



IMPROVING OUR COMMUNITY

COLUMBIA GATEWAY URBAN RENEWAL AGENCY

CITY OF THE DALLES

AGENDA

COLUMBIA GATEWAY URBAN RENEWAL AGENCY BOARD

Meeting Conducted in a Room in Compliance with ADA Standards

Tuesday, August 21, 2018

5:30 p.m.

City Hall Council Chambers

313 Court Street

The Dalles, Oregon

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES – July 17, 2018
- VI. PUBLIC COMMENT
- VII. PRESENTATION
Mary Hanlon, Hanlon Development – Presentation of Development Proposal for 523 East Third Street
- VIII. ACTION ITEMS
 - A. Declaration of Agency-Owned Personal Property as Surplus and Authorization to Dispose of Said Property
 - B. Authorization to Participate in Appeal of Predetermination Letter Issued by BOLI for Tony's Building Redevelopment Project
 - C. Authorization for Execution of Confidentiality and Non-Circumvention Agreement for GBHD, LLC
- IX. EXECUTIVE SESSION
 - A. Recess to Executive Session in accordance with ORS 192.660(2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions.
 - B. Reconvene to Open Session
 - C. Decision following Open Session

X. STAFF COMMENTS

Next Regular Meeting Date: September 18, 2018

XI. BOARD MEMBERS COMMENTS OR QUESTIONS

XII. ADJOURNMENT



IMPROVING OUR COMMUNITY

COLUMBIA GATEWAY URBAN RENEWAL AGENCY

CITY OF THE DALLES

MINUTES

COLUMBIA GATEWAY URBAN RENEWAL AGENCY BOARD

Meeting Conducted in a Room in Compliance with ADA Standards

Tuesday, July 17, 2018

5:30 p.m.

City Hall Council Chambers

313 Court Street

The Dalles, Oregon

CALL TO ORDER

Chair Miller called the meeting to order at 5:30 p.m.

ROLL CALL

Present: Scott Baker, Staci Coburn, Taner Elliott, John Fredrick, Darcy Long-Curtiss, Linda Miller, Kathleen Schwartz and Chuck Raleigh

Absent: Steve Kramer

Staff Present: Urban Renewal Manager Steve Harris and City Attorney Gene Parker

In Attendance: Seven

PLEDGE OF ALLEGIANCE

Chair Miller led the Pledge of Allegiance.

APPROVAL OF AGENDA

Board Member Fredrick moved to approved the agenda; Board Member Elliott seconded the motion. The motion passed unanimously.

APPROVAL OF MINUTES

Board Member Fredrick moved to approve the minutes of June 19, 2018, as written. Board Member Coburn seconded the motion; the motion passed unanimously.

PUBLIC COMMENT

None.

EXECUTIVE SESSION

Pursuant to Item VIII. A. of the Urban Renewal Agency Board Agenda dated July 17, 2018, which cites ORS 192.660(2)(e), the Board adjourned to Executive Session at 5:35 p.m.

Board Member Baker left the meeting at 8:18 p.m.

Chair Miller reconvened the Open Session at 8:35 p.m.

DECISION

Board Member Long-Curtiss moved to reject the offer from J. D. Powers. Board Member Elliott seconded the motion. The motion passed unanimously, Kramer and Baker absent.

STAFF COMMENTS

The next regularly scheduled meeting is August 21, 2018. Chair Miller proposed that no meeting be held in August. Based on future topics, Board Consensus was to hold an August meeting.

BOARD MEMBER COMMENTS

Board Member Schwartz stated she had resigned her position with the Mid-Columbia Fire and Rescue Board and would no longer serve on the Urban Renewal Agency Board.

Board Member Coburn inquired about a timeframe for submission of missing information. Director Harris stated he would communicate with Mr. Leash and Leland Consulting Group and report back within a week.

ADJOURNMENT

Chair Miller adjourned the meeting at 8:39 p.m.

Respectfully Submitted
Paula Webb, Planning Secretary

Linda Miller, Chair



IMPROVING OUR COMMUNITY

COLUMBIA GATEWAY URBAN RENEWAL AGENCY

CITY OF THE DALLES

AGENDA STAFF REPORT

AGENDA LOCATION: VIII. A.

DATE: August 21, 2018

TO: Chair and Members of the Urban Renewal Agency Board

FROM: Steven Harris, AICP
Urban Renewal Manager

ISSUE: Declaration of Agency-Owned Personal Property as Surplus and Authorization to Dispose of Said Property

BACKGROUND

Representatives of the National Neon Sign Museum ("Museum") have contacted Agency staff regarding the sale or donation of certain fixtures located in the Agency-owned Tony's Building, 401 East 2nd Street. Division 02-0280 of the Agency's Local Contract Review Board Rules (2011) establishes provisions for the disposal of surplus personal property.

DISCUSSION

Kirsten and David Benko have requested that they be able to purchase, or have the Agency donate, certain fixtures from the Tony's Building for their use in the Museum. The requested fixtures are as follows:

- 3 ceiling mounted track lighting fixtures (4 lights each)
- 2 open front display cabinets
- 1 enclosed front display cabinet
- 1 display counter table

The fixtures are shown in the attached photographs. Due to the condition of the items, staff is of the opinion that they have a nominal value (less than \$250) and would likely be disposed of at the time the building is either demolished or re-purposed at some future date.

The Agency's Local Contract Review Board Rules allow for the disposal of surplus personal property through the following methods:

- Auction sales of personal property – Division 02-0280 (l)
- Sales of personal property – Division 02-0280 (m)
- Donations of personal property – Division 02-0280 (n)

The Museum has been recognized by the IRS as a 501 (c)(3) non-profit organization, and further defined as a 509 (a)(2) public charity (see attached). Therefore, staff suggests that if the Board finds the items to be “surplus personal property,” and that their disposal proceed under the terms of Division 02-0280 (n)(B) Donations of Personal Property, as follows:

(n)(B) The Agency may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service activities, subject to the following conditions:

- (I) A determination has been made that the property is not needed for other public purposes;
- (ii) If the property has a current market value of \$250.00 or more, the donation or sale shall:
 - 1) Be approved by the Agency Manager;
 - 2) Be documented by the Agency to be clearly in the public interest;
- (iii) The Agency determines this is the most efficient and cost-effective method for disposing of the property.

STAFF RECOMMENDATIONS

Staff recommends that the Agency Board declare the fixtures identified above as surplus personal property; that the Board determines the property is not needed for other public purposes; that the property has a current market value of less than \$250.00; and that the Board determines this is the most efficient and cost-effective method for disposing of the property. Furthermore, staff recommends that the Board direct staff to proceed with the donation of the property to the National Neon Sign Museum.

BOARD ALTERNATIVES

1. **Staff recommended motion:** *Move to declare the items identified in the staff report as surplus personal property; that the property has been determined not to be needed for other public purposes; that the property has a current market value of less than \$250.00; that the Agency Board determines that Local Contract Review Board Rules Division 02-0280 (n)(B) is the most efficient and cost-effective method for disposing of the property; and to direct staff to proceed with the donation of the property to the National Neon Sign Museum.*
2. Declare the identified items as surplus personal property and proceed with their disposal as provided in the Urban Renewal Agency's Local Contract Review Board Rules – Division 02-0280 (l) or (m); or
3. Decline to declare the identified items as surplus personal property, and take no further action at this time.

Attachments

- Photographs of identified fixtures
- Local Contract Review Board Rules – Division 02-0280 (l), (m) and (n)
- National Neon Sign Museum IRS 501 (c) (3) determination letter





- (C) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected; and
 - (D) Not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.
 - (k) Goods purchased through the State of Oregon. Contracts for the purchase of goods or materials if competitive bids for the same goods or materials have been obtained by the State of Oregon, the contract is awarded to the same party that the State dealt with, and the price of the goods or materials is the same or lower than that paid by the State.
-

- (l) Auction Sales of Personal Property. Personal property may be sold at auction, after the property has been declared surplus, if the Agency determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive written bid.
- (m) Sales of Personal Property. The Agency may sell personal property after the property has been declared surplus, including recyclable or reclaimed materials, without formal competitive bidding if the Agency has determined that a negotiated sale will result in increased net revenue and the following conditions are complied with:
 - (A) When the current market value per item is deemed to be less than \$1,000.00, the Agency may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms; or
 - (B) When the current value per item is deemed to exceed \$1,000.00, the personal property must be offered for competitive written bid and be advertised in accordance with ORS 279.025, or be offered for sale at public auction. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected and the Agency may negotiate a sale subject to the following conditions:
 - (I) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or

- (ii) The sale amount exceeds the highest bid received through the bidding or auction process.
- (n) Donations of Personal Property.
 - (A) The Agency may transfer personal property after the property has been declared surplus, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following activities;
 - (I) Another public agency; or
 - (ii) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or
 - (iii) Any recognized non-profit activity which is certified to receive federal surplus property.
 - (B) The Agency may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service activities, subject to the following conditions:
 - (I) A determination has been made that the property is not needed for other public purposes;
 - (ii) If the property has a current market value of \$250.00 or more, the donation or sale shall:
 - 1) Be approved by the Agency Manager;
 - 2) Be documented by the Agency to be clearly in the public interest;
 - (iii) The Agency determines this is the most efficient and cost-effective method for disposing of the property.
 - (C) The Agency shall maintain a record of all transfers, donations or sales authorized by sections (A) and (B) of this rule.

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

FEB 01 2016

THE NATIONAL NEON SIGN MUSEUM
200 E 3RD ST
THE DALLES, OR 97058

Employer Identification Number:
47-4053295
DLN:
17053322368025
Contact Person:
THOMAS C KOESTER ID# 31116
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
509(a)(2)
Form 990/990-EZ/990-N Required:
Yes
Effective Date of Exemption:
March 6, 2015
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Letter 947

THE NATIONAL NEON SIGN MUSEUM

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jeffrey I. Cooper', with a stylized, cursive script.

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements



IMPROVING OUR COMMUNITY

COLUMBIA GATEWAY URBAN RENEWAL AGENCY

CITY OF THE DALLES

AGENDA STAFF REPORT

AGENDA LOCATION: VIII. B.

DATE: August 21, 2018

TO: Urban Renewal Agency Board

FROM: Gene Parker, City Attorney

ISSUE: Determination whether to proceed with appeal of pre-determination by Bureau of Labor and Industries (BOLI) concerning applicability of prevailing wages for Tony's Building redevelopment project

BACKGROUND: Pursuant to Section 3.5.1 of the Disposition and Development Agreement between the Urban Renewal Agency and Tokola Properties, Inc., the Urban Renewal Agency submitted a letter on May 8, 2018 to BOLI requesting a determination whether the proposed redevelopment project for the Tony's Building would be subject to the requirement to pay prevailing wages. On July 17, 2018, BOLI issued a determination that the prevailing wage rate laws would not apply to the project. The attorney for Tokola Properties and myself noted that this determination relied upon information which was inaccurate, and did not contain an explanation as to why certain expenditures did not qualify for exemptions from the definition of "funds of a public agency". We informally reached out to BOLI and requested that they reconsider their determination, based upon additional information that was provided to BOLI. On August 9, 2018, BOLI issued an amended determination that the project would be subject to prevailing wages. A copy of that determination is provided with this staff report.

Pursuant to Section 3.5.2 of the DDA, since the predetermination letter was not favorable for the project, Tokola has until August 20th to notify the Agency whether they will elect to terminate the DDA. As of the date of preparing this staff report, I have not been advised by Tokola's attorney they will be terminating the DDA. I have had discussions with Tokola's attorney that they have an attorney who will likely be representing them during an appeal of BOLI's determination letter of August 9, 2018. If Tokola does not choose to terminate the agreement, the Agency is then to notify Tokola if it intends to proceed with an appeal of BOLI's predetermination letter of August 9, 2018. If the Agency proceeds with the appeal, the DDA is not terminated. If an appeal of BOLI's predetermination letter is not successful, Tokola has the option to terminate the DDA by providing the Agency 10 days' notice upon receipt of notice of an unsuccessful appeal.

An appeal with BOLI must be received by BOLI by August 29, 2018. Throughout the preparation of the documents submitted to BOLI, the Agency and Tokola have consistently taken the position that the project should not be subject to the requirement to pay prevailing wages, and that BOLI has ignored many of the arguments raised by the Agency and Tokola and

is not correctly interpreting the statutes that define what costs qualify as “public funds of an agency” for determining if the Urban Renewal Agency is contributing more than \$750,000 toward the project. It is my opinion that Tokola will likely determine they want to proceed with an appeal of the BOLI decision, and my recommendation is that the Agency Board authorize staff to proceed with such an appeal.

As discussed in the section below concerning alternative actions, the Agency Board could decide it does not want Agency staff to participate in an appeal of BOLI's predetermination letter of August 9, 2018. If such a motion was adopted by the Board, this would have the effect of not causing one of the required conditions precedent to the DDA being able to be completed, and would likely result in the redevelopment project not being completed.

BUDGET IMPLICATIONS: It is my understanding there are no filing fees associated with any appeal of BOLI's predetermination letter.

BOARD ALTERNATIVES:

1. *Staff recommendation:* The Board move to authorize the City Attorney to notify Tokola Properties, Inc., that the Agency will participate in an appeal of the predetermination letter issued by BOLI dated August 9, 2018.
2. Move to authorize the City Attorney to notify Tokola Properties, Inc., that the Agency will not participate in an appeal of the predetermination letter issued by BOLI dated August 9, 2018.



August 9, 2018

Gene E. Parker, City Attorney
City of The Dalles
Columbia Gateway Urban Renewal Agency
313 Court Street
The Dalles, OR 97058

Re: *Determination Whether Project is Subject to Prevailing Wage Rate Laws – AMENDED*
Project: The Tony's Building
Requested by: City of The Dalles and Columbia Gateway Urban Renewal Agency

Dear Mr. Parker:

On May 8, 2018, the Bureau of Labor and Industries ("BOLI") received the request you submitted on behalf of the City of The Dalles ("City") and Columbia Gateway Urban Renewal Agency ("Agency") (collectively, "Owners") asking if the Prevailing Wage Rate laws would apply to a proposed project referred to as The Tony's Building. On July 17, 2018, BOLI issued a determination that the Prevailing Wage Rate laws would not apply to the project.

Between July 19, 2018 and July 27, 2018, you clarified certain information already in BOLI's possession and also provided additional information related to the project. Taking this information into consideration, the commissioner issues the following amended determination:

FINDING OF FACT

1. The City approved a Columbia Gateway Urban Renewal Plan ("Plan") in 1990, and has amended the Plan numerous times through the years. The 13th amendment of the Plan, approved on May 12, 2014, contains the following mission statement:
The Mission of the Urban Renewal Agency is to eliminate blight and depreciating property values within the Agency's jurisdiction and in the process, attracts aesthetically pleasing, job producing private investments that will stabilize or increase property values and protects the area's historic places and values.
2. On October 30, 2015, the City published a Request for Qualifications ("RFQ") to solicit qualified development teams for the redevelopment of four parcels of property located on Federal Street between First Street and Second Street in The Dalles, Oregon. An existing

PORTLAND
800 NE Oregon St. Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

SALEM
3865 Wolverine St. NE; E-1
Salem, OR 97305-1268
(503) 378-3292
FAX (503) 373-7636

EUGENE
1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
(541) 686-7623
FAX (541) 686-7980

BEND
Apprenticeship and Training
Worksource Bend
1645 NE Forbes Rd, Ste 106
Bend, OR 97701-4990
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building on the property is commonly known as The Tony's Building. The area of redevelopment includes an adjacent City-owned parking lot, the existing alley that runs through the property, and additional parking spaces. Collectively, these are referred to as the Property.

3. On January 5, 2016, the Owners and Tokola Properties, Inc. ("Developer") entered into an Exclusive Negotiating Agreement ("ENA") for joint development of the Property. Although this ENA expired, the Owners and the Developer entered into a new ENA for redevelopment of the Property, effective August 6, 2016.
4. On February 26, 2016, the Agency acquired the Property for the purpose of a mixed-use redevelopment, to include market rate housing, parking, and retail space. The proposed redevelopment is referred to as The Tony's Building (the "Project").
5. On February 28, 2018, the Agency and the Developer entered into an Agreement for Disposition and Development of Real Property (the "Agreement"). The Agreement governs the sale and redevelopment of the Property.
6. Under the Agreement, the Developer will purchase the Property from the Owners for ten dollars (\$10).
7. The Agreement requires development of the Project within certain timelines, and requires the Project contain numerous elements, including:
 - a. A mixed-use development constructed in a single building of approximately 47,000 square feet in size and comprised of four stories on approximately 0.59 acres of land.
 - b. 49 market rate apartments with a mix of studio, one-bedroom, two-bedroom, and three-bedroom floor plans.
 - c. Approximately 1,500 square feet of ground-level retail space.
 - d. 44 tuck-under, off-street parking spaces and five offsite parking spaces.
 - e. A bicycle wash and repair area.
 - f. A fitness center.
 - g. Controlled building access.
 - h. Elevator access to all floors.
 - i. A community room.
8. There are no plans for any public agencies to use or occupy any of the square footage of the Project.
9. The Agreement states that the Owners will have and exercise no control over the construction of the Project.
10. The Agreement stipulates that the Owners have the following remedies if the Developer fails to obtain a certificate of completion within 36 months of the closing date:
 - a. Re-enter and take possession of the Property;

- b. Terminate (and revest in Owner) the estate conveyed by the Deed for the Property;
 - c. Terminate Developer's right to develop the Property;
 - d. Provide Owners with the right to resell the Property.
11. Under Section 6.3 of the Agreement, the Owners agree to pay the Developer \$750,000 in financial assistance for the Project. Under an amendment to the Agreement, dated June 20, 2018, the parties have agreed to limit this amount to \$749,900.
12. The City and the Agency have paid or will pay for various costs associated with the Project, as shown on the table below. The Owners consider \$82,347 of those costs to be funds of a public agency used for the Project. This amount will be subtracted from the financial assistance figure of \$749,900 to be paid to the Developer, leaving \$667,553 to be paid to the Developer.

City Systems Development Charges (SDCs)	\$116,511.50
City Fees and Charges	\$440.00
Parks and Recreation SDCs	\$56,938.00
Building Codes Division Fees/Charges	\$123,898.75
School District Construction Excise Tax	\$90,720.00
Fair Market Value of Property Less Sale Price	\$309,990.00
Appraisal	\$8,000.00
Economic Analysis	\$25,846.00
Security Fencing	\$500.00
Marketing Consultant	\$1,800.00
Survey	\$3,850.00
Environmental Assessment	\$2,500.00
Archeological Study	\$75,000.00
Demolition of Building	\$250,000.00
NW Natural Gas	\$80,000.00
PUD Relocation	\$118,022.00
City Water/Sewer Relocation	\$175,961.50
Oil Tank Removal	\$8,920.00
Lab and Asbestos Testing	\$2,800.00
Easement Survey Work	\$1,848.25
Additional Financial Assistance Paid to Developer	\$667,553.00

- a. Building Development and Permit Fees: The Agency has paid or will pay for \$385,508.25 in building and development permit fees, including city systems development charges, city fees and charges, Parks and Recreation District systems development charges, Building Codes Division fees and charges, and school district construction excise tax. The Owners do not consider this amount to be funds of a public agency used on the Project.

- b. Fair Market Value of Property Less Sale Price: An appraisal of the Property was done by Integra Realty Resources, effective January 16, 2018. The appraisal states that the estimated land value as unencumbered (i.e., the as-is fair market value) is \$310,000. The fair market value of the Property less the sale price is \$309,990. The Owners do not consider this amount to be funds of a public agency used on the Project.

The appraisal states the “hypothetical value as stabilized through the Income Approach” is \$8,700,000. Taking into consideration the requirements imposed on the Project by the Agency as set forth in the Agreement, including but not limited to the requirements to develop the Property with four-story high-density apartments, street level retail space, and structured parking, the appraisal states that the “estimated cost of the proposed development before land” is \$10,800,000. Therefore, the appraisal finds that the “estimated land residual value with profit” is -\$2,100,000.

- c. Appraisal: The Agency paid \$8,000 for the appraisal for the Property. The Owners consider this amount to be funds of a public agency used on the Project.
- d. Economic Analysis: The Agency paid \$25,846 for an economic analysis for the Project. The Owners consider this amount to be funds of a public agency used on the Project.
- e. Security Fencing: The City will be providing security fencing around the excavation site for the City-owned parcels which make up the parking lot. The estimated cost for providing the security fencing is \$500. The Owners consider this amount to be funds of a public agency used for the Project.
- f. Marketing Consultant: The Agency paid for a marketing consultant, referred to in the May 7, 2018 initial request for determination (“Determination Request Letter”) as “outside staff,” at a cost of \$1,800. The Owners initially considered the contracted individual to be “staff resources of the public agency” and therefore not funds of a public agency under ORS 279C.810(1)(a)(F)¹. According to the Determination Request Letter, various “staff functions” were hired out to consultants due to their special expertise or the lack of available Owners’ staff to perform the needed work. The Owners considered the costs of those contracted services to be staff resources of the public agency. After the definition of “staff resources of a public agency” under OAR 839-025-0004(27)² was pointed out to the attorney representing the Owners, the Owners submitted Supplement #2 on June 21, 2018, stating the Agency concedes the Administrative Rule speaks to “employees,” but also states “it is an unfair burden to place on small cities and

¹ “Funds of a public agency” does not include staff resources of the public agency used to design or inspect one or more components of a project.

² “Staff resources of a public agency” means employees of the public agency who may manage, supervise or oversee a project or employees of the public agency used to design or inspect one or more components of a project, but not persons with whom a public agency contracts to perform such services.

agencies.... Agency will concede the \$1,800 in staff resources are funds of a public agency if need be to obtain a favorable determination.” In documentation accompanying Supplement #4, which was provided to BOLI by the Owners on July 27, 2018, the \$1,800 that was paid for “outside staff” was noted as being funds of a public agency used on the Project.

- g. Survey: The Agency paid \$3,850 for a survey of the Property. The Agency required a boundary survey, at a cost of \$1,925. The Developer requested and the Agency agreed to upgrade the survey to a full ALTA survey for Developer’s use, which increased the cost to \$3,850. The Owners consider the additional cost of \$1,925 for the ALTA survey to be funds of a public agency used on the project. In the Determination Request Letter, it was noted that the \$1,925 cost for the boundary survey was considered “staff resources of the public agency” and therefore not funds of a public agency. The Determination Request Letter also stated the \$1,925 boundary survey cost was “Value added to Property as consequence of site preparation,” and therefore not funds of a public agency. On a spreadsheet titled Attachment 3, which was provided with both the Determination Request Letter and Supplement #4, \$1,925 for the boundary survey is noted as being “Agency costs for site preparation,” and therefore “exempt” under ORS 297C.810(1)(a)(I)³.
- h. Environmental Assessment: The Agency paid \$2,500 for an environmental assessment of the Property. The Agency and the Developer agreed that the assessment was of equal value to both parties, and as a result, the Owners considered half of the cost allocated to the Developer, or \$1,250, to be funds of a public agency and will be deducted from the financial assistance to be paid to the Developer. In the Determination Request Letter, it was noted that the remaining \$1,250 cost of the environmental assessment allocated to the Agency was considered to be “staff resources of the public agency” and therefore not funds of a public agency. The Determination Request Letter also stated \$1,250 of the environmental assessment cost allocated to the Agency was “Value added to Property as consequence of site preparation,” and therefore not funds of a public agency. On Attachment 3, \$1,250 of the assessment cost is noted as being “Agency Costs for Site Preparation,” and therefore “exempt” under ORS 297C.810(1)(a)(I).
- i. Archeological Study: The Agency paid \$75,000 for an archeological study for the Property. According to the Determination Request Letter, the Developer required an archeological study to guide it in its excavation activities, and the City “must deal with archeological issues throughout its downtown to allow broad-based development to occur.” The Agency and the Developer agreed to allocate the costs of the study “based on the breadth of the archeological study and the

³ “Funds of a public agency” does not include value added to land as a consequence of a public agency’s site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870.

relevant benefit to the Owners for their broader development work and to the Developer for its site-specific excavation work.” The cost allocated to the Developer was \$43,026.25; the Owners consider this amount to be funds of a public agency. The remaining \$31,945.45 was allocated to the Agency, and was considered “staff resources of the public agency” and therefore not funds of a public agency. The Determination Request Letter also stated the cost allocated to the Agency was “Value added to Property as consequence of site preparation,” and therefore not funds of a public agency. On Attachment 3, \$31,945.45 of the archeological study cost is noted as being “Agency cost for its site preparation and work on adjacent alley,” and therefore “exempt” under ORS 297C.810(1)(a)(I).

- j. Demolition/Site Preparation: The Agency has paid or will pay for certain demolition and site preparation costs, including demolition of a building, moving utilities, moving an oil tank, asbestos testing, and an easement survey. The estimated total cost for this will be \$637,551.75. The Owners consider these costs to be “Value added to the Property as consequence site preparation” and therefore “exempt” under ORS 297C.810(1)(a)(I).

In a telephone conversation on July 24, 2018 with the attorney representing the Owners, BOLI personnel explained that “value added to land” in ORS 279C.810(1)(a)(I) is meant to refer to only the value that is actually added to the land as a result of demolition and site preparation, and not the costs the public agency expends for such demolition and site preparation. The Owners disagree with BOLI, and responded in Supplement #4 with the following:

[W]hat is excluded is: “*Value added to land as a consequence of a public agency’s site preparation, demolition of real property or remediation or removal of environmental contamination....*”

If we stop there, [it] appears hard to conclude that any value added from such work is not excluded. As discussed during the call, it is also hard to conceive how value can be added as contemplated without spending money to do so. If the money spent is considered funds of a public agency then the exclusion provides no exclusion at all because the value added is excluded and the funds expended to perform that work added back so it is a wash with no net exclusion. Certainly, the legislature did not contemplate this exclusion would have no net utility.

The next step is to evaluate the *balance of the language* in the exclusion: “...except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or”

[BOLI's] example appears to operate in reverse of the statutory language. [The] example first includes the cost for the site preparation, demolition or remediation or removal as funds of a public agency and then excludes the extra value added in excess of the expenses of the public agency. It appears to the Agency that the statute starts with what is excluded and then carves out from that exclusion, the fair market value added.

The Agency's reading of the statute makes sense from a public policy standpoint. A developer does not receive anything of value beyond what it pays for the land (based on work the public agency does before closing of the sale to prepare the land for sale) but if there is added fair market value created by the work the public agency performs before closing on the sale to prepare the land for sale *then*, the developer should have to pay for the then current (and resulting) fair market value; otherwise, there is a true transfer of value from the governmental agency to the developer in terms of that newly created value. This ties neatly into ORS 279C.810(1)(a)(E) which ensures the developer pays the fair market value for the land it purchases based on the value existing "*at the time of the sale.*" (All emphasis in original.)

The summary of the total funds of a public agency the Owners consider will be used on the Project:

Appraisal	\$8,000.00
Economic Analysis	\$25,846.00
Security Fencing	\$500.00
Marketing Consultant	\$1,800.00
Survey (1/2 of total cost)	\$1,925.00
Environmental Assessment (1/2 of total cost)	\$1,250.00
Archeological Study (Agency's allocated cost)	\$43,026.00
Additional financial assistance	\$667,553.00
Total:	\$749,900.00

13. Regarding the \$667,553 in financial assistance the Agency will pay the Developer, it was noted in Supplement #4 that the Developer and the Agency have agreed to amend the Agreement to reflect a "negative purchase price for the Property of \$667,553 so that there is no exchange of value from the Agency benefitting the Developer due to the site improvements and that revised negative purchase price is fully supported by the appraisal which would justify a negative purchase price of more than double that amount. The Agency and the Developer will supply that amendment upon request."
14. In Supplement #4, the Agency requests BOLI analyze the costs the Agency has paid or will pay for the survey, environmental assessment, archeological study, and \$637,551.75 in demolition and site preparation costs under ORS 279C.810(1)(a)(E)⁴. The Owners

⁴ "Funds of a public agency" does not include the difference between:

state that this work will be performed before title to the Property is transferred to the Developer, and as such, reduces the negative fair market value of the Property. The Owners indicate the cost of this work is \$719,899, but is subject to revisions. As noted previously, an appraisal of the Property indicates the “estimated land residual value with profit” is -\$2,100,000. In Supplement #4, the Owners state that if the work is performed before closing, this reduces the negative fair market value of the property by \$719,889, still leaving a “negative fair market value of \$1,380,101.” The Agency offered to “provide a supplement to the appraisal establishing that the \$719,899 in expenditures does not create a positive fair market value of the Property.” As stated in Supplement #4, “If those expenditures by the Agency before ‘the time of the sale’ are included as ‘funds of a public agency’ under ORS 279C.810(1)(a)(I), they should be exempt under ORS 279C.810(1)(a)(E) in *that a very significant negative [value] of the land remains.*” (Emphasis in original.)

CONCLUSIONS OF LAW

1. The Project is not being carried on or contracted for by a public agency and, as such, does not meet the definition of “public works” under ORS 279C.800(6)(a)(A).
2. Under ORS 279C.810(1)(a)(B), “funds of a public agency” does not include building and development permit fees paid or waived by the public agency. Therefore, the amounts the Owners have paid or will pay for city systems development charges, city fees and charges, Parks and Recreation District systems development charges, Building Codes Division fees and charges, and school district construction excise tax are not considered funds of a public agency used on the Project.
3. Under ORS 279C.810(1)(a)(D), “funds of a public agency” does not include land that a public agency sells to a private entity at fair market value. The Owners will sell the Property to the Developer for \$10, which is \$309,990 less than the appraised fair market value. However, under ORS 279C.810(1)(a)(E), “funds of a public agency” does not include the difference between the value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land, and the fair market value of the land if the land is not subject to those limitations.

According to the appraisal for the Property, the “estimated land residual value with profit” is -\$2,100,000 due to the restrictions and limitations the Owners have imposed on the Project. While the Owners will convey the Property to the Developer at less than fair market value, because the land has a negative value as a result of the restrictions and limitations the public agencies have imposed on the Project, the difference between the

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- (i) the value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and
 - (ii) the fair market value of the land if the land is not subject to the limitations described in subparagraph (i) of this subparagraph.

fair market value of the land and the sale price is not considered “funds of a public agency” used on the Project.

4. The Agency paid \$81,350 for a survey, an environmental assessment, and an archeological study for the Project. The Owners state that these expenditures are not funds of a public agency for multiple reasons.

First, the costs were allocated between the Agency and the Developer, and only the costs allocated to the Developer were considered “funds of a public agency” by the Owners. However, regardless of the proportion of benefit to either party, the fact remains that the total amount expended by the Agency for these costs is \$81,350. BOLI will consider the full costs for the survey, environmental assessment, and archeological study when determining whether the costs are “funds of a public agency” under OAR 839-025-0004(9)(a).⁵

Second, the Owners state these costs are for “staff resources” and not funds of a public agency under ORS 279C.810(1)(a)(F). Under ORS 279C.810(1)(a)(F), “funds of a public agency” does not include staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project. However, none of these costs were for supervision, coordination or oversight of the Project. Additionally, under OAR 839-025-0004(27), “staff resources of a public agency” means employees of the public agency who may manage, supervise or oversee a project, or employees of the public agency used to design or inspect one or more components of a project, but not persons with whom a public agency contracts to perform such services.” The costs for the survey, environmental assessment, and archeological study were for persons with whom the public agency contracted to perform those services, not employees of a public agency, and therefore these costs cannot be considered “staff resources of the public agency.”

Third, the Owners state that these costs are “value added to the land” and not funds of a public agency under ORS 279C.810(1)(a)(I). Under ORS 279C.810(1)(a)(I), “funds of a public agency” does not include value added to land as a consequence of a public agency’s site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870. Whether or not a property survey, an environmental assessment, or an archeological study may be considered “site preparation,” this provision in statute exempts from “funds

⁵“Funds of a public agency” includes any funds of a public agency that are directly or indirectly used, as described below.

(A) “Directly used funds of a public agency” means revenue, money, or that which can be valued in money collected for a public agency or derived from a public agency’s immediate custody and control, and...used as payment for all or part of a project.

(B) “Indirectly used funds of a public agency” means, except as provided in subsection (b) of this section, that a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter.

of a public agency” the *value added to the land* as a result of site preparation or demolition paid for by a public agency; it does not exempt the *costs* of the site preparation or demolition paid for by the public agency. It is unlikely the survey, environmental assessment, or archeological study has or will add value to the land, but whether they do or not, the \$81,350 the Agency paid for these items cannot be considered “value added to the land as a result of site preparation or demolition paid for by a public agency.”

Finally, the Owners state these costs are not funds of a public agency under ORS 279C.810(1)(a)(E). This statute provides that “funds of a public agency” does not include: the difference between:

- (i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency improves on the development or use of the land; and
- (ii) The fair market value of the land if the land is not subject to the limitations described in sub-subparagraph (i) of this subparagraph.

This provision relates to the value of land under certain circumstances. It does not reference the expenditures a public agency makes to pay for the costs of such items as surveys, environmental assessments, or archeological studies. Therefore, it is not appropriate to analyze these costs under ORS 279C.810(1)(a)(E).

The \$81,350 the Agency paid for the survey, environmental assessment, and archeological study is therefore “funds of a public agency” used on the Project.

5. The Agency has paid or will pay a total of approximately \$637,551.75 for demolition and site preparation costs. The Owners state that these expenditures are not funds of a public agency for two reasons.

First, the Owners state that these costs are “value added to the land” and not funds of a public agency under ORS 279C.810(1)(a)(I). This statute exempts from “funds of a public agency” the *value added to the land* as a result of site preparation or demolition paid for by a public agency; it does not exempt the *costs* of the site preparation or demolition paid for by the public agency. It is not known whether the demolition or site preparation has or will add value to the land, but whether they do or not, the \$637,551.75 the Agency paid for these items cannot be considered “value added to the land as a result of site preparation or demolition paid for by a public agency.”

Second, the Owners state these costs are not funds of a public agency under ORS 279C.810(1)(a)(E). This provision relates to the value of land under certain circumstances. It does not reference the expenditures a public agency makes to pay for demolition or site preparation. Therefore, it is not appropriate to analyze these costs under ORS 279C.810(1)(a)(E).

The \$637,551.75 the Agency paid for demolition and site preparation is therefore “funds of a public agency” used on the Project.

6. Under ORS 279C.800(6)(a)(B), “public works” includes a project that uses \$750,000 or more of funds of a public agency for constructing, reconstructing, painting or performing a major renovation on a road, highway, building, structure or improvement of any type. The Project will use approximately \$1,422,600.75 in funds of a public agency, as shown in the table below. Therefore, the Project meets the definition of “public works” under ORS 279C.800(6)(a)(B).

Appraisal	\$8,000.00
Economic Analysis	\$25,846.00
Security Fencing	\$500.00
Marketing Consultant	\$1,800.00
Survey	\$3,850.00
Environmental Assessment	\$2,500.00
Archeological Study	\$75,000.00
NW Natural Gas	\$80,000.00
PUD Relocation	\$118,022.00
City water/sewer relocation	\$175,961.50
Oil Tank	\$8,920.00
Demolition	\$250,000.00
Lab and Asbestos testing	\$2,800.00
Easement survey work	\$1,848.25
Additional financial assistance	\$667,553.00
Total Funds of a Public Agency:	\$1,422,600.75

7. No public agency will occupy or use any of the square footage of the Project. Therefore, the Project does not meet the definition of “public works” under ORS 279C.800(6)(a)(C).

DETERMINATION

Based on the foregoing, the Prevailing Wage Rate laws, ORS 279C.800 to ORS 279C.870, and OAR Chapter 839, Division 025, will apply to The Tony’s Building project.

This determination is based on the agency’s file as of the date of this determination. The commissioner may make a different determination if any of the project information is incorrect or if the project or project documents are modified or supplemented after the date of this determination.

REQUEST FOR A RECONSIDERATION

After the commissioner issues a determination, the requestor or any public agency served with a copy of the determination may request that the commissioner reconsider the determination. A request for reconsideration must be submitted in writing to the Prevailing

Wage Rate Unit, must include the reason or reasons for the request and any documents in support of the request, and must be received within 15 calendar days of the date the determination was mailed. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.

RIGHT TO A HEARING

The requestor and any person adversely affected or aggrieved by this determination are entitled to a hearing as provided by the Administrative Procedures Act (ORS 183.413 to 183.470) and ORS 279C.817. If you want a hearing, the Bureau of Labor and Industries, Wage and Hour Division must receive your written request for hearing within 21 days from the date this notice was mailed. Hearing requests should be addressed and delivered to:

Administrator
Wage and Hour Division
Bureau of Labor and Industries
800 NE Oregon St., Suite 1045
Portland, Oregon 97232

If a written request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived, this determination order will be final, and the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

If you request a hearing, you will be notified of the date, time and place of the hearing. You have the right to be represented by legal counsel at a hearing. However, if you are a government agency, corporation, partnership, or unincorporated association, you must be represented by either legal counsel or an authorized representative. If you request a hearing, you will receive information on Contested Case Rights and Procedures before the hearing. After the hearing, an order confirming, modifying, or reversing this determination order will be issued. This determination shall remain in effect until the final order is issued.

If you request a hearing, but fail to appear at any scheduled hearing, you will have waived your right to hearing, and the commissioner may issue a final order by default. If the commissioner issues a final order by default, the agency file on this matter shall serve as the record for purposes of proving a prima facie case.

Date: August 9, 2018

Brad Avakian, Commissioner
Bureau of Labor and Industries



Gerhard Taeubel, Administrator
Wage and Hour Division
Bureau of Labor and Industries

Certificate of Service

On August 9, 2018, I mailed the Prevailing Wage Rate Determination for the project known as The Tony's Building to the requestor and interest parties as follows:

Gene E. Parker, City Attorney
City of The Dalles
Columbia Gateway Urban Renewal Agency
313 Court Street
The Dalles, OR 97058

Randall Bateman, Esq.
Bateman Seidel
888 SW 5th Avenue, Suite 1250
Portland, OR 97204

Dwight Unti
Tokola Properties, Inc.
PO Box 1620
Gresham, OR 97030



Mike Kern
PWR Compliance Specialist
Wage and Hour Division
Bureau of Labor and Industries

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IMPROVING OUR COMMUNITY

COLUMBIA GATEWAY URBAN RENEWAL AGENCY

CITY OF THE DALLES

AGENDA STAFF REPORT

AGENDA LOCATION: VIII. C.

DATE: August 21, 2018

TO: Urban Renewal Agency Board

FROM: Gene E. Parker, City Attorney

ISSUE: Authorization for Execution of Confidentiality and Non-Circumvention Agreement with GBHD, LLC

BACKGROUND: Agency staff has been working with Leland Consulting and representatives of GBHD, LLC concerning the terms of a Confidentiality and Non-Circumvention Agreement requested by GBHD, LLC in connection with their proposed development project for a hotel. The purpose of the agreement is to establish guidelines for the treatment of information designated as confidential by GBHD, LLC and to also ensure that the Agency does not use any information it may acquire from GBHD, LLC to engage in business with a third party who could be a potential economic competitor with GBHD, LLC.

The proposed agreement, a copy of which is included with this staff report, establishes a process for GBHD to provide the confidential information to the Agency through Leland Consulting by using a series of secure electronic drop boxes to which Leland Consulting will have access. Leland Consulting will have the authority to provide this information to myself, Mr. Harris, and current and future members of the Agency Board. The agreement establishes a process to resolve potential disputes concerning whether certain information should be considered as confidential, involving legal counsel for the Agency and GBHD, LLC. In the event any dispute over confidentiality is not resolved, Leland Consulting has the discretion to take the non-disclosure of information into account when making their final recommendations to the Agency. The agreement also includes provisions concerning unauthorized disclosure or unauthorized circumvention, provisions relating to the return or destruction of confidential information, and provisions allowing for termination of negotiations between the Agency and GBHD LLC unless and until a binding agreement has been reached between the parties.

It is my understanding that GBHD LLC has advised Mr. Harris and Leland Consulting that they have been making progress in producing the documents, and that deadlines have been established for the production of the documents by September 7, 2018, to allow Leland Consulting to have sufficient time to review the documents prior to the Agency's meeting scheduled for October 16, 2018.

BUDGET IMPLICATIONS: The approved budget for Leland Consulting's work is \$24,480 with includes the sum of \$12,730 for Phase 1 and \$11,750 for Phase 2. Leland Consulting has advised Mr. Harris they estimate they will need an additional \$7,500 to complete their work for Phase 1.

BOARD ALTERNATIVES:

1. *Staff recommendation:* Move to authorize the Agency Chair to sign the Confidentiality and Non-Circumvention Agreement with GBHD, LLC.
2. Identify any provisions in the Confidentiality and Non-Circumvention Agreement with GBHD, LLC which the Agency desires to amend, and direct staff to present those amendments to GBHD, LLC.
3. Move to decline to authorize the execution of the Confidentiality and Non-Circumvention Agreement with GBHD, LLC.

CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT

THIS CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT (“Agreement”) is made as of August ___, 2018 (the “Effective Date”) by and between GBHD, LLC, an Oregon limited liability company, and its affiliated entities (collectively referred to in this Agreement as “GBHD”), and Columbia Gateway Urban Renewal Agency, a public body corporate and politic of the state of Oregon (“Agency”).

RECITALS

WHEREAS, GBHD and the Agency are engaged in discussions regarding a possible transaction involving GBHD’s development of a hotel complex in The Dalles, Oregon (referred to in this Agreement as the “Transaction”);

WHEREAS, the Agency has contracted with Leland Consulting Group (“Leland”) for the purpose of reviewing and analyzing technical and financial information related to the Transaction, and in turn advising the Agency with respect to the Agency’s role in the Transaction; and,

WHEREAS, both GBHD and the Agency desire to facilitate and set forth obligations with respect to the confidentiality of information exchanged relating to the Transaction;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GBHD and the Agency hereby agree as follows:

AGREEMENT

1. Confidential Information: The Agency acknowledges and agrees that in connection with the Transaction, GBHD will be supplying to the Agency certain oral, electronic and written information which shall include, but shall not be limited to, information concerning the operation and affairs of GBHD and the identity and contact information of GBHD investors, partners, borrowers, lenders, agents, consultants, brokers and business contacts. GBHD may designate certain information it considers confidential/proprietary as “Confidential Information” including, but not limited to, tangible, intangible, visual, electronic, and present or future information including, but not limited to (a) trade secrets; (b) financial information including market studies; (c) business information including operations, planning, marketing interests, and products, and (d) the terms of any agreement entered into between the Parties and the discussion, negotiations, and proposals relating thereto. The term “Confidential Information” however, shall not include any information that:

(A) At the time of disclosure or thereafter is generally available to or known by the public (other than as a result of a disclosure that was in violation of this Agreement directly or indirectly by the Agency or the Agency Representatives, as defined herein),

(B) Was available to the Agency on a non-confidential basis from a source other than GBHD, provided that such source was not governed by a confidentiality agreement, or

(C) Has been independently acquired or developed by the Agency without violating any obligations under this Agreement.

2. Use and Disclosure of Confidential Information: GBHD will provide Leland with such information and documents, including Confidential Information, as reasonably requested and required by Leland in order for Leland to advise the Agency according to Leland's Consulting Agreement with the Agency. GBHD will provide the information to the Agency through Leland Consulting, utilizing a series of secure electronic drop-boxes to which Leland Consulting will have access.

Prior to disclosure of information designated as Confidential Information by GBHD, from Leland Consulting to Agency and "Agency's Authorized Representatives," namely the Agency's current board members and any future members appointed to serve during the term of this Agreement, the Agency's Legal Counsel, Gene E. Parker and the Agency's Urban Renewal Manager, Steve Harris, Leland Consulting shall provide GBHD with five (5) business days advance notice of Leland's intent to disclose the Confidential Information to the Agency. Within the five (5) day business period GBHD shall have the right to notify the Agency in writing of any objection to the disclosure and the basis for the objection. If GBHD submits a written objection, then the Agency's legal counsel and GBHD's legal counsel shall immediately confer and make good faith efforts to reach an agreement on the disclosure and conditions of disclosure of such Confidential Information as may be sufficient for the Agency to rely upon and still protect GBHD's proprietary interests. If legal counsel for the Agency and GBHD cannot reach an agreement for disclosure and the information designated as Confidential Information is not provided to the Agency, GBHD understands that Leland Consulting has the discretion to take the non-disclosure of said Confidential Information into account when making their final recommendations to the Agency. If GBHD does not file any written objection, then Leland Consulting may provide the Confidential Information to the Agency and its authorized representatives, subject to this Agreement.

The Agency acknowledges and agrees to keep all Confidential Information strictly confidential, and to use the Confidential Information solely for the purpose of evaluating the Transaction, and for no other purpose. The Agency shall use reasonable care to protect Confidential Information from unauthorized disclosure.

Subject to the restrictions and procedures set forth herein, the Agency shall be permitted to disclose the Confidential Information to the Agency's Authorized Representatives and to Leland Consulting provided that such Representatives and Leland Consulting are advised of and agree to comply with the provisions of the Agreement, and further provided that the Agency agrees to be responsible for any breach of this agreement by any of its Authorized Representatives. In the event the Agency is placed under circumstances where the Agency or any of its Authorized Representatives may be legally compelled to disclose any of the Confidential Information, whether by deposition, interrogatory, request for documents, public records request pursuant to Oregon Public Records Law, subpoena, civil investigative demand or similar process, GBHD may seek a

protective order or other appropriate remedy, or at its election, waive compliance with the terms of this agreement. The Agency agrees not to unreasonably interfere with GBHD's efforts in obtaining such a protective order or other remedy. In the event such a protective order or other remedy is not obtained, the Agency agrees to furnish only that portion of the Confidential Information which is legally required, and the Agency further agrees to exercise diligence to ensure that confidential treatment be given to such Confidential Information. GBHD understands and agrees that the Agency shall have the discretion whether to disclose Confidential Information pursuant to a decision by the Wasco County District Attorney's Office, or to initiate a proceeding to appeal such a decision.

3. Non-Circumvention: During the Term of this Agreement, and for a period of five (5) year thereafter (referred to in this Agreement as the "Non-Circumvention Term"), the Agency agrees and acknowledges that:

(A) Without the prior written consent of GBHD, neither the Agency, nor any of the Agency's representatives shall communicate, correspond, or in any way conduct business, directly or indirectly, with any person or entity disclosed to the Agency via the Confidential Information (a "Confidential Contact") with whom GBHD has a contractual or business relationship, including, but not be limited to: (i) any partner of GBHD, (ii) any potential partner of GBHD, (iii) any representative or agent of GBHD as of the Effective Date, or (iv) any contact of GBHD;

(B) Without the prior written consent of GBHD, neither the Agency nor any of the Agency's representatives shall make any competitive offer, directly or indirectly, to any Confidential Contact or any entity or individual that could be construed as a potential source of capital for GBHD for the Transaction during the Non-Circumvention Term; and

(C) Neither the Agency, nor any of the Agency's representatives shall circumvent GBHD's interests for the benefit of the Agency, the Agency's representatives, or any third-party.

4. Unauthorized Disclosure or Unauthorized Circumvention: Upon any unauthorized disclosure or use of the Confidential Information by itself or by its Authorized representatives, the Agency acknowledges and agrees that it shall notify GBHD immediately both orally and in writing, and shall cooperate with and assist GBHD in every reasonable way to help GBHD regain possession of the disclosed Confidential Information and prevent the further unauthorized dissemination and use thereof. Furthermore, in the event of direct or indirect circumvention by either the Agency or the Agency's representatives in violation of this Agreement, the Agency agrees that GBHD shall be entitled to receive from the Agency the maximum value of any transaction that resulted from such unauthorized circumvention.

5. Return or Destruction of Confidential Information. If at any time, the Agency elects not to proceed with the Transaction, or, upon the oral or written request of GBHD, the Agency agrees and shall require its Authorized Representatives to either:

(A) Promptly return to GBHD the original, and all copies, of the Confidential Information, along with any documents relating thereto, such as memoranda, notes, reproductions, recordings, or any other media prepared by the Agency or its Authorized Representatives, subject to the Agency's obligation to retain records and documents in accordance with the provisions of the Oregon State Archivist's records retention schedule for local governments in effect at the time of return of the documents; or

(B) Promptly destroy the original, and all copies of the Confidential Information, along with any documents relating thereto, such as any memoranda, notes, reproductions, recordings, or any other media prepared by the Agency or its Authorized Representatives, and confirm in writing that the Agency and its Authorized Representatives have completed such destruction in accordance with this agreement, subject to the Agency's obligation to retain records and documents in accordance with the provisions of the Oregon State Archivist's records retention schedule for local governments in effect at the time of return of the documents.

6. Ownership: The Agency and Leland acknowledge and agree that all property rights in the Confidential Information are as of the Effective Date, and at all times thereafter, the property of GBHD, regardless if suggestions, comments and or ideas submitted by the Agency, any of its representatives or Leland are incorporated into the Confidential Information during or after the Term of this Agreement.

7. No Representations: The Agency acknowledges and agrees that GBHD is not making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, or of any other non-confidential information provided by GBHD. Furthermore, Agency agrees that neither GBHD nor any of its principals, officers, directors, representatives, advisors, employees or agents will have any liability to the Agency, its representatives, or any other person or entity as a result of use or reliability of the Confidential Information.

8. No Obligation to Proceed: The Agency acknowledges and agrees that, unless and until a final binding agreement regarding the Transaction is fully signed and delivered by both GBHD and the Agency:

(A) Neither GBHD nor the Agency shall have any obligation to negotiate furtherance of the Transaction, or any other agreement or document,

(B) GBHD shall retain the right, in its sole discretion, to reject any proposals or expressions of interest regarding any subject matter of the Transaction,

(C) Each of the Agency and GBHD shall retain at all times, the right, in its sole and subjective discretion, to unilaterally terminate any and all negotiations with the other, with or without notice, and

(D) GBHD shall retain at all times the right, without any restraint whatsoever, to negotiate with other parties and/or enter into any agreement (including, but not limited to, an agreement involving all or any subject matter of the Transaction) with any other party.

9. Remedies: The Agency acknowledges and agrees that because of the unique nature of the Confidential Information, GBHD will suffer immediate, irreparable harm in the event that the Agency, or any of Agency's representatives fail to comply with the provisions of this Agreement. As a result, the Agency acknowledges and agrees that in the event of a breach of the provisions of this Agreement, GBHD shall be entitled to seek equitable relief, including injunctive and specific performance, in addition to all other remedies available to GBHD at law or in equity. Furthermore, no delay or failure by GBHD in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege, including the pursuit of monetary losses and damages by GBHD against Agency and/or Agency's representatives.

10. Indemnification: The Agency acknowledges and agrees to indemnify, defend (with counsel agreed to by GBHD), protect and hold harmless GBHD, its affiliates and their respective principals, officers, directors, employees, representatives and agents from and against all damages, claims, demands, suits, actions, losses, costs, liabilities and expenses (including but not limited to, attorney's fees and court costs) arising from or in connection with the failure of Agency or Agency's Representatives to comply with the provisions of this Agreement. Furthermore, the Agency and its Representatives agree to be jointly and severally liable to GBHD for any claims, causes of action, disputes, damages, costs, expenses and liability arising from or in connection with either the Agency's or the Agency Representatives' failure to comply with the provisions of this Agreement.

11. Attorney Fees: In the event that any action arises in connection with this Agreement, both GBHD and the Agency acknowledge and agree that the non-prevailing party shall be responsible for reimbursing to the prevailing party all costs and expenses (including, but not limited to, all attorneys' fees and court costs) in addition to any other relief to which the prevailing party may be entitled.

12. Term: Aside from the obligations set forth in Section 3 of this Agreement, the obligations of the parties to this Agreement shall be effective for five (5) years from the Effective Date (the "Term"). The provisions of this Agreement shall survive as to any and all Confidential Information.

13. Severability: If any provision of this Agreement is found unenforceable, invalid or illegal, such provision shall be deemed deleted from this Agreement, or not applicable to such circumstance, as the case may be, and the remainder of this Agreement shall not be affected or impaired thereby.

14. Authority: Each signatory to this Agreement represents and warrants that as of the Effective Date, he or she has full authority to sign this Agreement on behalf of the party for whom he or she signs.

15. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction). The Agency acknowledges, agrees and irrevocably submits to the exclusive jurisdiction of the courts sitting in Wasco County, Oregon to adjudicate all disputes arising hereunder, and waives rights to object to or challenge the appropriateness of said forums. Furthermore, the Agency acknowledges and agrees that any service of process shall be in accordance with the laws of the State of Oregon.

16. Entire Agreement: As of the Effective Date, this Agreement constitutes the entire agreement between the parties hereto and supersedes all other agreements (whether oral or written) between the parties hereto, and may not be amended or modified except by a writing executed by both GBHD and the Agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date first written above.

**COLUMBIA GATEWAY URBAN
RENEWAL AGENCY**

GBHD, LLC, an Oregon limited liability
company

X _____
Name: _____
Title: _____

X _____
Name: Michael Leash
Title: Member/Manager