11 11 08 CA
NEWPORT

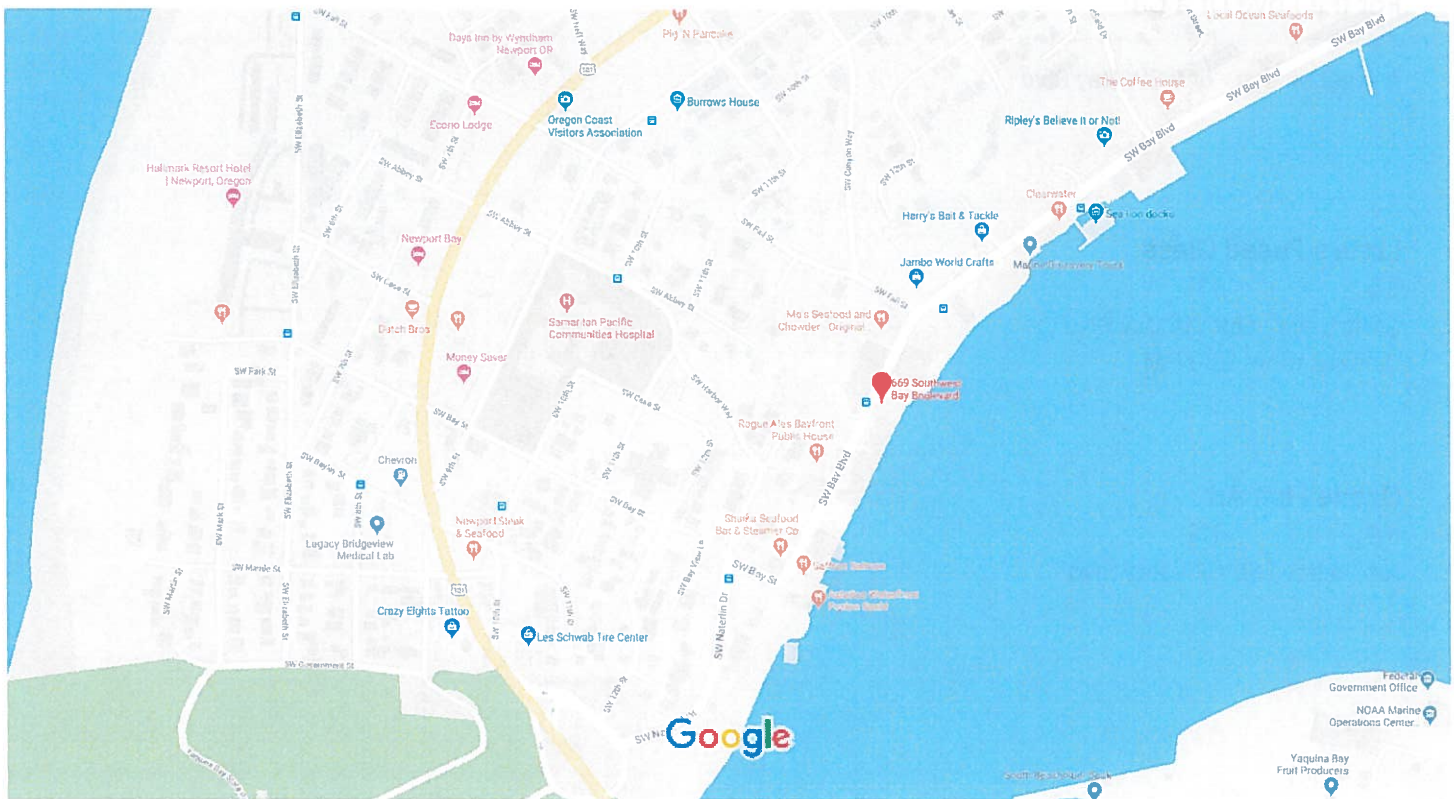
THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

Cancelled	1100-21	1300-21	1400-21	1400-22	1500	1600	1600-21	2100-21	2200-21	2300	2300-21	2400-21	2401	2401-21	2401-22	2401-23	2700	2900	3000	3200	3700-21	3800-21	7402	7800	8000	8000	8100	8200	8900	11000	11700	11800	12100	12301	12400	12800	13800-21	14000	14100	14500	14900	15000	15300-21	15500	15600-42	15700-20
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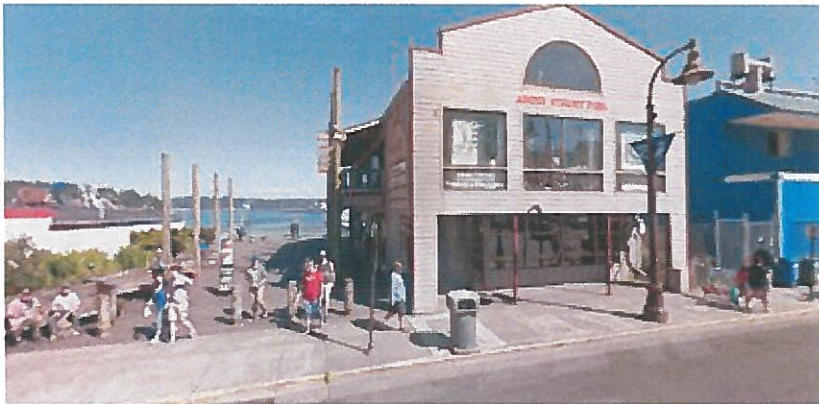
Revised: SAO
04/02/2018NEWPORT
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248

Google Maps 669 SW Bay Blvd

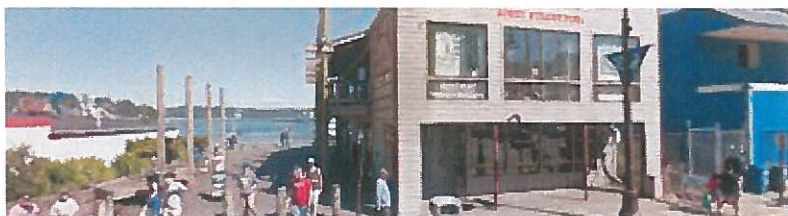


Map data ©2018 Google 200 ft

**669 SW Bay Blvd**

Newport, OR 97365

JWHV+9X Newport, Oregon



Payment Receipt Confirmation

Your payment to the Dept of State Lands was successfully processed.

Transaction Summary

Description	Amount
Other Authorizations - APP0011546	Total Amount Paid \$375.00

Transaction Detail

SKU	Description	Unit Price	Quantity	Amount
1	Other Authorizations - APP0011546	\$375.00	1	\$375.00
Total				\$375.00

Customer Information

Customer Name Margaret Hawker
Local Reference ID / Last 5 Digits of Application Number APP0011546

Receipt Date 10/22/2018
Receipt Time 01:45:22 PM PDT

Payment Information

Payment Type Credit Card
Credit Card Type MASTERCARD
Credit Card Number **** * 1762
Order ID 79925172
Name On Card Margaret Hawker

Billing Information

Billing Address 169 SW COAST HIGHWAY
Address 2
Billing City, State NEWPORT, OR
ZIP/Postal Code 97365
Country US

REGIONAL DESCRIPTION

CENTRAL OREGON COAST - REGIONAL DESCRIPTION

LOCATION



The Central Oregon Coast Region is located in Lincoln and Lane Counties. It is bound on the north by Tillamook County, the Coast Range to the east, by Highway 126 to the south and the Pacific Ocean on the west. The area can be accessed north/south by Highway 101, east/west by Highway 20 and Highway 34 providing linkage to the Corvallis area, by Highway 126 to the Eugene/Springfield area and by Highway 18 from Roads End to McMinnville. Each of the east/west linkages connect to the Interstate 5 Freeway as it passes through the Willamette Valley. Cities/towns in this region of the Coast vary in population with some of the largest being Lincoln City, Depoe Bay, Newport, Waldport and Yachats.

GENERAL

Lincoln City was incorporated in 1965 from the communities of Oceanlake, Delake, Taft, Cutler City, and Nelscott. It has approximately seven miles of beaches and hiking trails. Located on the 45th parallel, it is the home of the Chinook Winds Casino Resort owned and operated by the Confederated Tribes of the Siletz Indians of Oregon. It is one of the largest Oregon Coastal cities and rests conveniently west of Salem with comparable drive time to both Portland and Eugene, at just over two hours. Its larger city amenities, long unobstructed beaches, numerous lodging options, indoor and outdoor activities, and proximity to metro areas make it a destination for a variety of visitors.

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

Depoe Bay offers whale watching tours and deep sea fishing from what is claimed “the world’s smallest navigable harbor”. A sea wall runs almost the full length of town with “spouting horns,” rock formations that turn crashing waves into plumes of water, sometimes onto Highway 101.

Newport has many attractions including the Oregon Coast Aquarium, the Hatfield Marine Science Center, two historic lighthouses, and bayfront that was previously the canning district of the area. The bay front has a variety of retail and restaurant options and includes attractions such as Mariner Square. There is a US Coast Guard Station and a host of charter boats offering whale watching and deep sea fishing. Newport is also home to the Pacific Fleet of NOAA (National Oceanic and Atmospheric Administration), located in the neighborhood of South Beach.

Waldport offers fishing, clamming and has a free crabbing dock. Numerous state recreation areas offer beach access and wildlife viewing. The drive along Highway 34 to Corvallis offers a scenic route through the Coast Range. The Alsea Bay Bridge has a clearance of 70 feet with steel and concrete piles reaching more than 100 feet into the bedrock below.

Yachats is considered a village with only 1,010 people, as of 2021. It is located at the mouth of the Yachats River and nestles between the Coast Range and the Pacific Ocean. It has been a vacation destination drawing people who appreciate its unique variety of festivals, including the long-running annual “la de da” Parade.

TOPOGRAPHY

The area is bisected by the Coast Range with a narrow level area of development along the coast. The Salmon, Siletz and Alsea Rivers flow to the Pacific Ocean; as well as D River, the shortest river in the world, flowing a mere 120 feet from Devils Lake to the Ocean. Topography overall is relatively flat, rising to gentle rolling hills from sea level. This allows development, although some areas lie in flood plains, especially along the rivers and tend to experience flooding during unusually heavy rainfall. Tsunami areas dot the coastline.

CLIMATE

The region’s temperate, maritime climate is characterized by moderate year-round temperatures. Average summer temperatures range from a breezy 60 to 70 degrees on the oceanfront to 80 to 90 degrees a few miles inland. The average winter daytime temperature is a mild 50 degrees, dropping to an average 37 degrees at night. Up to 90 inches of precipitation fall annually, mainly in winter, as cool, moisture-laden Pacific air masses pass over the Coast Range.

POPULATION

The Central Oregon Coast attracts a large amount of second home buyers from residents who live in the Portland, Salem, and Eugene MSAs. Coast homes are often utilized as second homes or vacation rentals. However, the year-round population of the area is also reflecting growth. Population forecasts published by the Portland State University Center for Population Research and Census show a general upward trend in permanent population for the region.

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

Growth for the nearby MSAs is summarized in the following chart (most recent data available for MSA populations):

MSA POPULATION GROWTH												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	% Change 2020/21	Avg Annual Change
Eugene/Springfield MSA	354,200	356,125	358,805	362,150	365,940	370,600	375,120	378,800	383,181	382,647	-0.14%	0.89%
Salem/Keizer MSA	397,120	399,945	403,885	408,340	413,680	420,200	426,135	430,700	434,110	436,098	0.46%	1.09%
Corvallis MSA	86,785	87,725	88,740	90,005	91,320	92,575	93,590	94,360	95,316	93,976	-1.41%	0.92%
Portland/Vancouver/Hillboro	2,266,573	2,292,725	2,326,397	2,307,745	2,348,710	2,454,774	2,491,885	2,522,223	2,517,410	2,539,633	0.88%	1.34%

Source: Population Research Center, Portland State, April 2022

Future population growth within the region will be governed in part by the success of base industries such as specifically lumber, wood products, fishing, and tourism. Each plays a part in achieving some level of stability. Uncertainty over the amount of timber and fish that will ultimately be available for harvest is a major concern. The largest employment groups in the region are leisure and hospitality, government, and retail trade, with manufacturing a larger employment sector as one moves north toward the influence of the Columbia River and Portland.

Population trends for the Central Coast Region are summarized in the following table:

POPULATION TRENDS												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2020-2021 % Change	Annual Avg. % Change
Newport	10,150	10,160	10,095	10,165	10,190	10,215	10,125	10,285	10,400	10,591	1.84%	0.48%
Lincoln City	7,965	8,020	8,400	8,485	8,485	8,665	8,730	8,795	8,865	10,067	13.56%	2.93%
Waldport	2,040	2,050	2,060	2,075	2,080	2,095	2,105	2,110	2,125	2,321	9.22%	1.53%
Yachats	705	715	720	725	740	740	745	760	780	1,010	29.49%	4.81%
Lincoln County	46,295	46,560	46,890	47,225	47,735	47,960	48,210	48,260	48,305	50,903	5.38%	1.11%
Lane County	354,200	356,125	358,805	362,150	365,940	370,600	375,120	378,880	381,365	382,647	0.34%	0.89%
State of Oregon	3,883,735	3,919,020	3,962,710	4,013,845	4,076,350	4,141,100	4,195,300	4,236,400	4,243,851	4,266,620	0.54%	1.10%

Source: Population Research Center, Portland State, April 2022

Population forecasts published by the Portland State University Center for Population Research generally show a steady upward trend in permanent population for the region between 2012 and 2021. Oregon experienced tremendous growth between 2000 and 2007 due to a mass migration of people to the Portland metro region. However, the recession all but stopped population growth between 2008 and 2011. In general, the surveyed populations have grown in accordance with markets beginning to recover and consumers regaining confidence.

EMPLOYMENT

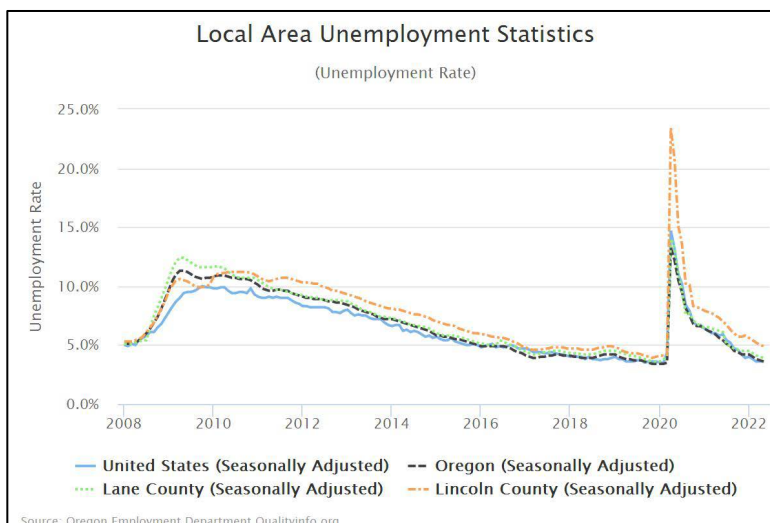
Prior to COVID-19, the Central Oregon Coast had generally recovered from the Great Recession. According to the Oregon Employment Department, the Central Oregon Coast economy began to slow in early 2008. Unemployment rates in the Central Coast Region, as well as the State of Oregon and United States, peaked in 2009. Because much of the Central Coast's employment relies on tourism, unemployment rates are higher than the rest of the state. However, the unemployment rate has steadily decreased in recent years, reaching pre-recession levels over the past few years.

Prior to the onset of the COVID-19 Pandemic, the Lincoln County unemployment rate was at a record low of 3.9% in March 2020 (as reported by <https://www.qualityinfo.org/>). Lane County's rate was 3.5% as of March 2020. Unemployment in Lincoln County spiked to 25.9% in April of 2020, the highest unemployment rate in the state at the time and

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

significantly above the Oregon rate of 14.7%. Lane County's unemployment spiked to 16% in April 2020.

Unemployment rates have steadily declined and are nearing pre-pandemic levels. Lincoln County has seen a dramatic decrease in unemployment rates from pandemic highs and is currently 4.9% as of May 2022. Lane County has a lower rate at 3.9%, slightly higher than the State rate of 3.6%. Rates are expected to continue to decline as the region recovers from the economic effects of the pandemic.



The dominant sectors of the Central Coast economy have historically been leisure and hospitality, government, trade transportation and utilities. The chart on the following page, provided by the State of Oregon Employment Department, summarizes various sectors of employment in the Central Coast through May 2022.

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

Lincoln County Current Labor Force and Industry Employment					
				--Change From--	
	May 2022	April 2022	May 2021	April 2022	May 2021
Labor Force Status					
Civilian labor force	21,210	21,107	21,069	103	141
Unemployed	884	1,003	1,477	-119	-593
Unemployment rate	4.2%	4.8%	7.0%	-0.6	-2.8
<i>Unemployment rate (seasonally adjusted)</i>	4.9%	5.0%	7.3%	-0.1	-2.4
Employed	20,326	20,104	19,592	222	734
Nonfarm Payroll Employment					
Total nonfarm employment	17,820	17,510	17,600	310	220
<i>Total nonfarm employment (seasonally adjusted)</i>	17,730	17,680	17,510	50	220
Total private	14,280	14,050	14,060	230	220
Mining, logging, and construction	940	940	980	0	-40
Mining and logging	120	130	140	-10	-20
Construction	820	810	840	10	-20
Manufacturing	1,070	970	1,050	100	20
Durable goods	170	170	170	0	0
Nondurable goods	900	800	880	100	20
Food manufacturing	360	280	360	80	0
Trade, transportation, and utilities	3,120	3,100	3,200	20	-80
Retail trade	2,690	2,680	2,740	10	-50
Food and beverage stores	780	760	780	20	0
Transportation, warehousing, and utilities	250	250	280	0	-30
Information	130	130	100	0	30
Financial activities	910	900	940	10	-30
Professional and business services	1,000	1,010	970	-10	30
Education and health services	2,030	2,030	2,100	0	-70
Leisure and hospitality	4,640	4,520	4,240	120	400
Accommodation and food services	4,430	4,330	4,080	100	350
Accommodation	1,750	1,700	1,640	50	110
Food services and drinking places	2,680	2,630	2,440	50	240
Other services	440	450	480	-10	-40
Government	3,540	3,460	3,540	80	0
Federal government	330	330	340	0	-10
State government	300	290	310	10	-10
Local government	2,910	2,840	2,890	70	20
Indian tribal	800	790	840	10	-40
Local education	900	890	850	10	50
Local government excluding education and tribal	1,210	1,160	1,200	50	10

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

NATURAL RESOURCES

Traditionally, the Central Coast Region has depended heavily upon tourism, fishing, timber and wood product industries.

The majority of commercial marine fishing activity for the region occurs in Newport. Commercial landings in the Newport Group (which includes Depoe Bay) account for 38% of the total catch for the state (source *Economic Contributions of Oregon's Commercial Marine Fisheries, October 2019 Update, Oregon Department of Fish and Wildlife*). Competition in the processing industry has resulted in consolidation and increased competition among processors in recent years, resulting in seven new seafood processors opening in the state since 2015. Economic contribution of the fishing industry extends beyond harvesting and processing to supporting local retail, tourist, industrial, regulatory, and research industries.

Historically, Lane County's economy has been based on timber and agriculture.

Timber is important because the county is on the edge of Oregon's largest stand of timber as 90% of Lane County is forestland. However, with the reductions in timber harvesting and the continued population growth affecting many agricultural areas, there has been a change of emphasis in the economic development of the county.

Housing related industries, such as the construction sector and Oregon's timber industry, have a history of "boom and bust" cycles. The Great Recession and corresponding housing crisis put the state's wood products manufacturing sector squarely in the "bust" part of that cycle. Since August 2006 Oregon's wood products manufacturing sector shed 9,100 jobs or one-quarter of its employment. However, increases in population should help spur new development in the Central Coast Region.

Onshore Landings by Port Group (2017)

LOCATION	LANDINGS (MILLIONS)	PERCENT OF LANDINGS	VESSEL LANDINGS
Astoria	154.49 LBS	51%	5,113
Tillamook	2.06 LBS	1%	1,225
Newport	114.92 LBS	38%	3,804
Coos Bay	21.03 LBS	7%	3,493
Brookings	10.96 LBS	4%	3,708
Total	303.46 LBS	100%	17,343

Source: ECDNorthwest using data from PacFIN

Note: Landings for Dungeness crab represent the 2016- to 2017 season.

Processors by Location (2018)

LOCATION	EMPLOYING ESTABLISHMENTS	EMPLOYMENT
Southern Oregon Coast	7	326
Central Oregon Coast	9	418
Northern Oregon Coast	10	449
Inland Processors	8	52
Total	34	1,245

Source: ECDNorthwest using data from Oregon Employment Department

Note: Southern Oregon Coast includes Coos, Curry, coastal Douglas, and coastal Lane counties. Central Oregon coast includes Lincoln and Tillamook counties. North Oregon Coast includes Clatsop County.

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

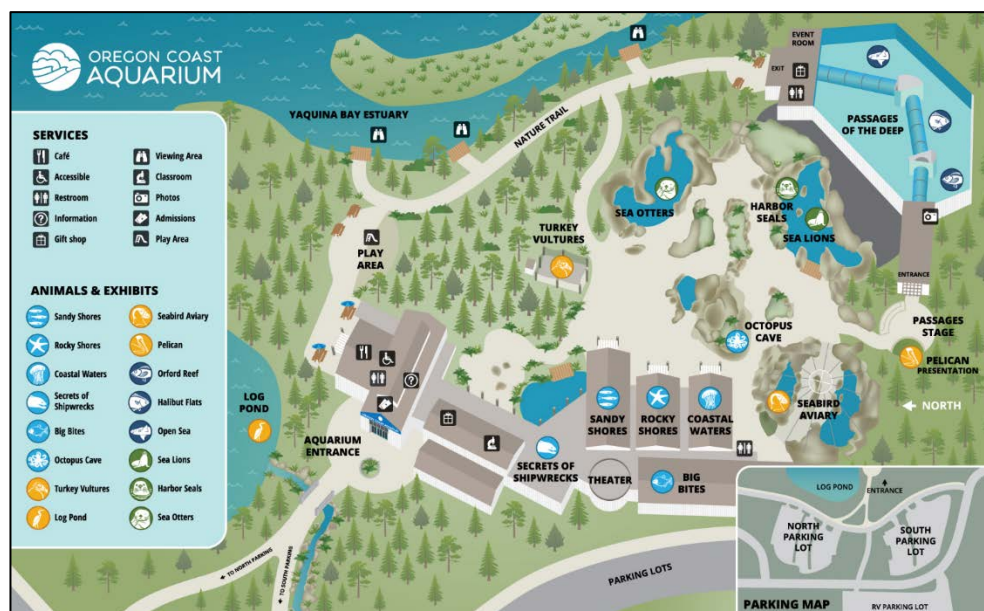
NOAA – LINCOLN COUNTY

The biggest news to hit the Oregon Coast is the relocation of NOAA from Washington to the South Beach neighborhood of Newport in Lincoln County. The Port of Newport was awarded a lease to the **Pacific Fleet of NOAA (National Oceanic and Atmospheric Administration)** in August 2009. After months of speculation regarding whether the relocation would come to fruition, final approval was released at a June 3, 2010 ground-breaking ceremony, in which an estimated 500 people gathered at the five-acre site, according to the *Newport News Times*. Construction began in January 2010, with the facility completed ahead of schedule. The total cost of the project was estimated to be \$38 million, of which \$19.5 million was provided by State of Oregon Lottery funds. **NOAA is leasing the site from the Port of Newport under a 20-year lease at \$2.4 million per year.** The new facility brought approximately 175 well-paying federal jobs to the area.

MARINE RESEARCH AND EDUCATION

The relocation of NOAA to Newport is just one more thread in a continuing blanket of aquatic development. Notable projects include the Oregon Coast Aquarium, Aquarium Science Program at Oregon Coast Community College, and the new Ocean Observatories Initiative. All of this development and initiative has turned Newport into a world-class destination for marine research and education.

The Oregon Coast Aquarium opened in 1992 and is located in the South Beach neighborhood of Newport. The facility sits on 23 acres along Yaquina Bay near the Pacific Ocean. A campus map is presented below, per the Aquarium website (www.aquarium.org).



USA Today considers the Oregon Coast Aquarium world-class and *Coastal Living* magazine ranks it among the top 10 aquariums in North America. The Aquarium is an American Zoo and Aquarium Association (AZA) accredited institution, and is considered a "living classroom," with over 40,000 students visiting the campus each year.

The aquarium was home to Keiko, the orca who starred in the movie *Free Willy*, from January 1996 until September 9, 1998, when he was shipped to Vestmannaeyjar, Iceland.

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

The Hatfield Marine Science Center (HMSC)

in Newport serves as Oregon State University's coastal campus and an oceanographic research base for state and federal agencies. Opened in 1965, the HMSC conducts research programs dedicated to whales, wildlife refuges, fisheries,



underwater volcanoes, and marine animal genetics. In the summer of 2020, the \$61.7 million **Gladys Valley Marine Studies Building** at HMSC opened. The 72,000 SF building includes 6,000 SF of office space, a 250-seat auditorium, three additional classrooms, two meeting rooms, a café, and a 2,563 SF lab space. The facility accommodates more than 300 researchers and students, plus six state and federal agencies. The building also serves as an emergency assembly site able to accommodate more than 900 people. The building was designed to withstand a 9+ earthquake and XXL tsunami event.



The Aquarium Science (AQS) Building, used for the **Aquarium Science program** at Oregon Coast Community College, was constructed in 2010 and was opened for classes in the fall of 2011. This 9,500 SF facility, located at the Central Oregon Coast Community College campus in Newport was built with State and Lincoln County funds. The AQS building is designed to be a teaching facility and laboratory that mimics the organization and set-up of working spaces typical of a

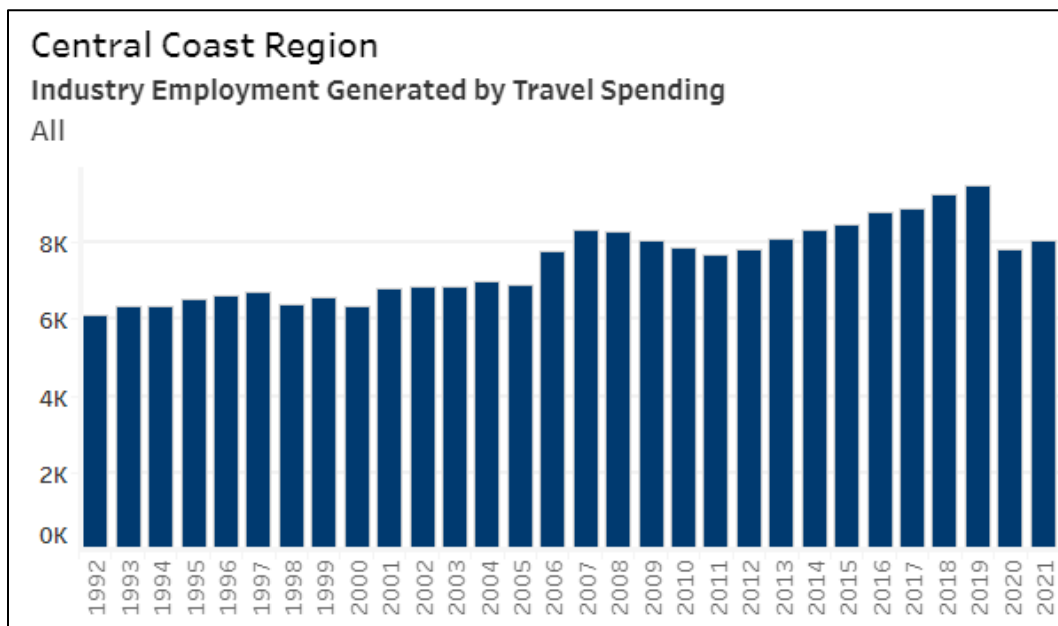
public aquarium facility. Spaces include a water quality lab, teaching lab, animal holding lab, food preparation lab, life support room and workshop. The facility was built with operational and energy efficiency in mind through the use of recirculating heat and solar panels. The key intention of the AQS facility is to provide an environment for Aquarium Science students to gain knowledge and hands-on skills that will assist them in the Aquarium Science industry.

The Pacific Northwest component of the coastal observatory of the **Ocean Observatories Initiative**, called the Endurance Array, operated by Oregon State University, places a series of long-term moorings off the Northwest coast. It includes a network of under-sea gliders that are programmed to patrol the near-shore waters and collect a variety of data. Gliders transmit data from each of their instruments onshore several times a day. OQI's Cyber-Infrastructure will be able to make data from all Endurance Array Instruments available online in near real time. The construction of the infrastructure began September 1, 2009 and lasted six years. Current operations and maintenance planning is based on a 25-year life span.

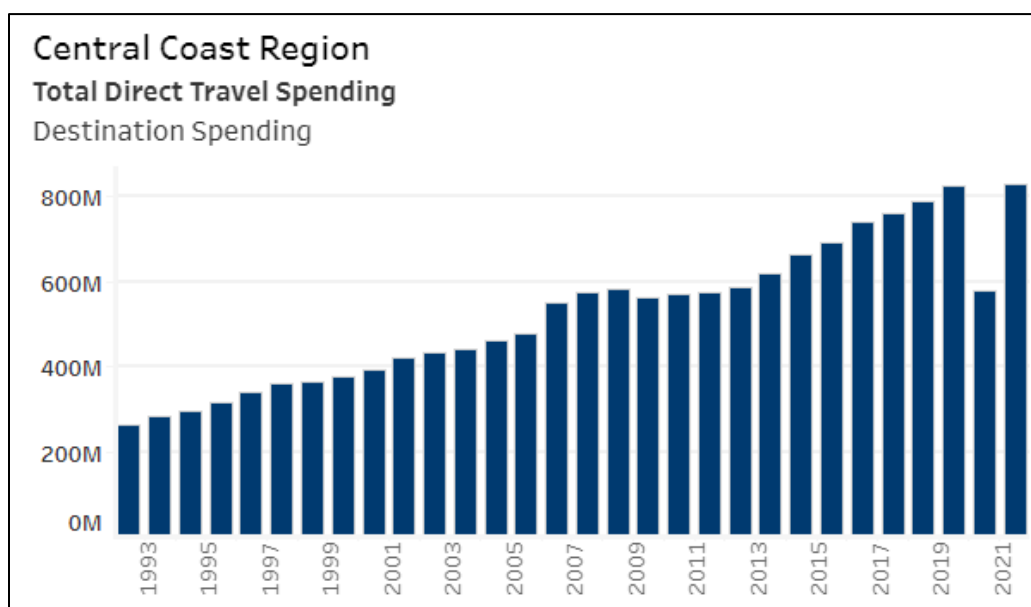
CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

TOURISM

The Central Coast Region is well positioned to attract tourists with numerous public parks and plentiful public beach access. Festivals draw travelers throughout the year. In 2021, the tourism sector accounted for approximately 8,033 jobs for the Central Coast region. Historical employment figures are illustrated in the chart below. (Source: Travel Oregon, <https://www.travelstats.com/impacts/oregon>):



Direct travel spending for 2021 totaled approximately \$826.9 million, up significantly from \$579.6 million in 2020, but similar to the 2019 figure of \$823.2 million. Reduced spending in 2020 was likely due to the COVID-19 pandemic and subsequent stay home orders issued by Governor Kate Brown. Historical tourist spending figures are displayed below (Source: Travel Oregon, <https://www.travelstats.com/impacts/oregon>):



CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

PROPERTY TAXES

In November 1996, Oregon voters approved a property tax limitation measure (Measure 47) which went into effect during the 1997/98 tax year. Under the provisions of this measure, property taxes at July 1, 1997 will be reduced to the smaller of the 1994/95 tax, or the 1995/96 tax less ten percent. Tax increases for subsequent years are limited to three percent per year, with exceptions for new construction, major remodeling, annexations and rezoning.

On May 21, 1997, voters approved a re-write of Measure 47 in the form of Measure 50. This revision effectively rolls back assessed values and tax levies freezing tax rates to 1995/96 levels. In addition, appreciation is capped at three percent per year. Ramifications of this revision are yet to be interpreted by county assessors.

PUBLIC SERVICES

Lincoln County has over forty-thousand residents around the coastal and inland communities such as Lincoln City, Depoe Bay, Newport, Waldport, Yachats, Toledo, Siletz and Eddyville. Its school district serves about 5,400 students from Kindergarten through Twelfth grade, with a total of approximately 520 employees, according to the district website (www.lincoln.k12.or.us). Each incorporated city has an adequate education system for its K-12 students. The principal industries of Lincoln County are lumber, fishing, agriculture and tourism.

GENERAL SERVICES

General and professional services in the region include a number of accounting/tax firms, attorneys/legal firms, banks, insurance companies, real estate sales and title companies. Hospital services are available in each county. Police and fire protection are provided by the incorporated cities. Both organizations make use of full, part-time, and volunteer workers.

The region enjoys a variety of cultural and recreational attractions including libraries, clubs, fraternal organizations, art groups, fishing, hunting, golfing, factory tours, casinos, resorts, golfing, Hatfield Marine Science Center, and various outdoor activities.

MEDICAL SERVICES

In **Lincoln City**, Samaritan North Lincoln Hospital currently operates within the North Lincoln Health District. The mission of the North Lincoln Health District is to deliver high quality health care services to the residents and visitors of the District and its surrounding communities. Samaritan North Lincoln Hospital is an accredited 25-bed hospital located in a peaceful setting on Devils Lake in Lincoln City. The non-profit hospital, originally constructed in 1967, is the only hospital serving Lincoln City. It has a licensed professional staff of more than 20 local physicians, physician assistants and nurse practitioners. In addition, many consulting physicians and specialists provide services at Samaritan North Lincoln Hospital on a regular basis. Currently, a replacement hospital is under construction.

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

The following information was published by Samaritan Health Services on September 27, 2017. "Samaritan North Lincoln Hospital administrators and the local community gathered on September 12, 2017 for a ceremonial ground breaking for the new replacement hospital slated



for completion in late 2019. The new structure will feature many new and updated services and facilities incorporating several high tech and next generation medical advances." The new hospital is being constructed on the site of the main parking lot located in the southeast corner of the 12-acre campus. According to the Samaritan Health Services website, construction began on July 9, 2018 and was completed in October 2019, with the new Samaritan North Lincoln Hospital opening February 10, 2020. Samaritan Health Services is funding the \$42 million facility, which is being planned with future expansion capabilities in mind. The preceding rendering illustrates the planned front elevation of the proposed hospital.

In **Newport**, voters passed Ballot Measure 21-163 in 2015, which issued a 20-year bond for up to \$57 million for the construction of a new hospital, to be built on the same site as the existing **Samaritan Pacific Communities Hospital**, a 25-bed critical access hospital located at the corner of SW 9th and SW Abbey Streets. Construction began in early summer 2017 (pictured at right, nearing completion of Phase 1 construction); the project included the remodel of 40,000 SF of the existing facility and construction of a new 86,000 SF, three-story addition.



Samaritan Health, which operates the hospital, was slated to contribute another \$11 million toward the project, which was completed in winter 2020. The City of Newport plans a new signalized intersection at SW Abbey Street and Coast Highway in response to expected increased traffic to the hospital campus.

TRANSPORTATION

The primary mode of transportation throughout the region is the private automobile, which is supplemented by private bus carriers and taxi services. Local airports, usually a general aviation facility, offer charter and scenic flights, and flight instruction. There are bus carriers in each County along the coast as well. The Lincoln County Transit is based in Newport and the Lane Transit District is in Eugene.

CENTRAL OREGON COAST - REGIONAL DESCRIPTION (continued)

SUMMARY

In summary, the Central Coast Region is characterized as a series of small coastal communities relying primarily on fishing, agriculture, forest products and tourism. Overall, the economic outlook for the area is good; however, the Great Recession forced many second homeowners to sell their properties and developers were caught with partially developed projects that were no longer feasible. A slow recovery occurred over the past several years. As the market continues to recover, growth should increase and property values will begin to rise again. The long-term outlook for the region is good.

APPRAISER QUALIFICATIONS



POWELL BANZ

VALUATION

The firm concentrates on complex commercial, industrial and multi-family valuation assignments for government, corporations and individuals. Work has been performed on a national scale. This is a sample of clients served:

Financial:

AKT, LLP
Bank of America
Bank of the Pacific
Bank of the West
Banner Bank
Church Extension Plan
Citizens Bank
CitiGroup
CIT Small Business Lending
Continental Bank
Evangelical Christian Credit Union
First Bank
First Community Credit Union
First Federal, McMinnville
First Interstate Bank, N.A.
HomeStreet Bank
JPMorgan Chase Bank, NA
Northwest Community Credit Union
OnPoint Community Credit Union
Oregon Coast Bank
OSU Federal Credit Union
Pioneer Trust Bank, N.A.
Regents Bank
Riverview Community Bank
Siuslaw Bank
Umpqua Bank
Washington Federal
Wells Fargo Bank
Willamette Community Bank
Willamette Valley Bank

Governmental:

Benton County
Bonneville Power Administration
City of Albany
City of Coos Bay
City of Corvallis
City of Eugene
City of Lincoln City
City of Newport
City of Salem
City of Silverton
City of Sweet Home
City of Woodburn
Dallas School District
Douglas County
FDIC

EXPERIENCE & QUALIFICATIONS

Federal Home Loan Bank
Klamath County
Lane County
Marion County
Military Dept. - State of Oregon
Mount Angel School District
Oregon Attorneys General
Oregon Dept. of Parks & Recreation
Oregon Dept. of Transportation
Oregon Division of State Lands
Oregon Dept. of General Services
Polk CDC
Port of Portland
Riverdale School District
Salem/Keizer School District
U.S. Army Corps of Engineers
U.S. Bureau of Land Management
U.S. Dept. of Interior
U.S. Marshall's Office
U.S. Forest Service
Washington Dept. of Fish & Wildlife
Woodburn School District
Yamhill County Housing Authority

Insurance/Medical:

Corvallis Clinic
Good Samaritan Hospital (Corvallis)
SAIF
Salem Health
Samaritan Albany General Hospital
Samaritan Health Services
St. Paul Fire & Marine

General:

Arnold, Gallagher, PC
Catholic Community Services
Martinis & Hill
McDonalds Corporation
Roth's Fresh Market
MDH Management LLC
Saalfeld Griggs PC
Feibleman & Case, PC
First American Title
Morrow Equipment
Sherman, Sherman, Johnnie & Hoyt
Mtn. West Development Corp.
State Farm Insurance Co.
GHR Lawyers



Katherine Powell Banz, MAI is a Principal and Certified General Appraiser with Powell Banz Valuation, LLC. Katie is licensed in Oregon and Washington and has performed a diverse range of commercial valuation assignments throughout the Northwest since joining the firm in 2002. In 2014 Katie and her husband, Jonathan Banz, MAI, AI-GRS purchased the business and rebranded the company Powell Banz Valuation, LLC.

Katie's professional experience includes a wide variety of valuation-related work, including consultation, appraisal, expert witness testimony, appraisal review, and feasibility analysis of income producing properties; including retail, office, development land, industrial, single and multi-family residential, and special use properties such as churches and schools.

Katie was the 2018 President of the Greater Oregon Chapter of the Appraisal Institute (GOCAI). She was an active GOCAI Board Member from 2012-2020. Katie also volunteered as a Region Representative for the Appraisal Institute Region 1 from 2017-2020, and is serving on the 2021 Region 1 Nominating Committee.

Katie graduated from Linfield College (McMinnville, Oregon) in 1997 with a Bachelor of Arts degree. Following college, she worked as a graphic artist and project manager with the Boeing Company in Seattle until joining Powell Valuation Inc in 2002.

In her spare time, Katie enjoys reading, gardening, striving to live a creative life, and spending time with her husband and Great Danes.

EXPERTISE & SERVICES

- Real Estate Valuation
 - Professional & Medical Office
 - Retail
 - Industrial
 - Subdivision Analysis
 - Multi-Family
 - Lodging
 - Special Purpose Properties
- Expert Witness Testimony
- Eminent Domain and Condemnation
- Market Analysis & Feasibility Studies
- Appraisal Review



kbantz@powellbanz.com
503-371-2403

AFFILIATIONS

- State of Oregon Certified General Appraiser, #C000897
- State of Washington Certified General Appraiser (#1101856)
- Designated Member of the Appraisal Institute (#480999)
- State of Oregon Supervising Appraiser
- Greater Oregon Chapter of the Appraisal Institute - GOCAI:
 - 2019/2020 Region 1 Representative
 - 2019 Past President
 - 2018 President
 - 2017 Vice President
 - 2016 Treasurer
 - 2015 Secretary
 - 2012- 2014 Board Member
- Board Member -Deepwood Museum & Gardens, Salem, OR (2014-2019)

EDUCATION / DESIGNATION

- MAI - Appraisal Institute
- B.A. - Linfield College

APPRAISER CERTIFICATION



KATHERINE J BANZ
POWELL BANZ VALUATION, LLC
201 FERRY ST SE STE 300
SALEM, OR 97301

Appraiser Certification and Licensure Board
State Certified General Appraiser
28 hours of continuing education required

License No.: C000897

Issue Date: September 01, 2022

Expiration Date: August 31, 2024

Chad Koch, Administrator

**NOTICE OF PUBLIC HEARING
BEFORE THE NEWPORT CITY COUNCIL
REGARDING THE PROPOSED SALE OF
DEVELOPED PROPERTY AT 669 SW BAY BOULEVARD**

The City Council of the City of Newport will hold a public hearing on Monday, December 2, 2024, at 6:00 P.M. in the City Hall Council Chambers (169 SW Coast Hwy), regarding the proposed sale of developed property known as the Abbey Street Pier Building, at 669 SW Bay Boulevard, to Arthur N. Hoppe in the amount of \$615,000. A copy of the proposed real estate contract, and other documentation setting up the nature and general terms of the proposed sale, including an appraisal of the property, will be available for public review at the hearing.

The City Council, at a prior hearing, determined that the subject property is not needed for public purposes and secured the services of a real estate broker to market the premises for sale. This hearing is being held to solicit public testimony on whether or not it is in the public interest to proceed with the sale of the property to Arthur N. Hoppe. Interested parties are encouraged to testify at the hearing.

Persons wishing to provide comment may do so by sending an email to: publiccomment@newportoregon.gov or for more information, please feel free to contact Derrick Tokos, Community Development Director, at 541-574-0626 or d.tokos@newportoregon.gov.

Published: Lincoln County Leader
November 27, 2024

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UNKNOWN CLAIMING TITLE, EREST IN PROPERTY KNOWN RESTLINE ALDPORT, efendants. 4CV48737 OR PUBLIC UNKNOWN EES AND ES OF NES AND NKNOWN CLAIMING TITLE, EREST IN PROPERTY KNOWN RESTLINE ALDPORT, OR DEFENDENT(S) ED: You icted and appear in, alnst, this within 30 first date of sum- the 27th e, 2024, e above in the our, and omplaint LLACG INVEST- r serve r signed plaintiff, at their ted; and r failure nent will inst you demand t, which with the t. This is Judicial Deed of "appear" he other imatical- ou must t a legal "motion" "motion" ust be rt clerk within the t. It must rm and vice on rney or, es not t, proof plaintiff. r ques- see an ately. If n find- ou may n State referral : www. r by 7363 in ipolitan a vet- d forc- ay be county officer action forma- county officer action stained Infor- MATED: 4 ZBS / Dirk outen, Amber

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PUBLIC NOTICES

L. Labrecque, OBS No. 094593, dschouten@zbslaw.com, alabrecque@zbslaw.com, Attorneys for Plaintiff.

LCL24-3205 THE EAST LINCOLN FIRE DISTRICT BOARD OF DIRECTORS WILL MEET:

Every second Tuesday at 6pm at 353 NW. Burgess road Sodexo conference room. The meeting is open to the public. N27

LCL24-3204 CITY OF NEWPORT NOTICE OF A PUBLIC HEARING.

The Newport Planning Commission will hold a public hearing on Monday, December 9, 2024, at 6:00 p.m. in the City Hall Council Chambers to consider File No. 2-2-24, amendments to Newport Municipal Code (NMC) Chapter 14.01, Purpose, Applicability, and Definitions; Chapter 14.32, Nonconforming Uses, Lots, and Structures; and Chapter 14.52, Procedural Requirements, related to implementing the limited land use decision making procedures contained in the Governor's Housing Bill (HB 1537). Pursuant to Newport Municipal Code (NMC) Section 14.38.010, the Commission must find that the change is required by public necessity and the general welfare of the community in order for it to make a recommendation to the City Council that the amendments be adopted. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 2:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The proposed code amendments, additional material

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PUBLIC NOTICES

and any other material in the file may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director, (541) 574-0626, d.tokos@newportoregon.gov (address above). N27

LCL24-3203 NOTICE TO INTERESTED PERSONS

Notice is hereby given that the undersigned has been appointed Personal Representative of the ESTATE OF ELAINE B. (COX) HARLEY, DECEASED, Lincoln County, Oregon, Circuit Court Case No. 24PB10101. All persons having claims against said estate are required to present them, with proper vouchers, within four months after the date of publication of this notice, as stated below, to the Personal Representative at 10121 SE Sunnyside Rd., Suite 329, Happy Valley, Oregon 97015-5714, or they may be barred. All persons whose rights may be affected by these proceedings may obtain additional information from the records of the court, the Personal Representative, or the attorney for the Personal Representative. DATED and published: November 27, 2024. Steven E. Harley, Personal Representative. Confluence Law Center, PC, Paula M. Walker, Attorney for Personal Representative, 10121 SE Sunnyside Rd., Suite 329, Happy Valley, OR 97015-5714. N27

LCL24-3202 INVITATION TO BIDS CITY OF LINCOLN CITY CITY HALL WINDOW REPLACEMENT

Bids Due: 2:00 PM, December 19, 2024 WORK - The general nature of work, described in detail in this Contract and in the basis of payment, includes furnishing all labor, equipment, and materials necessary for the construction of the project. Primary items of work include: Remove and replace windows along the elevator on a four story building and miscellaneous other items. BID SUBMITTAL - Sealed bid proposals will be received by Finance Department, PO Box 50, 801 SW Hwy 101 - City Hall, 3rd Floor, Lincoln City, OR 97367 until 2:00 PM Pacific Standard Time (PST) on the 19th day of December, 2024. Late bids will not be accepted. Within two working hours of the bid closing time, bidders must submit the First-Tier Subcontractor Disclosure Form. Submittal of bid proposals shall be in a sealed envelope with identification plainly marked on the outside including project name,

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PUBLIC NOTICES

bid date, and time, "Bid Proposal, Bid Bond and Certificate of Residency" and bidder's name. Bid proposals shall be publicly opened and read aloud immediately thereafter. Each bid proposal must be submitted on the forms prescribed by the City and accompanied by a Proposal Guaranty (certified check, cashier's check, or bid bond) in an amount equal to ten (10) percent of the total amount bid. The ten percent Proposal Guaranty shall be forfeited to the City if the bidder fails to enter into a contract with the City of Lincoln City within fifteen (15) days after the date of the Notice of Award. The successful bidder will be required to furnish a bond equal to one hundred percent of the amount bid for faithful performance of the Contract. BID DOCUMENTS - Bidders are to contact Jason Yoshinaga, Project Manager by email (jyoshinaga@lincolncity.org) to obtain Bid Documents. The Bid Documents will be emailed to you. The official Planholder's list will be kept by the City and any addenda will be issued by the City. PRE-BID MEETING - There will not be a pre-bid meeting or site visit conducted by the City. Bidders are required to conduct a field review of the project area on their own to acquaint themselves with pertinent conditions prior to preparing and submitting their bid proposal. QUESTIONS - All questions or requests for clarification shall be directed in writing to the Terry Chamberlin, Project Engineer, via email: tchamberlin@lincolncity.org, or by regular mail to Lincoln City, PO Box 50, Lincoln City, Oregon 97367. All written questions must be received by the Project Engineer by 5 PM PST on December 10, 2024, 9 calendar days prior to the Bid Due date. The Project Engineer will determine appropriate responses, if any, and if necessary an Addendum will be issued to all plan holders of record at least 5 calendar days prior to the Bid Due date. Any verbal response(s) obtained from any source by bidders will be considered informational and shall not be relied upon by bidders. OTHER BID INFORMATION Bidders must possess a current set of the 2021 Oregon Standard Specifications for Construction and the Oregon Standard Drawings (English), published jointly by ODOT and Oregon APWA. For ordering information contact Oregon Department of Transportation (ODOT) at: 355 Capitol St., NE Room 28, Salem, OR 97301-3871 (503) 986-3720 - Fax: (503) 986-3224 Website:

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PUBLIC NOTICES

www.odot.state.or.us/contractorplans E-mail: contractorplans@odot.state.or.us The Contractor must comply with the provisions required by ORS 279C.800 to ORS 279C.870 (PREVAILING WAGE RATE). City may cancel this procurement or reject any bid that does not comply with all prescribed public bidding procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375 (3)(b) and that City may reject for good cause all bids after finding that doing so is in the public interest. N27

LCL24-3201 NOTICE OF PUBLIC HEARING BEFORE THE NEWPORT CITY COUNCIL REGARDING THE PROPOSED SALE OF DEVELOPED PROPERTY AT 669 SW BAY BOULEVARD.

The City Council of the City of Newport will hold a public hearing on Monday, December 2, 2024, at 6:00 P.M. in the City Hall Council Chambers (169 SW Coast Hwy), regarding the proposed sale of developed property known as the Abbey Street Pier Building, at 669 SW Bay Boulevard, to Arthur N. Hoppe in the amount of \$615,000. A copy of the proposed real estate contract, and other documentation setting up the nature and general terms of the proposed sale, including an appraisal of the property, will be available for public review at the hearing. The City Council, at a prior hearing, determined that the subject property is not needed for public purposes and secured the services of a real estate broker to market the premises for sale. This hearing is being held to solicit public testimony on whether or not it is in the public interest to proceed with the sale of the property to Arthur N. Hoppe. Interested parties are encouraged to testify at the hearing. Persons wishing to provide comment may do so by sending an email to: publiccomment@newportoregon.gov or for more information, please feel free to contact Derrick Tokos, Community Development Director, at 541-574-0626 or d.tokos@newportoregon.gov. N27

LCL24-3200 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN

Probate Department Case No. 24PB09309 In the Matter of the Estate of MAX S TAYLOR, Deceased, NOTICE IS HEREBY GIVEN that Jacqueline Rachel Willey has been appointed as the personal representative. All persons having claims against the estate are required to present them to the personal

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PUBLIC NOTICES

viewed online at www.cityoftoledo.org/planning City File #RZ-1-24 and PA-1-24 are applications by Eric Bohne to amend the Comprehensive Plan Map and Zoning Map designations from General Residential Zone to Commercial Zone for the properties identified as Lincoln County Assessor's Map 11-10-17 BC Tax' Lots 7800, 7900, and 8200. The properties are commonly known as 161 SE 2nd Street and includes a portion of the former Toledo Eagles building site and parking lot. Criteria for the request: Toledo Municipal Code Chapters 17.80, 17.12, 17.16, and the Toledo Comprehensive Land Use Plan. If City File #RZ-1-24/PA-1-24 is approved, the Toledo City Council will consider the proposed ordinance, titled: "An ordinance amending the 2023 Toledo Comprehensive Land Use Plan and zoning maps, as adopted by Ordinance #1417". The proposed ordinance will also be considered at the City Council regular meeting on December 4, 2024, beginning at 6:00 pm. The proposed ordinance is available for review at the City Recorder's Office, Toledo City Hall, 206 N. Main St. Toledo OR. Oregon law requires that testimony and evidence presented be directed toward the relevant criteria in the Toledo Zoning Ordinance, Comprehensive Plan, or other City plans or policies which a person believes pertains to the request, and which will be used in making the decision. The application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at City Hall at no cost and copies can be provided at reasonable cost. The staff report and recommendation to the City Council will be available for review at no cost seven days before the scheduled hearings and copies can be provided on request at a reasonable cost. You may present your testimony at the public hearing or provide written comments to the Planning Department prior to the public hearing date. Failure to raise an issue in person or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals. N20 N27

LCL24-3191 NOTICE OF ABANDONED PROPERTY.

724 SW Ferry Ave #42 Siletz, OR 97380. Owner on record Ashley Devries. 1972 Skyline Hilcrest ID# 242140 x#182337

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PUBLIC NOTICES

es, assistance may be available from a county veterans' service officer or community action agency. Contact information for a local county veterans service officer and community action agency may be obtained by calling a 2-1-1 information service. DATED: November 4, 2024 ZBS LAW, LLP By: /s/ Dirk Schouten. Dirk Schouten, OSB# 115153, Amber L. Labrecque, OBS No. 094593, dschouten@zbslaw.com, alabrecque@zbslaw.com, Attorneys for Plaintiff.

LCL24-3172 TS NO. OR08000155-16-3S APN R258587 II P523437 / 07-11-22-BA-01600-00 TO NO DEF-635473 TRUSTEE'S NOTICE OF SALE

Reference is made to that certain Trust Deed made by WAYNE MORRISON AND CELESTIAL MORRISON, HUSBAND AND WIFE as Grantor to LAWYERS TITLE INSURANCE CORP, A VA CORP as Trustee, in favor of DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A. as Beneficiary dated as of March 1, 2006 and recorded on March 10, 2006 as Instrument No. 200603813 and that said Deed of Trust was modified by Modification Agreement and recorded December 6, 2016 as Instrument Number 2016-11579 and the beneficial interest was assigned to U.S. Bank National Association and recorded January 20, 2012 as Instrument Number 2012-00431 of official records in the Office of the Recorder of Lincoln County, Oregon to-wit: APN: R258587 II P523437 / 07-11-22-BA-01600-00 LOT 20, BLOCK 1, NELSCOTT CREST, IN LINCOLN COUNTY, OREGON Commonly known as: 1821 SW COAST AVENUE, LINCOLN CITY, OR 97367 Both the Beneficiary, U.S. Bank National Association, and the Trustee, Nathan F. Smith, Esq., OSB #120112, have elected to sell the said real property to satisfy the obligations secured by said Trust Deed and notice has been recorded pursuant to Section 86.752(3) of Oregon Revised Statutes. The default for which the foreclosure is made is the Grantor's failure to pay: Failed to pay payments which became due Monthly Payment(s): 53 Monthly Payment(s) from 10/01/2019 to 02/01/2024 at \$2,545.02 4 Monthly Payment(s) from 03/01/2024 to 06/01/2024 at \$7,476.43 1 Monthly Payment(s) from 07/01/2024 to 07/31/2024 at \$6,561.31 1 Monthly Late Charge(s): at \$636.25 By this reason of said default the Beneficiary has declared all obligations secured by said Trust Deed immediately due and payable, said sums being the fol-



Meeting Date: December 2, 2024

Title: Consideration of the use of Parks System Development Charge (SDC) Fund, Room Tax Fund, and General Fund for the park rehabilitation project of Agate Beach Neighborhood and Dog Park.

Prepared by: Mike Cavanaugh, Parks and Recreation Director

Recommended Motion:

I move to approve funds in the amount of \$100,000, with \$57,500 from Parks SDC contingency, \$21,250 from Room Tax contingency, and \$21,250 from General Fund contingency, for the rehabilitation of Agate Beach Neighborhood and Dog Park.

Background Information:

The Agate Beach Neighborhood and Dog Park Rehabilitation Project was approved on December 4, 2023, with an overall project budget of \$650,000. Of those funds, \$390,000 were contributed from Oregon Parks and Recreation Department's (OPRD) Local Government Grant Program and \$260,000 matching funds from the City. The project includes:

- Replacement of aging play structures.
- Upgrades to walking trails and lighting.
- Installation of water fountains and benches.
- Creation of an ADA parking lot.

Since the project's initiation, inflation has consistently risen causing an increase in material costs for this project. The initial budget accounted for known expenses; however, the following additional funds are required to address recent developments:

Item	Cost
Play Structure Equipment	\$80,000
Landscape Improvements	\$8,000
Irrigation Installation	\$12,000

Without the requested funding, the project scope will need to be significantly reduced, which could result in:

- Delays in project completion.
- Inability to meet community expectations for enhanced amenities.

Investing in Agate Beach Neighborhood & Dog Park not only enhances the quality of life in that area, but also aligns with the City's strategic goals of promoting sustainability, accessibility, and community well-being. Approval of this request will enable us to deliver a safe, modern, and inclusive park that serves all residents.

Fiscal Notes:

This project is currently budgeted in the FY24-25 Budget for \$260,000 of City funds. The requested additional funding of \$100,000 will come from:

- \$57,500 from Parks SDC contingency. Staff has confirmed the eligibility of the project for use by Park SDC funds.
- \$21,250 from Room Tax contingency.
- \$21,250 from General Fund contingency.

Alternatives:

Approve and direct staff to proceed, request revisions, deny approval and not continue.

Attachments:

30% Design Estimate of Construction Costs

30% Design Site Plan

AGATE BEACH NEIGHBORHOOD & DOG PARK

Preliminary Engineer's Estimate of Construction Costs

Prepared by: Wyatt Sherwood, Harper Houf Peterson Reghellis, Inc.

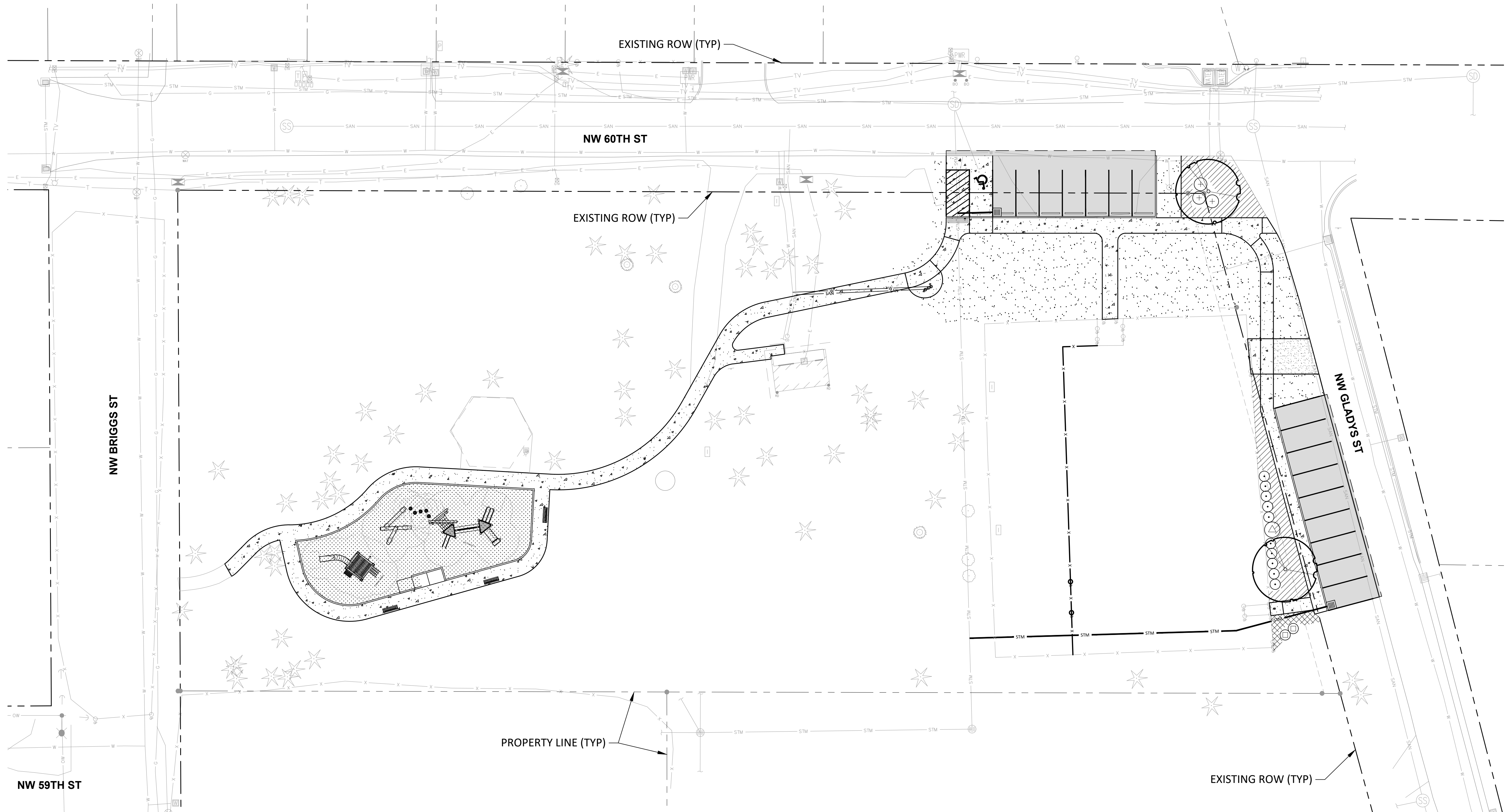
HHPR Job No. NEW-14

September 16, 2024

ESTIMATED CONSTRUCTION COSTS

		CONSTRUCTION COSTS			
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
Temporary Features and Appurtenances					
1	Mobilization	L.S.	1	8.0%	\$ 50,000.00
2	Erosion Control	L.S.	1	1.0%	\$ 10,000.00
3	Concrete Washout Facility	L.S.	1	\$ 1,500.00	\$ 1,500.00
4	Tree Protection Fence	L.F.	122	\$ 5.00	\$ 610.00
5	Inlet Protection type 3	EACH	2	\$ 150.00	\$ 300.00
	Temporary Features and Appurtenances Subtotal				\$ 62,410.00
Site Work					
6	Construction Survey Work	L.S.	1	3.0%	\$ 20,000.00
7	Clearing and Grubbing / Removal of Obstructions	L.S.	1	\$ 18,750.00	\$ 18,750.00
8	Asphalt Pavement Sawcutting	L.F.	168	\$ 3.00	\$ 504.00
	Roadwork Subtotal				\$ 39,254.00
Storm Sewer System					
9	6-Inch PVC Storm Sewer Pipe	L.F.	154	\$ 100.00	\$ 15,400.00
10	Type G-2 Catch Basin	Each	2	\$ 3,500.00	\$ 7,000.00
	Storm Sewer System Subtotal				\$ 22,400.00
Sanitary Sewer System					
11	6-Inch PVC Sanitary Sewer Pipe	L.F.	52	\$ 100.00	\$ 5,200.00
	Bases Subtotal				\$ 5,200.00
Bases					
12	Subgrade Geotextile	S.Y.	545	\$ 2.00	\$ 1,090.00
13	Aggregate Base	TON	307	\$ 60.00	\$ 18,442.22
	Bases Subtotal				\$ 19,532.22
Wearing Surfaces					
14	Level 2, 1/2" Dense ACP	TON	100	\$ 120.00	\$ 12,000.00
15	Concrete Curb, Standard Vertical Curb	L.F.	419	\$ 40.00	\$ 16,760.00
16	Concrete Walks	S.F.	4,905	\$ 12.00	\$ 58,860.00
17	Truncated Domes on New Surfaces	Each	1	\$ 500.00	\$ 500.00
	Wearing Surfaces Subtotal				\$ 88,120.00
Permanent Signing and Striping					
18	Permanent Signage	L.S.	2	\$ 1,000.00	\$ 2,000.00
19	Longitudinal Pavement Markings - Paint	L.F.	351	\$ 2.00	\$ 702.00
20	Pavement Legend: Disabled Parking	Each	1	\$ 1,000.00	\$ 1,000.00
	Permanent Signing and Striping Subtotal				\$ 3,702.00
Landscape and Site Furnishings					
21	Evergreen Trees, 6' Ht.	Each	2	\$ 400.00	\$ 800.00
22	Shrubs - 5 Gal.	Each	18	\$ 30.00	\$ 540.00
23	Shrubs - 1 Gal.	Each	2	\$ 12.00	\$ 24.00
24	Groundcover - 4" Pots	Each	206	\$ 12.00	\$ 2,472.00
25	Irrigation	L.S.	1	\$ 15,000.00	\$ 15,000.00
26	Drinking Fountain	Each	1	\$ 7,500.00	\$ 7,500.00
27	Bench	Each	3	\$ 1,500.00	\$ 4,500.00
28	Topsoil	C.Y.	144	\$ 65.00	\$ 9,360.00
29	Bark Mulch - 3" Deep	C.Y.	36	\$ 45.00	\$ 1,620.00
30	Engineered Wood Fiber - 18" Deep	C.Y.	160	\$ 60.00	\$ 9,600.00
31	Playground Equipment	Each	1	\$ 269,200.00	\$ 269,200.00
32	Playground Equipment Instalation	Each	1	\$ 40,000.00	\$ 40,000.00
	Landscape and Site Furnishings Subtotal				\$ 360,616.00
Water Supply Systems					
33	2" Water Pipe, Type 'K' Copper including all fittings, trenching and backfill	L.F.	55	\$ 50.00	\$ 2,750.00
	Water Supply Systems Subtotal				\$ 2,750.00
Construction Subtotal					\$ 603,984.22
30% Contingency					\$ 181,195.27
Construction Total					\$ 785,179.49

P:\04-Salem\NEW (City of Newport)\NEW-14 (Agate Beach Neighborhood and Dog Park Improvements)\NEW-14-DWG\SS\Sheets\NEW14 - C200 - CIVIL SITE PLAN.dwg



NO.	REVISIONS

PREPARED FOR
CITY OF NEWPORT PUBLIC WORKS DEPARTMENT 845 NE 3RD STREET NEWPORT, OR 97365



HHPR Harper Houf Peterson Righellis Inc.
ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS
530 Center Street NE, Suite 240, Salem, OR 97301
phone: 503.365.1131 www.hhpr.com fax: 503.221.1171

AGATE BEACH NEIGHBORHOOD & DOG PARK CIVIL SITE PLAN NEWPORT, OREGON			
DESIGNED BY: BJB	DRAFTED BY: HHPR TEAM	SHEET NO. C200	
DATE: 8/16/2024	PROJECT NUMBER: NEW-14		



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Meeting Date: December 2, 2024

Title: Big Creek Dam Project - Project Update

Prepared by: Nina Vetter, City Manager

Recommended Motion: None.

Background Information: The Big Creek Dam Project (Project) proposes to replace the two existing dams on Big Creek with a new roller-compacted concrete dam. The City has retained HDR for design services for the project. HDR is currently on contract to complete preliminary design that includes multiple key project components other than just the dam design itself.

The City Manager has requested that HDR provide City Council quarterly updates on the progression of the preliminary design. Our consultant from HDR is represented tonight by Senior Project Manager, Verena Winter, to provide City Council an update on the project.

Fiscal Notes for Recommendations: None.

Alternatives: None.

Attachments: None.



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Meeting Date: November 18, 2024

Title: Approval of Sole Source Purchase Agreement with Xylem for 3 Flygt model NT-3202.095 4" submersible pumps and Installation Kits.

Prepared by: Justin Scharbrough, Public Works Operations Superintendent

Robert Moser, Public Works Director

Recommendation:

I recommend that the City Council, acting as the Local Contract Review Board, consider the following motion:

I move to award a sole source purchase order in the amount of \$168,062.35 with Xylem Water Solutions USA, Inc. for the purchase of 3 Flygt model NT-3202.095 4" submersible pumps and Installation Kits. Pending City Attorney Review.

Background Information:

The Bayfront Pump Station is a critical component of Newport's wastewater management system, safeguarding environmental health and service reliability. Currently, the station operates with two aging pumps that are prone to minor failures, with replacement parts becoming scarce and subject to lengthy lead times. In the past, a pump failure caused dry well flooding, a total pump shutdown, and a sewer system overflow (SSO) into the bay, highlighting the urgent need for a more reliable configuration.

To address these issues, the city plans to upgrade to submersible pumps and add a third pump, which will provide essential redundancy, enhance flood resistance, and prevent future SSOs. This modernization will support continuous operation during maintenance, thereby reducing environmental and regulatory risks. Spencer Nebel, the former City Manager, approved ordering the pumps and installation kits before the start of this fiscal year due to lead times, ensuring a proactive approach to safeguarding the station's reliability and environmental compliance.

Fiscal Notes:

\$200,000 in current budget appropriation from 602-3420-73200 Fund.

Alternatives:

Not purchase the pumps and installation kits. This will keep the station at a higher risk of failure.

Attachments:

Signed Agreement from City Manager
Sole Source Memo

The City of Newport Public Works

169 S.W. Coast Highway

Newport, OR 97365

Coast Guard City, U.S.A.



phone: 541.574.5872

www.newportoregon.gov

Home Port of NOAA Pacific Fleet

Sister City: Mombetsu, Japan

NOTICE OF INTENT TO AWARD

DATE OF ISSUANCE: November 20, 2024

PROJECT NAME: Sole Source Purchase Order – (3) Flygt Model NT-3202.095 Pumps and Installation kits.

The City of Newport announces its intent to award a sole-source purchase order for the above-mentioned project to **Xylem Water Solutions U.S.A., Inc.**, in the amount of **\$168,062.53**.

This procurement qualifies as a sole source due to the unique compatibility of Flygt pumps with existing infrastructure, proprietary technology, and Xylem Water Solutions' exclusive distribution rights in Oregon.

Protests regarding this decision must be submitted in writing to:

City of Newport Public Works Department

Attn: Justin Scharbrough

169 SW Coast Highway

Newport, OR 97365

Protests must be received by **5:00 PM on November 27, 2024**.

If no protests are received by the deadline, the purchase order will be executed on or after **November 28, 2024**.

Executed by  PWOS on 11/20/24
Name, Position Date



November 20th, 2024

Justin Scharbrough
Public Works Operations
169 SW Coast Hwy 101
Newport, Oregon 97365

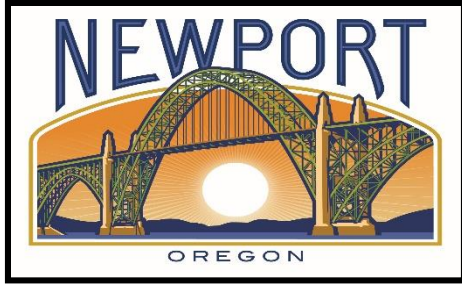
RE: Sole Source for Flygt Equipment

Dear Justin,

Xylem Water Solutions USA, Inc., Flygt Products Portland, is the sole manufacturer and distributor of Flygt equipment including, 10" HMI Operators, factory startup services on controls, pumps, and mixers for the municipal market in the State of Oregon.

A handwritten signature in black ink, appearing to read "DO", with a stylized flourish at the end.

Dave Olson
Aftermarket Sales
9625 SW Tualatin-Sherwood Rd.
Tualatin, OR 97062
M: 503-789-7330
F: 503-240-3445
O: 503-290-2175



MEMO

Date: 11/13/2024

To: Finance

From: Justin Scharbrough, Public Works Operations Superintendent
Robert Moser, Public Works Director

Subject: Sole Source Justification for Purchase of Flygt Pumps

Overview:

The City of Newport, Oregon's Public Works Department, requires the acquisition of Flygt pumps to support our wastewater management system. Flygt pumps, known for their durability and efficiency, are critical to our operations and compatibility with the existing infrastructure.

Justification for Sole Source:

Exclusive Distribution in Oregon:

Xylem Water Solutions USA, Inc. is the sole authorized distributor of Flygt pumps and parts in Oregon, operating through their facility in Tualatin. This exclusive distribution ensures the availability of genuine Flygt products and authorized service, which is essential to maintain the integrity and performance of our equipment.

Compatibility with Existing Infrastructure:

Flygt pumps are integral to our current wastewater system, allowing for seamless integration and minimizing the need for costly infrastructure modifications. Using another brand would disrupt operational continuity and introduce unnecessary expenses.

Proprietary Technology:

Flygt pumps utilize specialized technology unique to Xylem and are optimized for high performance in wastewater applications. Their proprietary design offers reliability and efficiency that other brands do not match, further reinforcing the need for this sole-source procurement.

Examples of Other Municipalities Utilizing Sole Source Procurement with Xylem in Oregon and Beyond:

- **City of Bend, Oregon:** To maintain system compatibility and efficiency, the city uses sole source agreements with Xylem for Flygt pumps and repair services.
- **City of Fort Worth, Texas:** Authorized a sole source agreement with Xylem for Flygt submersible pumps, parts, and repair services.
- **City of Columbus, Ohio:** Entered into a term contract for Flygt pump parts and services with Xylem under sole source provisions.

This pattern reflects a broader municipal trend that recognizes Xylem's unique role as the sole provider of Flygt equipment and services.

Conclusion:

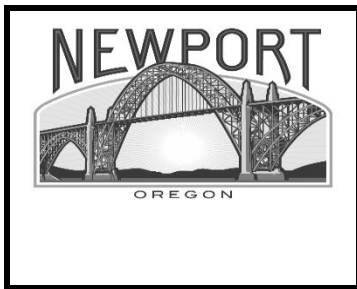
Designating this procurement as a sole source with Xylem Water Solutions USA, Inc. is critical to ensure cost-effective, uninterrupted operation of the City of Newport's wastewater system.

**Justin Scharbrough**

Public Works Operations
Superintendent

(o) 541.574.5872
(m) 541.961.1691
(e) j.scharbrough@newportoregon.gov

169 SW Coast Hwy 101
Newport, Oregon 97365



**STAFF REPORT
CITY COUNCIL AGENDA ITEM**

Date: 11/20/2024

Title: Goods and Services Agreement with Peterson Power Systems Inc. in the amount of \$54,970.00 annually, for a period of three years, for Generator Preventive Maintenance

Prepared by: Steve Stewart, Assistant Public Works Dir/Water Treatment Supervisor

Recommendation: I recommend that the City Council, acting as the Local Contract Review Board, consider the following motion:

I move to approve the Goods and Services Agreement with Peterson Power Systems Inc. in the amount of \$54,970.00 annually, for a period of three years, for Generator Preventive Maintenance, and authorize the City Manager to execute the Goods and Services Agreement on behalf of the City of Newport, including initialing Appendix B to extend pricing for three years.

Background Information:

The City of Newport owns 26 emergency generators, distributed throughout the City as follows:

Airport	2
City Hall	1
City Shops	1
Fire Department	2
Water Treatment Plant & Distribution Pump Stations	5
Wastewater Collections Lift Stations	12
Wastewater Treatment Plant & Northside	3

Peterson Power Systems has been the vendor for many of these units. They have also been the historical maintenance provider for Public Works generators. The contract outlines annual services, including inspections, general servicing, and load testing. Additional services are available as required, at additional costs.

Fiscal Notes:

Procurement of this contract is exempt from bidding requirements under Class Exemptions E-3 and E-7 of the Public Contracting Rules. Costs will be distributed among the participating departments' operational budgets, as shown in Attachment B. Pricing can be extended for a 3-year period for a total commitment of \$164,910.00.

Alternatives:

None.

Attachments:

- Goods and Services Contract with Attachments A and B

CITY OF NEWPORT, OREGON GOODS AND SERVICES CONTRACT

Generator Preventive Maintenance Project: Generator Service Proposal 2024

BASED UPON the quote submitted for generator service, City of Newport (City) and Peterson Power Systems, Inc. (Contractor) hereby enter into a contract for services in accordance with the specifications and quote provided.

All terms of the following exhibits are hereby incorporated by reference into this Contract, and the parties agree to comply with each:

- (1) Exhibit A Sourcewell Contract # 092222-CAT
- (2) Exhibit B – Contractor Quote # RAC240702R, dated 7/2/2024
- (3) Exhibit C – Oregon Public Contracting Requirements

To the extent there are any inconsistencies or conflicts between this document and Exhibit B, this document shall control and prevail.

1. Term. The term of this Contract shall extend from its execution to project completion, unless extended for additional periods of time upon written mutual agreement of both parties. Notwithstanding this Term, City reserves the right to terminate this Contract as outlined in this Agreement.

2. Scope of Work. Contractor shall provide all materials, labor, equipment, and all other services and facilities necessary for the services specified in the attached B (Project).

3. Compensation.

3.1 Basis of Payment. Contractor shall complete Project as defined above and in the attached exhibits for the prices in Exhibit B. Refer to attached Exhibit B for schedule and prices.

3.2 Invoices. Payments shall be based upon Contractor's invoices submitted to City, detailing the previous month's fees and costs.

a. City will review Contractor's invoice and within ten (10) business days of receipt notify Contractor in writing if there is a disagreement or dispute with the invoice or Project. If there are no such disputes, City shall pay the invoice amount in full within thirty (30) days of invoice date.

b. If City fails to make any payment due Contractor for services and expenses within thirty (30) days of the date on Contractor's invoice therefore, late fees will be added to amounts due Contractor at the rate of 1.0 percent (1%) per month

from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute.

4. Permits. City will be responsible for obtaining all permits, approvals and authorizations necessary for Contractor's performance.
5. Termination for Convenience. This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Upon termination under this paragraph, Contractor shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Contractor. Pursuant to this paragraph, Contractor shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Contractor. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Contractor can show good cause beyond its control for the delay.
6. Termination for Cause. City may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:
 - 6.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
 - 6.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
 - 6.3 If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
7. Termination for Default. Either City or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Contractor fails to perform in the manner called for in this Contract or if Contractor fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be affected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor shall be paid the Contract price only for equipment installed and services performed in accordance with the manner of performance as set forth in this Contract.

8. Remedies. In the event of breach of this Contract, the parties shall have the following remedies:

8.1 If terminated under paragraph 7 by City due to a breach by Contractor, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to City the amount of the reasonable excess.

8.2 In addition to the above remedies for a breach by Contractor, City also shall be entitled to any other equitable and legal remedies that are available.

8.3 If City breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

8.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

8.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Contractor shall immediately cease all activities related to the services and work under this Contract.

9. Standard of Care. Contractor warrants that the work to be performed pursuant to this Contract shall be done in a good and workmanlike manner and will conform to the highest standards prevalent in the industry or business most closely involved in providing the equipment and services City is purchasing.
10. Reports. The Contractor shall provide City with reports as detailed in Contractor's proposal, at a minimum of once per month, outlining the Project progress, issues of concern and budget status.
11. Change Orders. Contractor and City reserve the right to order changes to the equipment and services to be provided herein. Contractor and City shall determine a fair and equitable cost and, if required, additional time for such changes. All such changes shall be ordered and agreed to in writing by both parties.

12. Confidentiality. Contractor shall maintain the confidentiality, both external and internal, of any confidential information to which it is exposed by reason of this Contract. Contractor warrants that its employees assigned to this Contract shall maintain necessary confidentiality.
13. Security and Substance Check. Contractor agrees that each of its employees and subcontractor's employees involved in this Project may, at the option of City and in compliance with Contractor policy, be subject to a security background check and/or substance abuse testing.
14. Access to Records. For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.
15. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

CITY:

City of Newport
169 SW Coast Highway
Newport, OR 97365
Phone: (541) 574-5874
Fax: (541) 265-6792

CONTRACTOR:

Peterson Power Systems Inc.
2828 Teagarden St
San Leandro, CA 94577
Phone: 503-280-1539
Fax: 503-867-8567

16. Warranty. Contractor's warranty is as stated within Exhibit B. Contractor further warrants that all materials, equipment, and/or services provided under this Agreement shall be fit for the purpose(s) for which intended, for merchantability, that material and equipment shall be properly packaged, that proper instructions and warnings shall be supplied, and that the Project shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by City shall not alter or affect the obligations of Contractor or the rights of City.
17. Insurance. Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover

all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

17.1. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,300,000
Personal & Advertising Injury	\$1,300,000
Errors & Omissions	\$1,300,000
Each Occurrence	\$1,300,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

17.2. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,300,000.

17.3. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are either subject employers that will comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

17.4. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this Agreement.

17.5. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days prior notice of cancellation to the City

17.6. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

17.7. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

17.8. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Agreement.

The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

18. Indemnity. To the extent permitted by applicable law, Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and reasonable attorneys' fees (collectively, "Claims"), resulting from the injury or death of

any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Contractor's violation of any applicable law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages or Claims resulting from the negligence or willful misconduct of City. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.

19. Force Majeure. This section applies in the event that either party is unable to perform the obligations of this Agreement because of a Force Majeure event as defined herein, to the extent that the Agreement obligation must be suspended. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body which prevents performance. Should either party suffer from a Force Majeure event and be unable to perform, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance. Upon receipt of such notice, the parties shall be excused from such performance as it is affected by the Force Majeure event for the period of such event. If such event effects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such event.
20. Independent Contractor. It is the intention and understanding of the parties that Contractor is an independent contractor and that City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of Contractor shall not be deemed to convert this contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that City is not the exclusive user of the services that Contractor provides.
21. Assignment. Contractor shall not assign or subcontract any of its obligations under this Agreement without City's prior written consent, which may be granted or withheld in City's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Agreement. City's consent to any assignment or subcontract shall not release Contractor from liability under this Agreement or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.
22. Non-Waiver. The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder

should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

23. Non-Discrimination. Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.
24. Errors. Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delay and without additional cost.
25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles.
26. Consent to Jurisdiction. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon.
27. Public Contracting Requirements. Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit C, attached hereto and incorporated herein by this reference.
28. Arbitration. If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the request of City, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lincoln County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.
29. Attorney Fees. If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees

incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this Agreement without initiating litigation, Contractor agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

30. Severability/Counterparts. In the event any provision of this Agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect. This Agreement may be executed in counterparts and a signed copy transmitted by facsimile or other electronic means, each of which will be deemed an original, but all of which taken together will constitute one and the same agreement.
31. Entire Agreement. This Agreement shall be the exclusive agreement between the parties with respect to the included terms and for the Project. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties, except as otherwise authorized herein.
32. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.
33. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST REVENUE, LOST BUSINESS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING AND WHETHER OR NOT THAT PARTY WAS AWARE OF THE POSSIBILITY OF THOSE DAMAGES AND DESPITE THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS AGREEMENT. IN NO EVENT WILL THE AGGREGATE LIABILITY OF CONTRACTOR ARISING FROM THIS AGREEMENT EXCEED ONE MILLION DOLLARS (\$1,000,000).

CITY:

CONTRACTOR:

CITY OF NEWPORT

PETERSON POWER SYSTEMS, INC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

Sourcewell Contract # 092222-CAT

[See attached]

EXHIBIT B

**Contractor Quote: RAC240702R dated 7/2/2024
Service Agreement
Pricing Worksheet**

[See attached]

EXHIBIT C
Oregon Public Contracting Requirements
ORS CHAPTERS 279B AND 279C REQUIREMENTS

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1); 279C.505(1)(a)
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2); 279C.505(1)(b)
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3); 279C.505(1)(c)
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. ORS 279B.220(4); 279C.505(1)(d)
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid. ORS 279C.515
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1); 279C.530(1)
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2); 279C.530(2)
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29

Goods and Services Contract (rev. 3/2023)

USC 201, et seq). ORS 279B.235(3); 279C.520(3)

- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2); 279C.520(2)
- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women, service-disabled veterans, or emerging small business or disadvantaged business enterprises in obtaining any required subcontractors. ORS 279A.110
- (14) As used in this section, “nonresident contractor” means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a “resident bidder” under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120
- (15) If the contract price exceeds \$50,000 and this contract is not otherwise exempt, workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. The applicable prevailing rate of wage may be accessed online at: <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. ORS 279C.830
- (16) If the project is subject to both the Davis-Bacon Act and state prevailing rate of wage, Contractor and every subcontractor shall pay workers not less than the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830
- (17) Contractor and every subcontractor must have a public works bond filed with the Oregon Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). ORS 279C.830

Goods and Services Contract (rev. 3/2023)

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Caterpillar, Inc.

Electrical Energy Power Generation Equipment

#092222-CAT

THIS DOCUMENT IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A PART OF THE CONTRACT BETWEEN SOURCEWELL AND SUPPLIER.

If you would like to purchase off this contract or for questions regarding products and pricing, the Supplier Contact Information can be found at:

[Caterpillar Inc.: Contract 092222-CAT | Sourcewell \(sourcewell-mn.gov\)](#)

**Solicitation Number: RFP #092222****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Caterpillar Inc., 5212 N. O'Connor Blvd., Suite 1100, Irving, TX 75039 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Electrical Energy Power Generation Equipment with Related Parts, Supplies, and Services from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires November 22, 2026, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer used, close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily

apparent at the time of delivery, Supplier must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities. Supplier may not enter into a contract with a U.S. Federal Government entity prior to obtaining necessary internal approvals and will not be obligated to provide Equipment, Products, or Services to any U.S. Federal Government entity under this Contract unless separately agreed in writing. Supplier may work with such parties and may agree to provide equipment or services under the Contract on a case-by-case basis.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. **ORDERS AND PAYMENT.** To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. **ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM.** Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. **SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. **TERMINATION OF ORDERS.** Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. **BUSINESS REVIEWS.** Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. AUDIT. Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. ASSIGNMENT. Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited

assignment will be invalid. Provided, however, that Caterpillar is permitted to subcontract certain of its rights and obligations to Caterpillar dealers for performance without Sourcewell's prior written consent.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Intentionally omitted.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.

- b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
- 2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers, resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.
- 3. *Use; Quality Control.*
 - a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
 - b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.
- 4. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for products liability-completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Professional/Technical, Errors and Omissions, and/or Miscellaneous Professional Liability*. During the term of this Contract, Supplier will maintain coverage for all claims the Supplier may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Supplier's professional services required under this Contract.

Minimum Limits:

\$2,000,000 per claim or event

\$2,000,000 – annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds. A Participating Dealer may name a Participating Entity as an additional insured on a case-by-case basis.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Supplier's Participating Dealers must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier's Participating Dealer conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

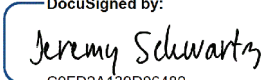
21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Intentionally omitted.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

DocuSigned by:

C0FD2A139D06489...

By: _____

Jeremy Schwartz

Title: Chief Procurement Officer

12/6/2022 | 4:51 PM CST

Date: _____

Caterpillar Inc.

DocuSigned by:

8ED6778AD1EB44E...

By: _____

Jaime Mineart

Title: Vice President & General Manager
Retail Electric Power Solutions

12/6/2022 | 6:57 PM PST

Date: _____

Approved:

DocuSigned by:

7E42B8F817A64CC...

By: _____

Chad Coquette

Title: Executive Director/CEO

12/6/2022 | 8:58 PM CST

Date: _____

RFP 092222 - Electrical Energy Power Generation Equipment with Related Parts, Supplies, and Services

Vendor Details

Company Name: Caterpillar
Address: 5205 N O'Connor Blvd
Irving, TX 75039
Contact: Jaime Mineart
Email: Mineart_Jaime_M@cat.com
Phone: 309-208-8238
Fax: 847-212-8020
HST#:

Submission Details

Created On: Thursday August 04, 2022 09:20:25
Submitted On: Thursday September 22, 2022 11:48:50
Submitted By: Jaime Mineart
Email: Mineart_Jaime_M@cat.com
Transaction #: 7d158290-a935-4ffc-acc0-efaa11d1bfb4
Submitter's IP Address: 198.180.154.20

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Caterpillar Inc.	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	N/A	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	N/A	*
4	Provide your CAGE code or Unique Entity Identifier (SAM):	11083	*
5	Proposer Physical Address:	5212 N O'Connor Blvd Ste. 1100, Irving, TX 75039	*
6	Proposer website address (or addresses):	https://www.caterpillar.com/ , https://www.cat.com/en_US.html	*
7	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Authorized Rep: Jaime Mineart Title: Vice President & General Manager, Retail Electric Power Solutions Address: 5212 N O'Connor Blvd Ste. 1100, Irving, TX 75039 Email: Mineart_Jaime_M@cat.com Phone: (309) 208-8238	*
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Primary Contact: Nicole Warnstedt Title: Territory Sales Manager Address: 5212 N O'Connor Blvd Ste. 1100, Irving, TX 75039 Email: Warnstedt_nicole_a@cat.com Phone: (847) 212-8020	*
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Other Contact: Steve Turner Title: Americas Sales Manager, Retail Electric Power Solutions Address: 5212 N O'Connor Blvd Ste. 1100, Irving, TX 75039 Email: Turner_Stephen_M@cat.com Phone: (309) 208-8238	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
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10	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>Caterpillar was founded in 1925 when two entrepreneurs merged their companies: Holt Manufacturing Company and C.L. Best Tractor Company. The merger was a great success because the ethics of both men were focused on high quality products and the best customer support.</p> <p>The key to this satisfaction is two-fold: build the best products and empower our dealers to offer the best support. Through this combination, we are proud to prove that our products offer the best value to our customers regardless of where they are located.</p> <p>Caterpillar produced its first diesel engine in 1939. In 1953, Caterpillar created a division dedicated to the specific needs of a broad range of diesel engine customers, including power generation. In 2021, the Energy & Transportation segment including all Power Generation divisions contributed more than \$20.2 Billion of revenue globally for Caterpillar Inc. with more than \$7.6 Billion in North America alone.</p> <p>Since the founding, Caterpillar Inc. has retained the culture of focusing on customer needs and supporting products after the sale. Our company culture is keenly focused on customer satisfaction and every employee realizes that a customer's experience using the product will determine whether he or she will purchase another one.</p> <p>Caterpillar has a robust Code of Conduct that can be found at Caterpillar Code of Conduct Caterpillar Values in Action. Here is a quote from Jim Umpleby, Caterpillar Chief Executive Officer, summarizing this code and its significance in Caterpillar culture. "We are proud that the people on our team come from across the globe, with diverse backgrounds, experiences, and perspectives. This diverse culture and character make us stronger. What unites us within this diversity is a common set of Values; that we are not just accountable for the work we do; we also care deeply about how we do it. Our Code of Conduct defines those Values in action –what we stand for and how we conduct ourselves with our customers, suppliers and one another. Its purpose is not to provide a set of rules that covers every situation or challenge we may face, but to guide us in living those values every day. The Code of Conduct explains what Integrity, Excellence, Teamwork, Commitment and Sustainability mean to us and how we use these Values to make sound, ethical decisions. Our Code of Conduct is one of the most important documents we produce at Caterpillar.</p> <p>We can prove measurable advantages in total owning and operating costs as well as tangible benefits in terms of standard safety features, telematic information sharing, and many training, and application support services offered by our dealers.</p>
11	What are your company's expectations in the event of an award?	<p>Caterpillar is honored to have served Sourcewell and its members who have purchased Cat construction equipment, work-tools, and electrical power generation products through Sourcewell since 2008. Furthermore, we are proud to have earned the Sourcewell Legacy Award in 2019. Caterpillar is the top contributor to generator sales in our current Power Generation and Services contract 120617-CAT. Together with the Machine contract, we look forward to the opportunity to further grow business and serve member needs together in this new Power Generation contract. With average 20-30% growth over the past 5 years, we will be dedicated to continuing with this annual growth.</p>

12	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	<p>Maintaining financial strength is a critical priority for Caterpillar. We receive debt ratings from the major credit rating agencies. Caterpillar is "mid-A" rated by S&P and Fitch and has a "low-A" rating with a positive outlook from Moody's. Maintaining our "mid-A" credit rating is critical to our cash deployment priorities. Due to our prudent focus on financial strength, on a comparative basis Caterpillar has generally demonstrated higher profitability, lower leverage, and better liquidity than our competitor peer group. Our liquidity position is extremely strong with typically the highest percentage of cash as a percent of total assets on the balance sheet vs our competitors.</p> <p>Please see 2021 Investor Presentation which provides additional details about our financial position. The full text of the SEC filing documents can be found on our public website: https://investors.caterpillar.com/financials/sec-filings/default.aspx.</p> <p>In 2021 full year sales and revenues were \$50.971B. Enterprise operating cash Flow was \$7.2B. During the year, the company paid dividends of \$2.33B and repurchased \$2.67B of Caterpillar common stock. Liquidity remained strong with an enterprise cash balance of \$9.25B at the end of 2021. After paying uninterrupted rising annual dividends for more than two decades, Caterpillar, Inc. (NYSE:CAT) reached the 27th consecutive year mark for inclusion in the elite group of companies designated as Dividend Aristocrats. In addition to a minimum of 25 consecutive years of dividend hikes, a company must be a component of the S&P 500 index and must have a market capitalization of at least \$3B to qualify as a Dividend Aristocrat.</p>	*
13	What is your US market share for the solutions that you are proposing?	Market share information beyond what is made publicly available through our annual reports is considered confidential. Market share data is not readily available within the industry. There are not many manufacturers offering products for the US and Canada that meet the required regulations. Caterpillar is a significant contributor to the overall Power Generation sector within the US and Canada.	*
14	What is your Canadian market share for the solutions that you are proposing?	Market share information beyond what is made publicly available through our annual reports is considered confidential. Market share data is not readily available within the industry. There are not many manufacturers offering products for the US and Canada that meet the required regulations. Caterpillar is a significant contributor to the overall Power Generation sector within the US and Canada.	*
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No, Caterpillar has never filed for bankruptcy.	*
16	<p>How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization.</p> <p>a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned?</p> <p>b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?</p>	<p>Caterpillar is a world class manufacturer which distributes products through a vast and capable dealer network. Our dealers are strong independent companies and in North America alone they have a combined net worth of billions of dollars. Their large valuation is a competitive advantage because it allows them to have the infrastructure to support customers regardless of location, industry, fleet size, or application. We believe our dealers have the largest amount of service parts available in their inventory.</p> <p>Another advantage of independently owned dealers is that they know their customers and market well. They tailor their services specifically to their customers' needs. Caterpillar and each dealer have signed a sales and service agreement that outlines the specific expectations from both parties. In a broad overview, Caterpillar manufactures products and sells them to our dealers. The dealers then sell those products to customers. Caterpillar does not sell directly to state and local governments.</p> <p>Though we will sign this contract as a manufacturer, our dealers will be given the opportunity to avail themselves of the opportunity presented by the contract and will execute all the transactions with governmental customers as they do today. This includes but is not limited to consultation, quoting, accepting payment, delivery, warranty support, parts sales, and service. This is no different than sales occurring out the terms of this agreement.</p> <p>Caterpillar dealers heartily embrace the other Sourcewell contracts currently available to them (032119-CAT, 120617-CAT and 062320-CAT). They have all been trained on contract usage. In fact, the current Electric Power contract is leveraged by at least 75% of our dealers in North America. Caterpillar offers specific discounts to Sourcewell members. By using any Sourcewell Contract, our dealers agree to honor those discounts.</p>	*
17	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	Caterpillar and its subsidiaries operate across the globe in a variety of markets that require Caterpillar to adhere to all locally mandated laws and regulations in order to do business. With regards to the territories covered by this RFP, Caterpillar will comply with applicable laws in order to do business in the territories described herein.	*

18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Caterpillar has not been suspended or disbarred in trading history.	*
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Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
19	Describe any relevant industry awards or recognition that your company has received in the past five years	<p>Please note: To list all the awards received in the past 5 years would unnecessarily lengthen our response. For brevity, we are highlighting some recognition received in 2020, 2021 and 2022. Also note there are many global awards.</p> <p>Fortune Magazine #78 on the Fortune 500 2021 Fortune Magazine World's Most Admired Companies World & North America Dow Jones Sustainability Index Forbes Best Employers for diversity 2020 and 2021 #82 Best Global Brands- Interbrand 2021 The Wall Street Journal Best Managed Companies in 2020 and 2021 The Wall Street Journal World's Most Sustainably Managed Companies Human Rights Campaign Foundation Corporate Equality Index Dow Jones Sustainability Index (World and North America) 21 years World's Most Sustainably Managed Companies – The Wall Street Journal United Way World Wide's Global Corporate Leadership Program U.S. President's Volunteer Service Award from Junior Achievement Corporate Equality Index – Human Rights Campaign Foundation CSR China Top 100 – the 4th CSR China Education Award (China) China CSR Excellence Award – China Philanthropy Times (China) Corporate Social Responsibility Research Center of Southern Weekly (China) Outstanding Contribution to Poverty Alleviation – China Foundation for Poverty Alleviation (China) 2020 Global 500 – Fortune Magazine America's Most Responsible Companies 2020, 2021 & 2022 – Newsweek Best-Managed Companies of 2020 & 2021 – The Wall Street Journal Top Companies for Customer Satisfaction – The Wall Street Journal The CEO Leaderboard: COVID-19 Reputation Rankings – SJR All-America Executive Team – Institutional Investor Top 150 Global Licensors – Global License Best Global Brands Top 100 – Interbrand World's Most Valuable Brands 2020 – Forbes 2020 Best Places to Work for Disability Inclusion – Disability Equality Index World's Best Employers 2020 – Forbes Best Employers for Women 2020 – Forbes America's Best Employers by State 2020 – Forbes America's Best Employers for Diversity 2020 – Forbes Best Employers for New Grads 2020 – Forbes Global 2000 – Forbes 2020, 2021 & 2022 Best Employers for Veterans 2020 and 2021– Forbes Top Veteran-Friendly Company – U.S. Veterans Magazine #1 Great Place to Work – Great Place to Work Institute (Brazil) #1 Great Place to Work in the Ag Business - Great Place to Work Institute (Brazil) Chile's 20 Best Places in 2020 to Work for LGBTQ Equality, pwc Human Rights Campaign Top of Mind Company "Industry category" (Piracicaba, Brazil) Certification on Promoting Work-Life Balance in Hyogo Prefecture – Hyogo Work and Life Center (Japan) Hyogo's Women's Success in Business Promotion Company – Hyogo Women Empowerment & Promotion Center (Japan) Hanada Award for WIN Akashi – Hyogo Women and Future Association (Japan) Hyogo Childcare Supporting Company Award (Japan) Science & Technology Industry Summit: Outstanding Contribution – The Economic Observer (China) 2020 China Good Companies: Industry Leadership – Jiemian.com (China) Cat® G3520 Fast-Response, Natural Gas Generator Set Earns Gold Award in Consulting-Specifying Engineer's 2021 Product of the Year Competition</p>	*
20	What percentage of your sales are to the governmental sector in the past three years	The governmental and educational sector is extremely important to Caterpillar. We do not track government and education separately. However, it is safe to assume that the bulk of these sales is to state, county, municipal and special districts. We have a dedicated team to ensure success in this market. Overall, the percentage of our sales to non-federal government agencies varies between 7% and 15%.	*

21	What percentage of your sales are to the education sector in the past three years	The governmental and educational sector is extremely important to Caterpillar. We do not track government and education separately. However, it is safe to assume that the bulk of these sales is to state, county, municipal and special districts. We have a dedicated team to ensure success in this market. Overall, the percentage of our sales to non-federal government agencies varies between 7% and 15%.	*
22	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Cat dealers typically hold contracts with states and provinces. Additionally, we are contract holders with OMNIA. Just as we would never share Sourcewell transaction information with other cooperatives, we feel it is inappropriate to share volumes with those contracts.	*
23	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Listed below are the current Power Generation GSA contracts that Caterpillar holds: SIN 335999 Power Distribution Equipment: 2020=\$736,134 2021=\$1,353,905 2022 = as of today \$285,951 Contract Number: GS07F5666R (Future sales will be under new contract: GS30F0018U)	*

Table 4: References/Testimonials

Line Item 24. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Ogden	Monica Kapp	801-430-2308	*
United Water Conservation District	Chris Hendricks	805-415-1554	*
Renewable Water Resources	Brent Rhymer	864-299-4000	*

Table 5: Top Five Government or Education Customers

Line Item 25. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City of Charlotte	Government	North Carolina - NC	A city local to North Carolina	Purchased 16 units (specific to EP products)	\$2,545,112	*
Manatee County	Government	Florida - FL	A county local to Florida	Purchased 9 units (specific to EP products)	\$1,463,479	*
Bonita Springs Utilities	Government	Florida - FL	A city local to Florida	Purchased 2 units (specific to EP products)	\$1,388,444	*
University of Florida	Government	Florida - FL	College in Gainesville, Florida	Purchased 3 units (specific to EP products)	\$1,199,583	*
City of Raleigh Public Utilities	Government	North Carolina - NC	Water and sanitary sewer services	Purchased one unit (specific to EP products)	\$1,034,177	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *
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26	Sales force.	<p>The Cat dealer salesforce is the most capable and highly trained in the industry. The Cat dealer salespeople are consultants to their customers and advise their customers on the best solutions for their application and job. As a manufacturer we request our dealers to follow strict training protocols to ensure our sales force remains current on all product updates. Specifically, as it relates to governmental sales, each dealer has one or more people named to be a key liaison between us as manufacturer and their dealer sales team. This person is offered additional in-depth training on Sourcewell and ensures that all contract terms are followed. In addition, dealers also have electric power specialists located in house to work with customers on all aspects of their power generation business.</p> <p>In North America, our dealers employ more than 53,000 people across the machine, energy, parts and service divisions. The dealer sales teams are supported by a network of Caterpillar professionals. Each dealer has in territory support of 5-8 Caterpillar sales/marketing employees. It is the responsibility of these people to ensure that the dealer and Caterpillar are working well together to constantly improve and to adapt to marketplace changes. Beyond the territory experts, the sales and marketing department at Caterpillar is staffed by more than 600 people whose mission is to focus on customer satisfaction. Even more are employed "behind-the-scenes" to ensure industry leading product design, up to date product information, and maintaining the ease of doing business in an increasingly connected marketplace.</p>
27	Dealer network or other distribution methods.	<p>The Cat dealer network is key to the success of our company. Within Canada and the United States, we have more than 800 dealer owned locations that sell and rent equipment. Please refer to our directory listing of Cat dealer locations and locations map in the attached "Cat Dealer Directory". Cat dealers are independently owned and many cover an entire state or province. In some cases, dealers cross state/provincial boundaries, and in other cases, more than one dealer will be located in a state). Each dealer has multiple branches and a mobile service fleet that can serve customers regardless of location. These are full physical locations our governmental customers can use.</p> <p>Because of the size of Cat dealers, they are exceptionally capable to serve governmental customers and customers in the governmental industry. Dealers have trained specialists that cover many industries. Many of our dealer sales reps sell more than 50% of their sales through Sourcewell. To support these dealers and specialists in the field, Caterpillar has an electric power division with 30+ dedicated electric power territory managers dedicated to training and focused on the electric power industry. To help with Sourcewell sales, we have a dedicated sales rep, Nicole Warnstedt, who is expert on co-operative purchasing for the power generation group as well as an intern to assist with day to day tasks. Caterpillar also pulls together the electric power specialists into a Dealer Advisory group to have a continuous feedback loop on industry trends and to collaborate on future new product introductions.</p> <p>Collectively, Cat dealers' large net worth permits them to stock a high volume of replacement parts - allowing governmental customers the fastest turnaround on parts availability and repair time. Cat dealers recognize the importance of governmental business to their overall success and their product support sales reps are well versed in working with government entities.</p> <p>Please refer to the Cat dealer locations list and map included in "Additional Documents".</p>

28	Service force.	<p>At Caterpillar we are very proud of the saying "The sales department sells the first machine; the service department sells every one after that." The Cat dealer network in North America collectively employs more than 20,000 factory trained technicians, parts experts, product support managers and other service-oriented staff. These people are supported by the best repair shop equipment and materials. As machines and engines are constantly updated, so too are our service experts. We conduct product-specific training every week of the year. Technician shortage is an industry-wide concern, but because Cat dealers are large, long established companies, they can offer strong compensation and benefit packages that encourage the best people to seek employment and to retain them once hired. Caterpillar works very closely with dealers and through a program called "Think Big", we are able to keep the pipeline of high quality employees full.</p> <p>In addition to the technicians and mechanics that work on the generators directly, each dealer has a service support staff that includes customer-facing consultants who are responsible for working with customers to set up maintenance and repair schedules to ensure the best possible up-time. Collectively, service support staff makes up the bulk of each dealers' staff. Roughly half of their personnel investment goes to ensuring customer success via product support.</p> <p>The dealer service teams are supported by a network of Caterpillar professionals. Each dealer has in territory support of 5-8 Caterpillar parts/service employees. It is the responsibility of these people to ensure that the dealer and Caterpillar are working well together to constantly improve and to adapt to marketplace changes. Beyond the territory experts, the service and support groups at Caterpillar are staffed by thousands of people whose mission is to focus on post-sale customer satisfaction. Even more are employed "behind-the-scenes" to ensure technical literature is up to date, service standards are adhere to and repair questions are answered quickly. Historically, we have exceeded our 95% 2-hour response rate target in responding to dealer service inquiries.</p>
29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	<p>Our simple order process has been and will continue to be well appreciated by Sourcewell and Sourcewell members:</p> <ol style="list-style-type: none"> 1) When a member decides to purchase a new Cat Generator, they include the contract number and their Sourcewell member number on the Purchase Order they issue to the Cat dealer. 2) The Cat dealer then accepts the PO, issues the invoice, accepts payment and delivers the generator. 3) After the generator has been delivered, the dealer, as part of their normal process, includes the member number when filing their sales claims with Caterpillar. 4) At month end, Caterpillar aggregates these reports and sends the sales information quarterly to Sourcewell along with the administrative fee. <p>IMPORTANT NOTE: Should a member wish to include additional terms and conditions to this contract, or to otherwise request a Participating Addendum, that agreement / PA should be executed between the member and Cat dealer directly.</p>

30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	<p>We are proud that our reputation stands on having the best customer support in the industry. In fact, our capabilities are industry leading. Should a customer ever have a problem or issue with a generator, their Cat dealer is empowered to resolve that issue locally. If the problem is a result of a defect in material or workmanship, Caterpillar has a standard warranty to address. Every Cat dealer has a common detailed service process in place. Caterpillar supports and verifies that all the dealer service technicians are supplied with the tools and equipment needed to repair all Cat products.</p> <p>With an abundance of Caterpillar Network service locations (over 468 locations) including an estimated sales and service team of 53,000, 8,000 service bays, and 8,500 field service trucks, our highly skilled/trained Caterpillar dealer technicians are in close proximity to Sourcewell customers within the US and Canada. The Caterpillar network provides unmatched service capabilities to meet customer servicing requirements.</p> <p>Technicians have access to an electronic library of technical information including Service Letters, Technical Information Bulletins, System Operations, Troubleshooting and Disassembly and Assembly manuals. These manuals are provided for every Cat product. Each dealer also has one or more "Technical Communicators" who are dedicated to supporting the service technicians by acting as a liaison between the shop personnel and Caterpillar.</p> <p>The service technicians also have a dealer support network (DSN) system with direct access to Caterpillar's Service Engineers. Caterpillar responds to more than 95% of all high priority tickets within one hour.</p> <p>Depending on a customer's needs, they may choose to handle service issues themselves, in conjunction with their dealer, or they may ask their dealer to handle them entirely. To meet the varying desires of each customer, Caterpillar offers a wide range of service programs:</p> <ul style="list-style-type: none"> -Cat Inspect -Condition Monitoring -Customer Support Agreements -S-O-S Services (fluid analysis) 	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	We are happy to serve all geographic areas and all Sourcewell member sectors with in the United States with our complete product and service offerings. Caterpillar has successfully utilized Sourcewell to sell generators in all states.	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	We are happy to serve all geographic areas and all Sourcewell member sectors within Canada with our complete product and service offerings. In fact, we see the Canadian market as a significant growth opportunity for Sourcewell use and are actively encouraging its use. Caterpillar currently has Canada Sourcewell growth in our Canada Dealer's 2023 Growth Plans. We have gained momentum with our current contract 120617-CAT in Canada.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	We are happy to serve all geographic areas of the United States and Canada.	*
34	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	<p>We are happy to serve all Sourcewell Member sectors within the United States and Canada with our complete product and service offering through Sourcewell.</p> <p>Caterpillar's cooperative purchasing contracts are non-exclusive; i.e. none of them restrict Caterpillar from promoting any other cooperative purchasing contracts.</p>	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	There are no restrictions or limitations for sales to members in Hawaii, Alaska or U.S. Territories.	*

Table 7: Marketing Plan

Line Item	Question	Response *
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36	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	<p>Caterpillar is committed to cooperating with Sourcewell to fully and continually train our 53,000+ management and sales staff within the dealer network to ensure maximum awareness and embracement of our Sourcewell contract. To show our commitment, we have engaged to deploy the proven ability of the Government Solutions Team, LLC (GST) of Lebanon, Tennessee to train and further support our sales management and dealer network in the event of a contract award in this RFP process. GST's extensive knowledge and understanding of the Sourcewell statutes, history and processes will be our continual priority in the support and education of our distribution channel. GST builds Sourcewell awareness and enthusiasm within our dealer network. Consistent remote and on-site dealer training at regional and national dealer meetings will continue to lead to exemplary sales growth of our proposed Sourcewell contract. GST also staffs a Dealer Support Specialist who is dedicated to assisting sales reps with their questions and needs. Caterpillar is also listed as a strategic supplier partner for National Cooperative Purchasing Partners (NCP), the professional association for cooperative procurement.</p> <p>Documentation and training regarding Sourcewell projects are available on our internal dealer website. Caterpillar also does onsite and virtual training for dealers to educate and drive Sourcewell growth.</p> <p>Our current marketing strategy with Sourcewell contract 120617-CAT proves to be effective with year-over-year sales growth. Since inception of Caterpillar's Sourcewell contracts, 3,015 Caterpillar generators have been sold leveraging the Sourcewell contract. Should we be fortunate enough to be awarded a contract for Energy Generation in response to RFP #092222, we will proudly announce the award publicly through our multiple customer-facing touchpoints to include but not limited to:</p> <ol style="list-style-type: none"> 1) Press Release 2) Announcement in monthly Electric Power customer e-newsletter: 3) Feature on cat.com cooperative purchasing focused webpage: https://www.cat.com/en_US/articles/electric-power/sourcewell-cooperative-purchasing.html 4) Announcement on Cat Electric Power social media channels (FB, LinkedIn, Twitter) 5) Sourcewell promotion at industry events we attend where the audience includes non-profits and government within the SLED market including schools, landfill, and water/sewer treatment applications. Examples of 2022 events where GST representatives attended in support of Caterpillar and Sourcewell included American Public Works Association (PW), Wastecan, WasteExpo, Water Environment Federation's Technical Exhibition and Conference (WEFTEC), Government Fleet Expo (GFX), National Institute of Government Procurement (NIGP), California Association of Public Procurement Officials (CAPPO), National Association of County Engineers (NACE) and American Public Works Association (APWA) Snow Conference. 6) Update promotional literature 7) Dealer awareness promotional events
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	<p>Caterpillar and the Cat dealer network are leaders in using emerging technologies to reach our customers. We manage several social media platforms and can target governmental segments. We also look at past purchase history and financing information to recognize in advance when customers may be considering replacing machines they own.</p> <p>Caterpillar has teams of people who handle leads from Cat.com to grow and enhance online presence. Cat Electric Power has an online portal that has ability for customers to size a unit and view inventory. Our dealers have resources for lead generation from third party databases to understand which opportunities are coming in the governmental and non-profit section. Our dealers utilize these resources plus Caterpillar Inc. resources to focus and drive and understand pipeline of opportunity that we can promote the Sourcewell solution through.</p>
38	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	<p>Sourcewell is a well-respected contracting agency within the public procurement industry. It is important, in the event of an award, that our products and logos be included in Sourcewell marketing and website. We believe that the most important role that Sourcewell can play in marketing our contract and products, is to market themselves and promote contract purchasing across the industry.</p> <p>In the event of an award, Caterpillar will put high priority in building awareness and enthusiasm within our dealer network and customer base to leverage the Sourcewell contract as our go to market strategy.</p>

39	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	<p>We do offer a e-procurement ordering process for parts via parts.cat.com. We can also integrate into a variety of procurement systems for high volume customers.</p> <p>We enable customers to size and configure our less complex products, view available inventory, and engage dealers online at power.cat.com. Our larger products are complex and often custom-configured. A consultative salesperson is integral to ensuring that generator sets are configured and built to perform well in their expected duties. For this reason, we only include our less complex products online. We encourage our independent dealers to offer options beyond those from Caterpillar. Sourcewell members are free to use those options.</p>	*
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Table 8: Value-Added Attributes

Line Item	Question	Response *	
40	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	<p>All dealers offer basic operation, safety, and maintenance training with every sale. All Caterpillar operation and maintenance manuals provided with our equipment have instructions for safe operation of our equipment. Should a customer desire more advanced training, such as productivity improvement or advanced repairs, each of our dealers can supply that training. Often there is a cost associated with that specific training and if would be negotiated between the dealer and the customer.</p> <p>Caterpillar also offers training programs directly to customers in three areas - operation, safety, and service. Members may access courses online, via CD's, or through instructor-led classes leading to operator certifications. The fees for these services vary depending on the depth of training desired. These high-level instruct-led courses can be conducted at one of our dedicated training facilities in the US or on a customer's local site using their own equipment.</p>	*

41	Describe any technological advances that your proposed products or services offer.	<p>Technology is a key product differentiator for Caterpillar. To describe each of them in detail would expand the length of this response beyond a reasonable level. For brevity, key technologies specific to products in this RFP are listed below. More details are available on our product pages on www.cat.com.</p> <ol style="list-style-type: none"> 1. Cat Remote Asset Monitoring and telematics are available on every generator. Generators smaller than C32 come equipped with Product Link devices which allow ease of setup for monitoring. This allows customers and dealers to monitor generator health and operation with the intent of early issue detection. Through our proprietary fleet monitoring software, we are leaders in using technology to prevent unexpected downtime. 2. Caterpillar has invested in controller technology for generators, offering our EMCP 4.4 control panel for most generator offerings. This controller has an easy-to-use interface and allows for paralleling of multiple units, creating redundancies and allowing customers even more protection against outages. 3. Caterpillar equips every Tier 4 Interim/Stage IIIB engine with ACERT™ technology with an ideal combination of electronic, fuel, air and aftertreatment components, based on engine size, the type of application and the geographic location in which it will work. Applying technologies systematically and strategically optimizes them to meet our customers' high expectations for productivity, fuel efficiency, reliability, and service life. The right technology fine-tuned for the right application results in improved fuel efficiency, boosted power and performance across applications, no additional space requirements, and reduced emissions with up to 90 percent reduction in particulate matter (pm) and 50 percent reduction in oxides of nitrogen (NOx). 4. As the global climate changes, more companies are turning to sustainable solutions to help lower their carbon footprint. Renewable hydrogen and hydrogen blends are among several alternative fuels customers are considering achieving their sustainability goals. Leveraging 35 years of expertise in hydrogen technologies across multiple end markets, Caterpillar continues to improve the performance of hydrogen-fueled power technologies with minimal impacts on maintenance costs and schedules, availability, and operations. 5. Caterpillar offers a full range of Cat® Microgrid projects from 10kW to 100MW through our global dealer network. The projects would include an integrated or standalone solution using solar, energy storage and/or diesel/gas generator sets. We can also offer monitoring services for our projects. The solutions are all module and scalable. Our CAT dealers can offer product upgrades, financing services, warranties, service agreements, and parts availability. We will customize our microgrid technologies to meet your business and industry needs. 6. In 2022, Caterpillar acquired Tangent Energy Solutions, an Energy-as-a-service company. Tangent provides customers with turnkey solutions for reducing energy costs, increasing energy efficiency, reducing emissions, monetizing electric grid support and providing resiliency for customer operations. Tangent Energy's proprietary software solutions monitor patterns from grid and client facilities, analyze opportunities in energy markets, and then dispatch resources to maximize return without disrupting normal business operations.
42	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>At Caterpillar, sustainability is an important commitment to building a better world. Sustainability is part of who we are and what we do every day - it is one of Caterpillar's core values. We recognize progress involves a balance of environmental stewardship, social responsibility, and economic growth.</p> <p>We consider this as we work toward a vision of a world in which people's basic needs - such as shelter, clean water, education, and reliable energy - are fulfilled. We provide work environments, products, services, and solutions that make productive and efficient use of resources as we strive to achieve our vision. We believe this commitment supports the enduring success of our customers, stockholders, dealers, and our people. Caterpillar is a proud 20-year member of the Dow Jones Sustainability Indices, including both the World and North America Indices. The annuals DJSI process follows a best-in-class approach, evaluating numerous corporate economic, environmental, and social performance factors. For more on sustainability at Caterpillar, please visit our 2021 Sustainability Report found at Caterpillar 2021 Sustainability Report.</p> <p>Caterpillar has recently acquired Tangent Energy Solutions. Tangent is an energy-as-a-service company that provides expertise to customers in structuring and developing projects that monetize their power generation assets. This capability increases a customer's financial rationale for new installations and, at the same time, increases power reliability and supports their ESG (Environmental, Social and Governance) initiatives. This investment increases our ability to participate in the growing utility sector and sell more electric power products. Electrification and Decarbonization are major growing trends in our energy space. Tangent can help with the reliability of power that customers are looking for while simplifying the power systems as we move forward through this Energy Transition</p>

43	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	<p>Plants certified with ISO 14001:2004 Environmental Management System include:</p> <ol style="list-style-type: none"> 1) Anchor Coupling - Goldsboro NC, ISO 14001:2004- Sept 2018 2) Anchor Coupling - Menominee - ISO 14001: 2015 - Jan. 2021 3) Mapleton - 14001:2004 self-certification issued Jan 2013 4) Reman Services - Corinth MS - ISO 14001-2015- Sept. 2021 5) Reman Services - Franklin - ISO 14001:2004-May 2017 <p>Certifications specific to EP product manufacturing:</p> <ol style="list-style-type: none"> 1) Lafayette, IN – ISO 9001: 2015- Nov 2020 2) Griffin, GA – ISO 9001:2015 – Feb 2021 3) Seguin, TX- ISO 9001:2015
44	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	<p>Two CAT dealers in NA are owned by women: Foley Equipment, with territory primarily in Kansas and Missouri; and Cashman Equipment based in Nevada. In addition to these two owners, there are 31 other women in our NA dealer network who hold the titles of President, Vice President or Director.</p> <p>One of the more recognized initiatives within Caterpillar's Global Supply Network Division is the Caterpillar Inc. Proprietary Information Supplier Diversity Program which spurs economic growth by increasing business opportunities to minority-owned, women-owned, veteran and service disabled veteran-owned, small disadvantaged businesses and those certified in HUBZones, all while ensuring expectations are met with regards to quality, velocity, capacity, and cost. Currently more than 37% of our direct and indirect purchasing is conducted with suppliers in these categories.</p> <p>Caterpillar is a proud member of the National Minority Supplier Development Council (NMSDC). We also use the System for Award Management (SAM), SBA, and NMSDC databases to locate SDB, VOSB, SDVOSB and HUBZone suppliers.</p> <p>Supplier Diversity is discussed with Global Supply Network Division leadership during the Monthly Operating Results Review meetings. This in turn forces accountability for divers supplier inclusion by measuring drivers, such as the number of sourcing projects, which include Divers Suppliers and the values of the projects in which they participate. The goal is to create greater transparency to determine which teams are creating inclusive environments and which are not.</p> <p>A full report on Caterpillar Diversity and Inclusion can be found at Caterpillar Caterpillar 2021 Diversity & Inclusion Report Highlights Progress with Growth in Diverse Populations.</p>

45	<p>What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?</p>	<p>BEST OVERALL VALUE / LOWEST LIFE CYCLE COST: CAT products deliver the best value for the money. We are happy to demonstrate to customers that our generators offer the lowest overall owning and operating costs when factors such as fuel efficiency, repair frequency, productivity, and resale value are factored in. We believe that government agencies are tasked to be the best stewards of taxpayer funds and our products can prove that they are the best solution. Sourcewell members are in the best position to allow these discussions to take place in contrast to a local bid situation where the focus is often only on initial price.</p> <p>EXTENDED SERVICE COVERAGE To show the value that we place on this proposed contract, we will continue to offer a complimentary Gold and Platinum Extended Service Coverage on most models when purchased through the Sourcewell contract. Details on these offerings can be found in flyers included in Attachments.</p> <p>CAT SAFETY SERVICES / SAFETY FEATURES: In addition to the tangible, measurable aspects of the life cycle cost equation, we also bring our focus on safety to every product that we manufacture. Quantifying a human life or debilitating injury is impossible, but each generator has industry-leading features that strive to minimize the possibility for accidents. Some examples include:</p> <ul style="list-style-type: none"> - UL2200 Certified – all units include guards over rotating compartments, safety shutdowns and alarms, and grounded wiring installations among many other safety features - Emergency Stop Button - Enclosures are lockable to allow human contact to be avoided - XQ Product has separated control panel to allow a member to not have to go in enclosure to make generator adjustments - XQ also has cover over customer connections and circuit breaker trips when opened. - NFPA 110 – Level 1 Life Safety saves lives of people who are in hospitals, nursing homes, etc. by requiring startup in X seconds. - IBC – certified against earthquakes <p>All certifications on our products are listed here: AS1359, CSA C22.2 No100-04, UL142, UL489, UL869, UL2200, NFPA37, NFPA70, NFPA99, NFPA110, IBC, IEC60034-1, ISO3046, ISO8528, NEMA MG1-22, NEMA MG1-33, 2006/95/EC, 2006/42/EC, 2004/108/EC.</p> <p>Caterpillar Safety Services offers culture, jobsite and leadership assessments; safety and leadership training workshops; and a comprehensive continuous improvement process through consultative services. Services are facilitated by Safety Services consultants and training products can be purchased for self-implementation. Details on products and services are available at www.cat.com/safety.</p> <p>DEALERSHIP ATTRIBUTES: Back up power is a critical asset of many Sourcewell members. Caterpillar dealers bring a unique solution to provide second to none service to our customers. Unlike competitors, our dealers own their own rental fleet and make available as needed. Even with stationary products, we have options to provide back up rentals to best serve Sourcewell's members when emergencies occur. Our vast dealer network with 800 locations is positioned to service both urban and rural areas throughout the US and Canada.</p> <p>PRODUCT ATTRIBUTES: Over the last five years, Caterpillar has invested in a product that is lower capex cost for the public and non-profit industry sector. This new line of generators, our GC models, involved a redesign of 15 of our current generator offerings, which created an average cost reduction of 10-15%. The cost savings is driven by offering fewer options on these models without sacrificing Caterpillar quality.</p>
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Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
46	Do your warranties cover all products, parts, and labor?	Yes. Caterpillar has the most extensive warranty coverage in the industry. We cover all products, parts and labor with fewer exclusions than our competitors. Please see our "EP Warranty Statement SELF5731-01."	*
47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	We are pleased to say that our warranties cover defects in material and workmanship for the time specified in the policy when the equipment is used as per design intent.	*
48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Caterpillar warranties cover the cost of replacement parts and the labor to install them. They sometimes cover travel time and mileage. Dealer territories vary considerably from state to state as do their policies about travel time and mileage during the warranty period.	*
49	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	We have no geography restrictions on warranty repairs. One of our key differentiating strengths is our ability to service equipment regardless of where it is located.	*
50	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Warranty service for generator ordered from a Caterpillar facility are generally provided by Caterpillar and performed by Cat dealers. Some items, such as battery chargers, are covered under their manufacturers' warranties	*
51	What are your proposed exchange and return programs and policies?	We warrant that upon delivery our products will be free from defects in material and workmanship and will operate as intended. If they are not, we will make any necessary corrections.	*
52	Describe any service contract options for the items included in your proposal.	<p>We have a large variety of service contract options which can all be customized according to customer needs and at least equal to local competition. More solutions are available and we encourage members and dealers to explore all options.</p> <p>Customer Value Agreements (CVA's): A member may choose to enter an agreement with their Cat dealer to perform routine maintenance and/or repairs. These contracts are customizable based on member's situational and local needs, including some standard options as well. For instance, all units under 1250kW have standard parts kits available. Examples of options that can be included in a CVA are:</p> <ol style="list-style-type: none"> 1. Condition Monitoring 2. Load Bank Testing 3. Extended Service Coverages <p>CVA's are a useful tool for members to better manage their budget. Most CVA's are bundled at the time of purchase; however, they may be added at any time.</p>	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
53	Describe your payment terms and accepted payment methods.	Cat dealers are independently owned businesses. As such their payment terms vary, but all will be agreed upon at the PO level.	*
54	Describe any leasing or financing options available for use by educational or governmental entities.	Caterpillar's wholly owned subsidiary, Caterpillar Financial offers Sourcewell members leasing and finance products at below market interest rates. The total interest charged is normally less than the total cost of issuing a bond. Often these leasing/financing options may not require voter approval as with bond issuance. These products also let Sourcewell members cancel their contracts without penalty (on the last day of the appropriations period) if funding is not approved for the following year. Lending terms and conditions are transparent to all Sourcewell members upon quotation.	*
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Cat dealers are independently owned businesses. As such their standard transaction documents will vary.	*
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Because Cat dealers will be receiving payments directly from members, accepting P-card procurement will be at their discretion. Many dealers do accept this method without additional fees. Some have limitations on the amount that can be processed.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
57	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Our pricing model is simple. We offer a deep discount off the current generator list prices to all Sourcewell members. Overall pricing from published list price is discounted up to 40% with an average of 27% overall. Specific discounts apply to each diesel or natural gas platform product line. Services, used products, rental agreements, and microgrid solutions are also included at different discounting levels. We have provided reference pricing in the document entitled "Caterpillar Gen Disc List RFP August 2022."	*
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The discounts are off of the current generator list prices. Our discount ranges varies between 10 - 40% off of the list price depending on the product family.	*
59	Describe any quantity or volume discounts or rebate programs that you offer.	Our dealers are empowered to consider purchase order volume, repeat purchases, member responsiveness, etc. They may offer members additional discounts and /or services at their discretion.	*
60	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Sourced goods / Open Market Items are available to members from our Cat dealers. The prices for these good or services will represent fair marketing value and will be determined between the member and the selling dealer. We encourage our dealers and members to use this option as it facilitates complimentary products and streamlines the procurement process. Customers and dealers are responsible for including their Sourcewell contract number and member numbers on all documentation related to these purchases. Caterpillar Inc. is not a party to these sales and is exempted from including them in quarterly reports. For audits, inclusion of a customer's Sourcewell member number on the PO and/or invoice shall be deemed sufficient.	*
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Generators are unique in their requirements, and often require specialized startup/installation which can be determined with the dealer at the PO level. When a dealer issues a quote for a generator, any additional costs will be itemized separately and are not subject to the Sourcewell discount.	*
62	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	There is no additional cost to members who choose to pick up their generator from the Cat dealer. Freight and delivery charges will be determined and assessed at each project.	*
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	Just as for members in the 48 contiguous states, there is no additional cost to members who choose to pick up their generator from their Cat dealer. Freight and delivery charges will be determined and assessed at each project.	*
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	Generators are large purchases and if there are unique member requirements our dealers will be happy to discuss on a case by case basis.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	This proposed contract is priced to be our go-to-market strategy across the US and Canada. We have included a complimentary extended warranty for most models when purchased through our proposed Sourcewell contract.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
66	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	<p>We plan to continue our very robust process to ensure reporting speed, accuracy, and contract compliance.</p> <p>Caterpillar and our Cat dealers have very close and trusting relationships. Our dealers are long-established, and the current process (under contract #120617-CAT) is working well.</p> <p>The Caterpillar Dealer Network will receive additional discounts from Caterpillar to help reach Sourcewell members purchasing prices per the Sourcewell contract. To qualify for the discounts, the selling Caterpillar Dealer must identify each applicable sale as a Sourcewell sale on their order and they must also fill out a report to the Caterpillar designated Sourcewell custodian, Nicole Warnstedt, including the product order number and Sourcewell member number. Reports are updated and reviewed on a quarterly basis to assist in providing payment to Sourcewell. To ensure correct pricing and auditing, Caterpillar has created a focus program that dealers can use on their quotes. This focus program automatically populates associated discount levels. The Caterpillar designated Sourcewell custodian, Nicole Warnstedt, has and will remain actively involved in the auditing process both with auditing Caterpillar Dealer pricing to Sourcewell members as well as the quarterly administration fee process.</p>	*
67	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	In the event of an award, we will continue to measure the percentage of sales that are sold through the Sourcewell contract, dealer participation with the contract, total number of gensets sold and program growth year over year.	*
68	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	We propose an administrative fee to Sourcewell of 1% of transaction price of any new Caterpillar generators sold through this contract. Caterpillar will pay this fee to Sourcewell and not impose related charges to our dealers or members.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
69	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	<p>Caterpillar is proposing an extensive alternative energy solutions offering including: 1) a full line of diesel and natural gas packaged generator sets from 20 to 4000 kW 2) a line of price point configured diesel generator sets up to 1250 kW and 3) Microgrid solar and battery energy solutions.</p> <p>The following key Caterpillar product categories are included in this response: Stationary Diesel Packaged Generator Sets Stationary Natural Gas Packaged Generator Sets Mobile Diesel Packaged Generator Sets (XQ Products with Trailers) Control Panels Switchgear Automatic Transfer Switches Microgrid Components Leasing and Financing</p> <p>The Caterpillar Dealer Network can also offer custom shop work, installation, "turn-key" solutions, delivery/freight, training, custom enclosures, custom fuel tanks, custom automatic transfer switches, dealer labor, additional/custom parts, engineering, leasing, financing and general contracting labor. To further enhance the Sourcewell members' product offering, the Caterpillar Dealer Network can also offer an expansive network of used equipment along with rental agreements and maintenance agreements.</p>
70	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	N/A

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments
71	Stationary electrical generation systems, backup or standby generator sets, mobile and ground power units, and trailer mounted generators	<input checked="" type="radio"/> Yes <input type="radio"/> No	N/A
72	Parts and accessories, including enclosures, fuel tanks, automatic transfer switches, paralleling equipment, switch gears, connection boxes, controls, alarm modules, batteries, block heaters, and networking tools	<input checked="" type="radio"/> Yes <input type="radio"/> No	N/A
73	Related services, including design, customization, engineering, commissioning, installation, delivery, maintenance, repair, training and operation, service and maintenance agreements, decommissioning and repurposing, custom shop work, and rental services	<input checked="" type="radio"/> Yes <input type="radio"/> No	N/A

Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
 2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
 3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
 4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
- [Pricing](#) - Caterpillar Gen Disc List RFP August 2022.xlsx - Tuesday September 20, 2022 15:56:47
 - [Financial Strength and Stability](#) - Financial Strength and Stability.zip - Tuesday September 20, 2022 15:58:41
 - [Marketing Plan/Samples](#) - Marketing Plan.zip - Tuesday September 20, 2022 15:59:03
 - WM8E/M8E/S8E or Related Certificates (optional)
 - [Warranty Information](#) - SELF5743-01_.pdf - Tuesday September 20, 2022 15:57:54
 - [Standard Transaction Document Samples](#) - Standard Transaction Document Samples.zip - Tuesday September 20, 2022 15:59:30
 - [Upload Additional Document](#) - Additional.zip - Tuesday September 20, 2022 15:59:44

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Jaime Mineart, Vice President & General Manager, Caterpillar Inc.

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_4_Electrical_Energy_Power_Generation_Equipment_RFP_092222 Fri September 9 2022 09:10 AM	<input checked="" type="checkbox"/>	1
Addendum_3_Electrical_Energy_Power_Generation_Equipment_RFP_092222 Tue September 6 2022 02:37 PM	<input checked="" type="checkbox"/>	1
Addendum_2_Electrical_Energy_Power_Generation_Equipment_RFP_092222 Wed August 31 2022 07:52 AM	<input checked="" type="checkbox"/>	1
Addendum_1_Electrical_Energy_Power_Generation_Equipment_RFP_092222 Wed August 10 2022 11:35 AM	<input checked="" type="checkbox"/>	1



Date: 07/02/2024
Proposal #:RAC240702R

☐ Prevailing Wage

Service Agreement Prepared for City Of Newport

Acct. #: 7332420
Contact: Josephine Duncan
Email: J.Duncan@newportoregon.gov
Phone: 541-270-2567
Fax:
Billing Address: 169 SW Coast Hwy
Newport, OR 97365

Prepared by: Ron Camacho
Email: racamacho@petersonpower.com
Phone: (503) 280-1539
Cell Phone: (503) 209-2363
Business Address: 2828 Teagarden Street
San Leandro, CA 94577

Peterson Power Systems, Inc. agrees to perform the services listed below for City Of Newport. The agreement will be for a period of THREE years, commencing on acceptance date. These services will be performed on the units listed below at the stated price.

The units are located at: various locations, Newport, OR

** PRICING PER SOURCEWELL CONTRACT # 092222-CAT. Exceeds minimum 5% labor discount

** MEMBER ACCT # 84821 (CITY OF NEWPORT)

. The services have been designed around the Manufacturer's Recommended Standards, will be performed on a flat fee basis and include labor, travel and service parts as indicated below. Taxes, if applicable, are not reflected, unless otherwise noted. Following is a summary of charges for the agreement.

Unit	Loc	Make	Model	Serial	\$ Inspection x Freq	Annual	Green Annual	Load Test	3 Yr Service	Battery Replace	Megger	Other	Total
1	City Of Newport			SEE ATTACHMENT "PRICING WORKSHEET RAC240702R	x C	C	C	C	C	C	C	164910	\$164,910
Total					\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$164,910	\$164,910

NOTES

1) Peterson offers this proposal under Sourcewell contract 092222-CAT. City of Newport Sourcewell member number is 84821. Pricing in attached proposal exceeds minimum discount off of list pricing.

2) Several optional additional services based on Manufacturer recommendation, NFPA, and industry best practices are listed on pricing worksheet. If desired, please notify your Peterson service rep for quotes.

3) 3-year cooling system services and battery replacements to be quoted separately as needed, due to fluctuating parts pricing and availability.

4) Annual services include SOS-1 oil and coolant samples. Mid level SOS-CSA fuel samples for diesel generators (tests for water, sediment, microbe growth)

5) Load testing reflects NFPA 1.5 hour duration

6) Inspections will be built using Cat Inspect software. Report to be emailed to customer live to customer from jobsite site. Any additional recommended repair items will be presented to customer in separate formal quote.

The services listed above include, but are not limited to, the following. For a complete listing of service options available through Peterson Power please see Attachment B.

An **Inspection** includes an individual inspection of each unit. The technician will verify the fluid levels (oil, coolant and fuel), service the batteries, ensure proper operation of battery charging system, perform an operational check of the engine and generator (as applicable), and provide a completed service report detailing the service and any potential problems that should be addressed.

An **Annual Service** includes a full inspection (see description above) of each unit and a full service which includes; the replacement of engine oil, oil filters and fuel filters. Air filters are replaced on an as needed basis for an additional charge. Please contact your PSSR if you would like your air filters replaced.

Load Bank Testing is recommended annually for any generator that is not run "under load" (maintaining a load of at least 30% of its kilowatt (kW) rating) regularly, to ensure the proper operation of your generator. A Load Bank Test will include the connection of a portable resistive Load Bank. The load will be varied in steps for a 1.5 hour duration.

Every three years, engine manufacturers recommend replacement of cooling system belts, cooling system hoses and coolant. In addition, the (PM-3) includes upgrading block heater hoses to high temperature silicone hoses. Block heater isolation ball valves will be installed on any engine not already (if applicable) equipped. Engine thermostat and radiator cap are also replaced.

Batteries are recommended for replacement on a three year cycle, and will be replaced with Maintenance Free batteries unless otherwise specified by the customer.

Notes and/or Exclusions:

Results of services will be forwarded to you in a detailed report listing any components and/or areas requiring further attention for repair.

Customer Signature

Date

Purchase Order

THANK YOU FOR THE OPPORTUNITY TO SERVE ALL OF YOUR POWER NEEDS

The pricing in this proposal is valid for 90 days from the date above. The Purchaser identified above accepts and agrees, upon the signing of this proposal, to purchase and pay for the products and labor furnished by Peterson Power Systems, Inc., specifically for the above-identified equipment in this proposal. Services are quoted to be performed during normal working hours. Peterson Power Systems, Inc. will bill upon completion of the service. Any repair work required over and above the quoted service will be performed on a time-and-material basis, subject to the customer's written authorization. Warranty and Customer Registry coverage on Caterpillar parts, where applicable, will apply as a credit to the customer. The Purchaser will be charged for travel time and mileage associated with any service cancelled on the same date it was scheduled.

**Peterson Power Systems
Detail of Service Options
Attachment B**

Inspection Service

Before Starting Engine:

- Check engine oil and coolant levels
- Check block heater (should maintain a coolant temperature of 90° F in the block)
- Check fuel level in storage tank
- Check battery water level and top as necessary
- Check battery terminals for corrosion and connections for tightness (lead acid)

With Engine Running:

- Check oil pressure
- Check fuel pressure
- Check oil level and add oil as required
- Check RPM (frequency)
- Check generated voltage
- Check for leaks or unusual noises

After Stopping Engine:

- Check/verify all switches are in proper positions for automatic start.
- Check fuel level in tank
- Record battery charger volts, check for proper operation
- Remove, clean and reinstall all battery connections (lead acid)
- Inspect generator for cleanliness

Reporting:

- Provide written service report for each visit
- Advise customer of any/all unusual situations or potential problems which will require further attention
- Advise when main fuel tank is below $\frac{3}{4}$ full

Annual Service

Includes all Inspection Services and the following:

- Drain crankcase oil and replace with new oil
- Remove and replace oil and fuel filters
- Inspect air filter(s)
- Check generator output
- Take oil sample for analysis

Load Test

- Start engine and load with contractor supplied resistive load bank. As per NFPA 110 Code 8.4.2.3 (2013 Edition)

Three Year Service (PM-3)

- Replace all rubber coolant hoses
- Replace drive belts
- Replace block heater hoses
- Replace coolant regulators (Thermostat)
- Standard antifreeze will be replaced every three years
- Extended life coolants will be upgraded after the first three years and replaced after six years

Additional Services Upon Request

Thermal Image Inspections:

- Thermo Images reveal temperature variations that signal electrical and mechanical problems before they become failures.

Fuel Conditioning:

Extend life of stored diesel fuel by adding CAT Diesel Fuel Conditioner and polishing with high efficiency kidney loop filtration system.

ATS Hot Inspection:

Inspect enclosure, anchorage, door seal, connections for thermal variance, loose or damaged wires, overheating or mechanical malfunction, and indicator lamps. Record serial number, set points, voltage drop across contacts, and amps per phase (access permitting). Transfer load up to 30 minutes (as permitted). Replace 9V battery (as applicable).

ATS Major:

Visual and electrical/mechanical inspection of automatic transfer switch. Includes checking the following: Indication light; Lug Connections: Condition of main & Aux arcing contacts; Freedom of movement; Loose wiring; and Inphase monitor. Inspect and clean controller and relays; brush and vacuum enclosure. take infrared image for diagnostic heat detection.

Megger Testing:

Vibration, general usage or moisture can break down generator insulation and cause electrical shorts. Megohmmeter testing identifies decreasing generator insulation before it becomes a major repair or replacement. CAT recommends annual testing.

Emergency Servicing: Provide 24-hour emergency repair coverage **800.963.6446**

Pricing Worksheet RAC240702R - City Of Newport
2024-2026 THREE year enrollment - perform annual services and load testing

Division	Unit	Kilowatt (KW) rating	Make	Model	Serial #	Annual Service	Load test 1.5 hr	Unit Totals
Water	Water Treat Plant	800	Caterpillar	C27	2A300677	\$ 2,275.00	\$ 1,655.00	\$ 3,930.00
Water	40th Street	125	Caterpillar	G125G1	NGG00101	\$ 885.00	\$ 770.00	\$ 1,655.00
Water	NE 7th Street	85	Cummins	GGHJ-1794922	J170258243	\$ 885.00	\$ 670.00	\$ 1,555.00
Water	71st Street	50	Generac	SG0050	9833717	\$ 885.00	\$ 670.00	\$ 1,555.00
Water	Lakewood	60	Cummins	GGHE-1409251	F140700655	\$ 885.00	\$ 670.00	\$ 1,555.00
SUBTOTALS						\$ 5,815.00	\$ 4,435.00	
Division Total						\$	\$	10,250.00

** Reports to: S.Stewart@NewportOregon.gov

CUSTOMER CONTACT:
Coordination/reports: Steve Stewart
Office: 541-265-7421
Mobile: 541-961-4723
Email: S.Stewart@newportoregon.gov

WW Collections	32nd St P.S.	65	John Deere	4045TF250	T04045T701339	\$ 885.00	\$ 670.00	\$ 1,555.00
WW Collections *new*	New 48th Street PS	80	Kohler	80REOZJF	33JVGMGF0005	\$ 885.00	\$ 670.00	\$ 1,555.00
WW Collections *new*	New 68th Street PS	180	Kohler	180REOZJG	337RGMGF0008	\$ 1,000.00	\$ 865.00	\$ 1,865.00
WW Collections	56th Street P.S.	20	Onan	GGDB-3386156	L990032205	\$ 765.00	\$ 670.00	\$ 1,435.00
WW Collections	Bayfront P.S.	150	Cat/Olympian	D150P1	NAT00303	\$ 1,000.00	\$ 865.00	\$ 1,865.00
WW Collections	Big Creek P.S.	300	Cummins	QQDAC-1623908	F160970444	\$ 1,555.00	\$ 965.00	\$ 2,520.00
WW Collections	Embarcadero	20	Onan	GGMA	A100080545	\$ 765.00	\$ 670.00	\$ 1,435.00
WW Collections	HMSC P.S.	110	John Deere	4045TF001	T04045T514444	\$ 885.00	\$ 770.00	\$ 1,655.00
WW Collections	Nye Beach P.S.	100	Cat/Olympian	D100P1	NPS00472	\$ 885.00	\$ 770.00	\$ 1,655.00
WW Collections *new*	Portable Generac	38	Generac	MMG45IF4	3014261802	\$ 885.00	\$ 670.00	\$ 1,555.00
WW Collections	Portable Isuzu	25	Isuzu	4LE1 PV-01	20830	\$ 820.00		\$ 820.00
WW Collections	Southshore P.S.	N/A - Pump	Wisconsin	V465D1	94-466-AX	\$ 820.00		\$ 820.00
SUBTOTALS						\$ 11,150.00	\$ 7,585.00	
Division Total						\$	\$	18,735.00

** Reports to: S.graham@newportoregon.gov

CUSTOMER CONTACT:
Coordination/reports: Seamus Graham
Mobile: 541-921-4693
Email: S.graham@newportoregon.gov

Wastewater	Intake	1100	Cat	3512	CMJ00302	\$ 3,620.00	\$ 2,145.00	\$ 5,765.00
Wastewater	Northside	500	Cat	3412	9EP02146	\$ 2,665.00	\$ 1,655.00	\$ 4,320.00
Wastewater	WWTP	1000	Cat	3508	CNB00397	\$ 3,830.00	\$ 1,855.00	\$ 5,685.00
SUBTOTALS						\$ 10,115.00	\$ 5,655.00	
Division Total						\$	\$	15,770.00

** Reports to: D.Fox@newportoregon.gov

CUSTOMER CONTACT
Coordination/reports: DJ Fox
Office: 541-574-3371
Mobile: 541-270-3943
Email: D.fox@newportoregon.gov

City Hall	City Hall	100	John Deere	6068TF250	T06068T700648	\$ 1,035.00	\$ 770.00	\$ 1,805.00
City Shop	City Shop	100	Cummins	GGHH-1334060	G130538941	\$ 1,035.00	\$ 770.00	\$ 1,805.00
SUBTOTALS						\$	\$	3,610.00

** Reports to: J.Scharbrough@NewportOregon.gov

CUSTOMER CONTACT:
Coordination/reports: Justin Scharborough
Mobile: 541-961-1691
Email: J.Scharbrough@NewportOregon.gov

Fire Department	Main Station	30	Cummins	DGGD-1952029	L090071881	\$ 885.00	\$ 670.00	\$ 1,555.00
Fire Department	South Beach	10	Kohler	10R0Y61	464926	\$ 885.00	\$ 670.00	\$ 1,555.00
SUBTOTALS						\$	\$	3,110.00

** Reports to: R.murphy@newportoregon.gov (Fire Chief Rob Murphy)

CUSTOMER CONTACT:
Coordination/Reports: Rob Murphy
Office: 541-265-9461
Email: R.Murphy@newportoregon.gov

Airport	FBO Gen	35	Cummins	GDDG	E070066224	\$ 955.00	\$ 735.00	\$ 1,690.00
Airport	Airfield	100	MTU	GS00100L6S	371868-1-1-0514	\$ 1,035.00	\$ 770.00	\$ 1,805.00
SUBTOTALS						\$ 1,990.00	\$ 1,505.00	
Division Total						\$	\$	3,495.00

** Reports to: L.Vanderbeck@NewportOregon.gov

CUSTOMER CONTACT:
Airport Director: Lance Vanderbeck
Office: 541-867-7422
Email: L.Vanderbeck@NewportOregon.gov

Optional Adders - Price TBD per Generator

Cooling System Service (Belts, Hoses, Coolant, T-Stat(s)) (Recommended every 3 years)
Quoted seperately as needed - due to flucuating parts pricing and availability
Batteries (Recommended every 3 years) Quoted seperately as needed
Meggar Test (Test of gen end winding insulation, recommended annually)
Load bank test pricing reflects 1.5 hour duration. If a specific site qualifies for NFPA Level 1 life safety, a FOUR load bank test would be required every 36 months. Contact your Peterson Service rep for revised load test price if applicable.

Service Agreement Total (Per Year)
\$ 54,970.00

TOTAL 3-YEAR Agreement
Total \$ 164,910.00



Meeting Date: December 2, 2024

Title: Approval of an Amendment to the City of Newport's Personal Service Agreement with Clair Company, Inc. to Provide Building Plan Review and Inspection Services

Prepared by: Derrick I. Tokos, AICP, Community Development Director

Recommended Motion: I recommend that the City Council, acting as the Local Contract Review Board, consider the following motion:

I move that the Council approve this amendment to the April 6, 2020 Personal Service Agreement with Clair Company, Inc. adjusting the rates for building plan review and inspection services, and authorize the City Manager to sign the document upon final review by the City Attorney.

Background Information: The City of Newport supports its building services program with a combination of full-time staff and contract services. The City's principal contracts are with Lincoln County (2023), Clair Company, Inc. out of Corvallis (2020), and NW Code Professionals out of Eugene (2018, 2021).

The City relies upon Clair Company, Inc. to perform commercial plan reviews, structural plan reviews that must be performed by a licensed engineer, and A-Level plumbing inspections. They also provide backup support for residential plan reviews and building official services. On October 23, 2024, Clair Company, Inc. informed the City, in writing, that its expenses have increased significantly over the last four plus years, while the fixed hourly rates have remained unchanged since the Agreement was executed on April 6, 2020. They further noted that while their company would like to continue to provide the City with cost effective inspection and plan review services, they cannot accomplish that objective without increasing the hourly rates. Included with their correspondence was an itemized table listing new rates that they need to charge.

Costs have increased over the last 4+ plus years, so it is understandable that Clair Company, Inc. is asking for a rate increase. This amendment puts in place the new hourly rates, which amounts to a 23-25% increase for the services the City most commonly uses. Clair Company, Inc. asserts that the new rates are in line with the prevailing market. The City's agreement with Clair Company expires on April 6, 2025, and staff intends to solicit proposals for a new five-year contract on a competitive basis in advance of that date. That will be an opportunity for the limited number of other firms that provide these types of services to provide a proposal.

This amendment further increases the total amount of compensation Clair Company, Inc. can receive for performing plan review and inspection service from \$75,000 to \$100,000. The City has almost hit the \$75,000 limit in the past, so this increase is needed to ensure that critical plan review and inspection services are available given the new rates.

Fiscal Notes: The City's building program is fee supported, and an increase in expenses to cover Clair Company's new rates may require fee adjustments on the City's part to ensure that the program is sustainable. Staff will evaluate the impact and bring forward a fee proposal if justified.

Alternatives: Seek revisions to the draft amendment or proposed rates, forgo approving the amendment, or as suggested by Council.

Attachments:

Draft Amendment to the Clair Company Building Services Agreement

Request by Clair Company to Adjust the Rates

City of Newport - Clair Company Building Services Agreement, dated April 2020

**Amendment to Personal Services Contract Between
City of Newport and Clair Company, Inc. for
Building Plan Review and Inspection Services**

THIS AMENDMENT is to the Personal Services Contract (Agreement) between the City of Newport (City) and Clair Company, Inc., an Oregon Domestic Business Corporation (Contractor), effective April 6, 2020.

Recitals:

1. On April 6, 2020, City and Contractor entered into an Agreement for Contractor to provide building plan review and inspection services on City's behalf at fixed hourly rates as set out in a rates for services table enclosed as Exhibit A to the Agreement. The rates for services table also includes a fixed rate for mileage reimbursements and overtime.
2. The Agreement is effective for five years, with an expiration date of April 6, 2025 unless it is otherwise terminated or extended. There are no provisions in the Agreement for adjusting the rates for services, and Contractor's compensation is capped at a maximum of \$75,000 per calendar year.
3. On October 23, 2024, Contractor informed the City that its expenses have increased significantly over the last four plus years, while the fixed hourly rates have remained unchanged since the contract was executed on April 6, 2020. Contractor further noted that while they would like to continue to provide the City with cost effective inspection and plan review services, they cannot accomplish that objective without increasing the hourly rates, and they provided an itemized table listing new rates that they need to charge.
4. The rate adjustment constitutes a 23-25% increase in the amount the City will be charged by Consultant for the most commonly used services, and while the need for such an increase is understandable, the City may need to evaluate adjusting the fees it charges applicants in order to keep the building program financially sustainable.
5. Consultant asserts that the new rates are competitive within the market, and they will have an opportunity to demonstrate that to be the case, as the City will be in a position to solicit proposals in the coming months for a new long term building plan review and inspection services contract, given that this Agreement will expire on April 6, 2025.
6. Considering that this rate adjustment will increase plan review and inspection service costs under this Agreement by 23-25%, it is appropriate to increase Contractor' compensation limit from \$75,000 to \$100,000 to ensure that critical plan review and inspection services are available when needed.

Terms of Amendment:

City and Contractor agree to amend the Agreement as follows, effective on the date of the last signature below:

- A. Contractor charge rates for services listed in Exhibit A to the Agreement, and referenced under Terms of Agreement Section 3, Compensation, are hereby replaced with new rates for services listed in Exhibit A to this amendment.
- B. Maximum compensation to Contractor referenced under Terms of Agreement Section 3, Compensation, is hereby increased from \$75,000 to \$100,000 per calendar year.

Except as expressly set forth herein, all provisions of the Agreement shall continue and remain in full force and effect.

City of Newport

Clair Company, Inc.

Christina Vetter, City Manager

Millie Hicks, Chief Operating Officer

Date: _____

Date: _____

EXHIBIT A

Contractor Charge Rates for Services

Charge Rate Category	Hourly Rate
Building Official / Project Manager	\$125.00
Residential Plans Examiner	\$97.00
Commercial Plans Examiner (Bldg/FLS, Mech, Plumb, Elect)	\$105.00
Code / HazMat Tech Support	\$105.00
Licensed Engineer / Structural Plans Examiner	\$125.00
Residential Inspector (all disciplines)	\$97.00
A-Level Inspector (Building/FLS, Mechanical)	\$97.00
A-Level Inspector (Plumbing and Electrical)	\$105.00
Project Administration / Controller / Document Control	\$67.00
Mileage, at Federal Rate	\$0.67
Overtime (before 7am, after 5pm, weekends, holidays)	1.5 x base

Derrick Tokos

From: Millie Hicks <mhicks@claircompany.com>
Sent: Wednesday, October 23, 2024 4:53 PM
To: Derrick Tokos
Cc: David E. Flemings; Joseph Lease
Subject: Clair-City of Newport Hourly Rate Increase
Attachments: Clair Rates, effective 12-1-2024.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

[WARNING] This message comes from an external organization. Be careful of embedded links.

Hello Derrick,
 I hope everyone at the City is doing well.

As you know, costs to do business have increased significantly over the last 4+ years, while our hourly rates have not been increased since our last contract dated 4/6/2020. While we still want to provide the best service at an affordable cost, we will need to adjust rates to cover the increasing expenses. We have found that even with the increase in our hourly rates, we are still competitive within the market.

Please also note that we can offer the City an alternative cost model for plan review services, if that is something you would like to consider. We can offer plan review services for a percentage of the plan review fees collected for the scopes assigned to us (generally, 75%) vs. charging hourly. We are happy to talk about that option if it is of interest to the City.

Please see the attached revised rates, suggested to be effective December 1, 2024. Feel free to reach out to Dave and/or me to discuss any questions or comments you may have. We have enjoyed assisting the City over the years and look forward to many more.

Thank you, Millie

Millie Hicks
 Chief Operating Officer

Clair Company, Inc.
 525 NW Second Street
 Corvallis, OR 97330

Direct] 541.758.1302
Toll Free] 800.383.8855



October 23, 2024

City of Newport
169 SW Coat Highway
Newport, OR 97365

Attention: Derrick I. Tokos, AICP, Community Development Director

**Subject: Proposed Rate Adjustment
Plan Review and Inspection Support, City of Newport**

Clair Company, Inc (Clair) would like to provide the following proposed changes to our hourly rate schedule for City of Newport – Plan Review and Inspection Support Services.

Itemized List of Charges

Clair can continue to provide support services on an hourly rate basis for both plan review and inspection services. We are open to review of other cost models such as percentage of fees for plan review services. Rates have not increased for over four years, since April 2020. Below are our suggested revised rates. We are open to providing alternative cost models for plan review services (offering reviews for a percentage of plan review fees collected, vs. on an hourly basis, generally 75%).

Description	Hourly Rate
Building Official / Project Manager	\$125.00
Residential Plans Examiner	\$97.00
Commercial Plans Examiner (Bldg/FLS, Mech, Plumb, Elect)	\$105.00
Code / HazMat Tech Support	\$105.00
Licensed Engineer / Structural Plans Examiner	\$125.00
Residential Inspector (all disciplines)	\$97.00
A-Level Inspector (Building/FLS, Mechanical)	\$97.00
A-Level Inspector (Plumbing and Electrical)	\$105.00
Project Administration / Controller / Document Control	\$67.00
Mileage, at Federal Rate	\$0.67
Overtime (before 7am, after 5pm, weekends, holidays)	1.5 x base

If you have any questions, or need clarification regarding the information we have provided, please do not hesitate to contact our office at 800-383-8855 or by email at mhicks@claircompany.com. Additional information can be provided upon request. We look forward to discussing the details of the requested scope and to the opportunity to work with you and your team.

Respectfully Submitted,

Millie Hicks
Chief Operating Officer

**CITY OF NEWPORT, OREGON
PERSONAL SERVICES CONTRACT
BUILDING PLAN REVIEW AND INSPECTION SERVICES**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and Clair Company, Inc., an Oregon Domestic Business Corporation (Contractor). This agreement shall be effective when signed by both parties.

RECITALS

A. Contractor has the training, ability, knowledge, and experience to provide services desired by the City.

B. Consistent with ORS 279A.055, City selected Contractor using provisions in the public contracting rules that govern personal service contracts other than those related to Architect, Engineer, and Surveying services, and this agreement is structured to comply with the requirements for public contracting set forth in statute, administrative rule, and the Newport Municipal Code.

TERMS OF AGREEMENT

1. SERVICES TO BE PROVIDED

Contractor shall begin services on April 6, 2020. Payment shall not be made for any other services without the written agreement by the City. Contractor shall fill in for the City's Building Official, under the supervision of the Building Official, on an as needed basis, conduct commercial and residential plan reviews, and perform structural, electrical, plumbing and medical gas inspection services upon request and instruction by the City of Newport and, subject to review and final approval by the City, as follows:

- A. Contractor shall strive to complete plan reviews within 7 days for residential projects and 14 days for commercial projects, and in no circumstance shall reviews be completed more than 30 days after plans are mailed by the City.
- B. Inspections are to be performed during construction to ascertain if the construction complies with applicable State of Oregon Specialty Codes and Newport Municipal Code provisions, as written and per the approved plans.
- C. Inspections are to take place within two (2) working days following Contractor's receipt of an inspection request from the City.
- D. In the event Contractor determines that construction is not compliant with applicable codes, he/she shall, in writing, identify the nature of the compliance issue, applicable code sections, and required corrective measures. Further, Contractor agrees to make a good faith effort to work with the permit applicant/holders and City staff, in person or via teleconference, to resolve any issues arising under the applicable codes.

- E. Contractor agrees to utilize City forms and permit records when conducting inspections and documenting results, and shall provide inspection reports to City in a timely manner.
- F. Contractor agrees to coordinate with other City functions and departments when performing inspections, adhere to City ordinances and regulations for utilities and land use requirements, and assist in the in the enforcement of codes relevant to the inspections being performed.

Contractor may have contact with the public in the course of performing this Agreement and shall maintain good relations with the public. Failure to maintain good relations with the public shall constitute a breach of the contract. The City may treat the failure to maintain good relations as a non-curable breach allowing the City to terminate the Agreement and to disqualify Contractor from future work for the City.

2. TERM

This Agreement shall expire, unless otherwise terminated or extended, on April 6, 2025.

3. COMPENSATION

Contractor shall be compensated as described in Exhibit A to this agreement up to a maximum of \$75,000 per calendar year.

4. ASSIGNMENT/DELEGATION

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other.

5. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

- A. Contractor acknowledges that Contractor is an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due. or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.
- B. Contractor represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection this Agreement, except as specifically declared in writing.

- C. Contractor certifies that Contractor currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

6. INDEMNIFICATION

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws. Acceptance of contractor's work by City shall not operate as a waiver or release. Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the negligence of the City and its employees. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.

7. INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. The insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Errors and Omissions (or equivalent) Aggregate	\$1,500,000

Each Occurrence	\$500,000
Fire Damage (Anyone fire)	\$50,000
Medical Expense (Anyone person)	\$5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

C. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement that 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 that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this contract.

E. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City.

F. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No Agreement shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

G. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

H. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution, and errors and omissions policies required by this contract.

The procuring of required insurance shall not be construed to limit contractor's liability under this agreement. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

8. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

All notices, bills and payments shall be made in writing and may be given by personal delivery or mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

City:

City of Newport
Attn: Community Development Director
169 SW Coast Highway
Newport, Oregon 97365
Business Phone: 541.574.0626

Contractor:

Clair Company, Inc.
Attn: Code Consulting Services Manager
525 NW Second Street
Corvallis, Oregon 97330
Business Phone: 541.758.1302

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

9. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

10. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the Agreement pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

11. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

1. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
3. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
4. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

1. If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
2. If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
3. If Contractor fails to eliminate a conflict as described in Section 11 of this agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

12. ACCESS TO RECORDS

City shall have access to books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

13. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within 10 days from the beginning of the delay, notify the other party in writing of the cause of delay and its probable extent. The notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

14. NON-WAIVER

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

15. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

16. ERRORS

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delay and without additional cost.

17. EXTRA WORK

The Community Development Director may authorize additional work not described in Section 1 of this agreement, in writing, if such work is necessary to comply with State of Oregon Specialty Codes, or other building codes adopted by the City of Newport. Failure of Contractor to secure written authorization for work not described in Section 1 shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

18. ATTORNEY'S FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

19. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

20. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning application of building codes, working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279B, the provisions of which are hereby made a part of this agreement. (See Exhibit B.)

CITY OF NEWPORT


By: Spencer Nebel, City Manager

03-25-20
Date

CLAIR COMPANY, INC.


By: Millie Hicks, President

04-14-2020
Date

EXHIBIT A

Contractor Charge Rates for Services

Charge Rate Category	Hourly Rate
Building Official / Project Manager	\$ 90.00
Residential Plans Examiner	\$75.00
Commercial Plans Examiner (Bldg, FLS, Mech, Plumb, Elect)	\$85.00
Code / HazMat Tech Support	\$85.00
Licensed Engineer / Structural Plans Examiner	\$100.00
Residential Inspector (all disciplines)	\$75.00
A-Level Inspector (Building, FLS, Mechanical)	\$75.00
A-Level Inspector (Plumbing and Electrical)	\$85.00
Project Administration / Controller / Document Control	\$50.00
Mileage, at Federal Rate	\$0.575
Overtime (before 7am, after 5pm, weekends, holidays)	1.5 x base

EXHIBIT B

ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS FOR PERSONAL SERVICE CONTRACTS

Pursuant to ORS Chapters 279A and 279B, the following are requirements of this Agreement to the extent applicable to Consultant's services.

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (6) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (7) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).
- (8) Contractor shall pay employees at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or the Fair Labor Standards Act of 1938 (29 USC 201, et seq.) from receiving overtime. ORS 279B.235(3).

(9) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.

(10) Contractor represents and warrants that the contractor has complied with the tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor agrees to continue to comply with the tax laws of this state during the term of the public contract. Contractor's failure to comply with the tax laws of this state before the contractor executed the public contract or during the term of the public contract is a default for which the City may terminate the public contract and seek damages and other relief available under the terms of the public contract or under applicable law. ORS 279B.045.

(11) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises or a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontractors. ORS 279A.110.

(12) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.

