



ABERDEEN CITY COUNCIL

August 10, 2022

COUNCIL MEETING AGENDA

7:15 PM – 3rd Floor, City Hall (Hybrid)

COMMITTEE OF THE WHOLE

- A. Roll Call
- B. Guest Speakers
- C. Department Heads
- D. Mayor's Report
- E. Non-Standing Committee Reports

COUNCIL MEETING

I. ROLL CALL

II. FLAG SALUTE

III. APPROVAL OF MINUTES

IV. ADDITIONS / DELETIONS

V. PUBLIC COMMENT

VI. FINANCE COMMITTEE

- A. Committee Chair Report
- B. Approval of expenditures
 - 1. Recommend approval of expenditures and payroll.
- C. Public Hearings
- D. Reports & Communications
- E. Resolutions
- F. Ordinances
 - 1. Second reading and Public Hearing on Bill No. 22-10 an Ordinance relating to the purchase and disposition of surplus real property, adding a new chapter 3.110, Purchase and Disposition of Surplus Real Property.

VII. PUBLIC WORKS

- A. Committee Chair Report
- B. Public Hearings
- C. Reports & Communication
 - 1. Report from Public Works and the Parks Director recommending that the City Council adopt the *Community Event Pole Banner* rules and policies.

2. Report from Public Works and the Public Works Director recommending that the Mayor shall sign an Interlocal agreement with the City of Hoquiam relating to the funding and implementation of the North Shore Levee Project.

D. Resolutions

E. Ordinances

VIII. PUBLIC SAFETY

A. Committee Chair Report

B. Reports & Communications

IX. SPECIAL AGENDA ITEMS

A. Reports & Communication

B. Proclamation

C. Resolutions

D. Ordinances

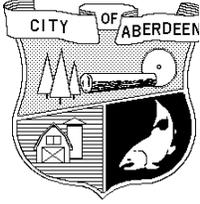
E. Appointments

X. CITY COUNCIL COMMENT PERIOD

XI. EXECUTIVE SESSION

The City of Aberdeen does not discriminate against or exclude anyone from participation in public meetings. Requests for assistance should be made by contacting the Human Resources Department at 360-537-3207, 24 hours in advance of the meeting.

Thank you.



CITY OF ABERDEEN

200 EAST MARKET ST • ABERDEEN, WA 98520 • WWW.ABERDEENWA.GOV
PHONE (360) 533-4100 • FAX (360) 537-5741

NOTICE OF PUBLIC HEARING

The City of Aberdeen will hold a second reading and public hearing on Bill No. 22-10, **an Ordinance relating to the purchase and disposition of surplus real property, adding a new chapter 3.110, purchase and disposition of surplus real property.**

The hearing will be held during the **August 10, 2022** Council Meeting which starts at **7:15 PM**. The public may attend the meeting in person in the **Council Chambers at City Hall, 200 E. Market Street, Aberdeen, WA** or, a Zoom Link can also be found on the City of Aberdeen website www.Aberdeenwa.gov – Council Calendar.

Any interested party is encouraged to attend.

The Council Chambers is handicap accessible. Arrangements to reasonably accommodate special needs, including handicap accessibility or interpreter, will be made upon receiving 48-hour advance notice. Please contact the Human Resources Department at 360-537-3207, City Hall.

Bill No. 22-10

ORDINANCE NO.

AN ORDINANCE RELATING TO THE PURCHASE AND DISPOSITION OF SURPLUS REAL PROPERTY, ADDING A NEW CHAPTER 3.110, PURCHASE AND DISPOSITION OF SURPLUS REAL PROPERTY.

WHEREAS, the Aberdeen City Council has recommended an ordinance be brought forward relating to the sale of city owned property; and

WHEREAS, the City Council finds that the proposed addition is appropriate and necessary for administration of the sale of city owned surplus property; **NOW, THEREFORE**,

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

SECTION 1. NEW CODE SECTION ADOPTED. The following section 3.110 is hereby added to the Aberdeen Municipal Code:

[NEW] 3.110.010 –Purpose. As authorized by, and pursuant to Article 8, Section 7 of the Washington State Constitution, which generally prohibits the City from gifting money or property to private individuals or corporations, RCW 35.22.280(3), chapters 35.94 and 39.33 RCW, and this Chapter [3.110](#) AMC, the City Council intends that this chapter govern the purchase of property, and the determination and disposition of all surplus real City property, regardless of type, size, location, or department of origin, except for property managed and controlled by the Park Board, the Library Board, and to vacations of right-of-way (ROW) by the Public Works Department.

[NEW] 3.110.020 - Review of City Real Property.

- A. The Public Works and Community Development Department shall, on an annual basis, review all City-owned, real property and determine which, if any, real property parcels are appropriate for disposition as surplus. In making this initial determination, the departments will communicate with all City departments to verify whether any of the departments currently use, or in the near future will use, underutilized City real property.
- B. In addition to the annual review by these departments, the Mayor and City department directors may request that specific properties be evaluated for potential purchase or surplus disposition at any time. This review may also be initiated by and upon the receipt of an unsolicited purchase offer.
- C. Any purchase or disposition of City real property requires City Council approval as provided in this chapter.

[NEW] 3.110.030 - Real Estate Review Committee; Report.

- A. Upon determining that no City department is using, or will use, an identified parcel of land within a reasonable timeframe, a Real Estate Review Committee (“RERC”) shall review the subject property and prepare a written recommendation to the Mayor as to whether a particular parcel should be declared surplus and, if so, the method of disposition. The RERC shall meet on an as-needed basis, and shall include the following members or their designees:
 1. City Administrator,
 2. City Finance Director and the City Department or Division Head most directly affected by the surplus and disposition,
 3. The Council President and the chairs of the Finance, Public Works and Public Safety Committee.

- B. The RERC report shall include at least the following information regarding the subject property:
 1. A description of subject parcel’s size, zoning, existing improvements, condition of improvements, ingress/egress, known environmental conditions (findings of environmental reports), historical data and other salient observations.
 2. A description of the acquisition and development history of property, including when the property was originally acquired by the City, the source of funds for acquisition, the source of funds for subsequent improvements, how the property is currently used or was used most recently, and the City department(s) involved, etc.
 3. The report should identify the City department or fund (e.g., revenue, general, special) which is most logically and/or economically linked to the property. In addition, the report should address the repayment of bonds, grants, or other financing instruments used to acquire the property or which have used the property as security.
 4. Before a recommendation for purchase or surplus and disposition is made, the RERC shall announce to all City departments and the City Council that the subject property is being evaluated for purchase or surplus. In regards to surplus, if a City department or the Mayor expresses interest in using the property, that department must present a written explanation to the RERC, for inclusion in its recommendation report, of the department’s interest, its intended use, timeline, and operational and financial rationale for maintaining City ownership of the property for use by the interested department.
 5. The RERC’s report must describe the efforts made by the RERC to obtain input from and consultation with City staff, members of the community, including public testimony at City Council workshops or public meetings and other stakeholder groups that may have developed ideas on re-purposing the subject property.
 6. The RERC report must also include an estimate of the subject property’s market value. This can be accomplished by the use of a Member of Appraisal Institute (“MAI”) /state certified appraisal, tax assessment, market comparables, and/or a City staff opinion of market value.

7. The RERC report should include any recommended covenants, conditions, or restrictions that the City should place on the subject property before being purchased or disposed of. Examples include access easements, air rights for adjacent property owners, purchase option or right of first refusal for City to reacquire property at a future date.
8. The RERC report should recommend the preferred purchase or disposition method from among those listed in AMC 3.110.040. The methods are not mutually exclusive and some properties may require more than one method.

[NEW] 3.110.040 - Allowable Methods of Property Purchase or Disposition.

- A. Surplus City real property may be disposed of using any of the following methods:
 1. Direct Sale. Using City legal staff, third party title/escrow companies, and third party reports such as appraisals and environmental studies, the City may sell property directly to another party. This approach does not require the services of a professional listing broker or the additional considerations of a special disposition. Typical examples for which this method are most well-suited include:
 - a. Remnants, defined as: 1) small parcels of land, usually smaller than 2,000 square feet, 2) irregularly shaped, and 3) are unlikely to support any stand-alone development. Remnants are often the leftover parcels from right of way dedications and developments. The most likely buyer of a remnant property will be an abutting property owner.
 - b. Unsolicited offers the City receives from public or private parties for city-owned real estate properties that have not been surplusd or are not actively being marketed for sale.
 - c. Sales to Public Development Authorities or Limited Redevelopment Authorities, provided that such sales comply with Chapter 39.33 RCW.
 - d. Sales to non-profit or for-profit affordable housing providers, provided that such sales comply with Chapter 39.33 RCW.
 2. Listing with Real Estate Broker. In order to generate the greatest return on the sale of a property, subject to applicable procurement laws, the City may contract with a professional commercial real estate broker who specializes in commercial or residential properties for broker listing in some cases. Broker listings are ideally suited for land parcels and improved properties in established neighborhoods for which (1) the anticipated use of the subject property will be similar to its present use, and (2) future development of the subject parcel is expected to conform to the well-established land uses prevalent in the subject property's vicinity.
 3. Land Swaps. The City may also, as specifically authorized by Chapter 39.33 RCW, dispose of real property via a land swap with another public entity, such as a school district, county, the federal government, or other municipal corporation.
 4. Special Dispositions. Some City-owned real property may merit the use of a special disposition method because such property can provide benefits that far exceed the limitations of monetary market value. Special disposition of these properties can further

the objectives and goals of the City and can actually be a catalyst for economic development, affordable housing and expansion of community services. All special dispositions should be reviewed for compliance with Chapter 39.33 RCW and Article VIII, Section 7 of the Washington State Constitution, which generally prohibits gifting of City property.

- i. Key characteristics qualifying a property for special disposition status include the following: Properties that have a nexus with a Public Development Authority (PDA), such as where the property is within the geographic area of a PDA, or where a PDA has expressed specific interest in the subject property.
- ii. Properties within City-designated investment areas or a neighborhood where redevelopment is a focus of revitalization efforts.
- iii. Properties with characteristics desirable when providing affordable housing units including access to transit, employment centers, healthcare facilities, schools, and the presence of other relevant factors. The property's current land use and zoning designations shall not be considered prohibitive to providing affordable housing units.
- iv. Properties for which there is strong community interest, as expressed by local businesses, schools, community members and other community organizations.
- v. Properties which may, if the use is changed from the current use, create a substantial impact on neighboring property owners.
- vi. The needs of multiple stakeholders, including those mentioned above, may necessitate the use of a disposition method other than a listing or direct sale.
- vii. The City may use a special disposition method where the City anticipates that a likely buyer will request a zoning amendment, a street dedication, or a right of way vacation.
- viii. Special disposition methods may be appropriate where the City retains property rights after the sale of the property, such as access easements, air rights, purchase options, and other conditions not already addressed elsewhere.
- ix. The RERC report may contain a recommendation for the use of a special disposition method for reasons other than those listed above, based on the specific circumstances.
 - a. Prior to finalizing a report which recommends a special disposition method, the RERC shall hold a public hearing regarding the subject property. The RERC will issue a notice of public hearing no sooner than 10 days and no more than 25 days prior to the hearing. Notice will be sent to all property owners within 300 feet of the subject property. The RERC shall incorporate the public hearing comments in its recommendation report.
 - b. The primary means for using the special disposition method is a City-issued Request for Proposal ("RFP"). The RERC will develop the RFP criteria as part of any recommendation report which recommends disposition via a special disposition process. The criteria used in evaluating responses to the RFP will be enumerated and weighted on a property-specific basis. For instance, the RFP

criteria on a residential parcel in one area of the City may vary significantly from that on an industrial property in another area.

- i. Some RFP criteria may be:
 - A. Compatibility with an adopted neighborhood plan.
 - B. Compliance with the City of Aberdeen's Comprehensive Plan,
 - C. Potential number of affordable housing units which the property can provide, the income level(s) potentially served by such affordable housing development, and the proposer's experience or capacity in developing and managing affordable housing.
 - D. Job creation potential.
 - E. New tax base expansion or creation potential.
 - F. Ultimate range of purchase price and earnest money.
 - G. Relevant purchase contract conditions.
 - H. Experience and capability of the buyer.
 - I. Interdepartmental disposition of real property does not require City Council authorization.
- c. Timeline for completing the project and/or project phases, as applicable.
- d. The RFP process may use a direct sale closing process or it may become part of the listing requirements with a licensed broker. Alternatively, the RERC may recommend a long-term lease. The RERC report shall contain a recommendation concerning the method of disposition.

B. Real property may be purchased using a real estate broker or direct purchase from an individual, family or corporation.

[NEW] 3.110.050 - Council Action on Purchase or Disposition.

- A. Upon receiving the RERC report and the Mayor's recommendation, the City Council shall undertake consideration of the recommendation to designate the property as surplus or available for purchase, and if surplus, whether and how to dispose of the property.
- B. With respect to property which is the subject of a RERC report, the Council may:
 - 1. Accept the recommendations as presented, pass a resolution determining the subject property to be purchased or surplus and if surplus, authorize the City to dispose of the property as set forth in the RERC recommendation report.
 - 2. In terms of surplus, modify the RERC report recommendations, declare the property surplus by resolution and authorize the City to dispose of the property as set forth in the modified RERC recommendations.
 - 3. Return the recommendations to the RERC for further analysis and consideration of specific facts or criteria identified by the City Council.
 - 4. In terms of surplus, designate the subject property for long term lease; or
 - 5. Take no action on the recommendation.

[NEW] 3.110.060 – Severability. The provisions of this chapter are declared to be severable and if any section, sentence, clause or phrase of this chapter shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this chapter, and they shall remain in effect, it being the legislative intent that this chapter shall stand notwithstanding the invalidity of any part.

SECTION 2. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation.

SECTION 3. PUBLICATION BY SUMMARY. The Finance Director is authorized and directed to publish the attached summary in lieu of this ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect immediately upon its passage, signing, and publication.

PASSED and APPROVED this ____ day of _____, 2022.

Pete Schave, Mayor

ATTEST:

Patricia Soule, Finance Director

Approved to Form:

Hillary J. Evans, Corporate Counsel

**LEGISLATIVE REPORT
CITY OF ABERDEEN**

MAYOR: Hon. Pete Schave

**THE MEMBERS OF
THE COMMITTEE ON:** Public Works and the Parks Director

RE: Proposed Community Event Pole Banner Program

REPORT AS FOLLOWS: The City of Aberdeen has 87 decorative light poles along Wishkah and Heron Streets in downtown Aberdeen. We have received a number of requests from local groups (mostly non profits) that would like permission to place banners on these poles. The “Community Event Pole Banner” is available to the public for the sole purpose of promoting public events of wide interest to the community. All events under this program must be open to all members of the community.

The Director of the Parks Department, or his or her designee, reserves the right to determine which events will be posted, the style and content of the banners, and the duration of the posting. Banners must meet the required specifications (triangle banners) set forth in the rules and procedures. Event banners would be installed and removed by the applicant. Banners would be posted two weeks in advance of the event and removed the day after the event, with the next event banner, if available, installed at that time. This program is not available from May 1st through September 14th due to the flower basket program. There is no charge for this program.

IT IS RECOMMENDED: that the City Council adopt the *Community Event Pole Banner* rules and policies.

Stacie Barnum, Parks Director

Dee Anne Shaw, Committee Chair

Reported _____, 2022

Joshua Francy, Vice-Chair

Adopted _____, 2022

David Lawrence, Committee Member

City of Aberdeen
COMMUNITY EVENT POLE BANNER
APPLICATION/AGREEMENT

Please fill this form out and return it to the City of Aberdeen Parks Department at 200 E. Market St., Aberdeen, WA 98520 or aweber@aberdeenwa.gov. There is no fee for the application; fees may apply to the installation of banners.

The Director of the Parks Department, or his or her designee (“Director”), reserves the right to determine which events will be posted, the style and content of the banners, and the duration of the posting.

Installation and Removal Scheduling. Banners are usually posted two weeks before and removed the day after the event by the Applicant; dates and duration of posting may vary from the time requested at the discretion of the Director. The full rules and policies for posting pole banners are on the reverse side of this Application/Agreement form. Also, see the pole banner specifications before having banners made as the City of Aberdeen (“City”) will not permit banner installations not meeting those specifications. Banner poles are available only on Wishkah Street and Heron Street.

NAME OF PERSON COMPLETING APPLICATION: _____

REPRESENTING: _____

ADDRESS: _____

PHONE (DAY & EVENING): _____

EMAIL: _____

NUMBER OF BANNERS TO BE HUNG: Wishkah Street: _____ Heron Street: _____

TEXT PLANNED FOR BANNER (*attach a copy of the banner(s) to this form*).

REQUESTED DATES FOR POSTING: (No more than one year in advance) _____

(May 1st through September 14th not available)

INDEMNIFICATION AGREEMENT. The Applicant agrees, in consideration of the actual posting of the requested banner, to indemnify and hold harmless the City and all its officers, agents, and employees, from any and all liability, loss, or damage that they may suffer as a result of claims, demands, actions, or damages to any and all persons or property, or as a result of costs or judgments against the City, its officers, agents, or employees, which result from, arise out of, or are in any way connected with, the Applicant’s use of the Community Event Pole Banner site. Due to the nature of the banner site, the City will not be responsible for any damage to the banner.

By signing this document, I hereby acknowledge that I have read and agreed to all the terms and conditions on both sides of this Application/Agreement, including the above **INDEMNIFICATION AGREEMENT**, and will comply with the terms and conditions herein. **THE COMMUNITY EVENT POLE BANNER RULES AND POLICIES PRINTED ON THE REVERSE SIDE OF THIS DOCUMENT ARE EXPRESSLY INCLUDED TERMS AND CONDITIONS OF THIS AGREEMENT.**

SIGNATURE: _____ **DATE:** _____

Date received by Parks Dept.: _____

Date approved by Parks Dept.: _____

COMMUNITY EVENT POLE BANNER RULES AND POLICIES

The Community Event Pole Banner is available to the public for the sole purpose of promoting public events of wide interest to the community, and not merely to serve as a source for announcing the many functions that take place in the City. All events under this application must be open to all members of the community. Event postings for which pole banners may not be approved include, but are not limited to: private garage/yard sales, retail store sales, private/personal messages, exclusive events, exclusive club meetings, and commercial advertising.

The Community Event Pole Banner is a program of the City and its use is subject to the availability and adherence to these rules and policies. Since this is a City structure, financially supported by the citizens of Aberdeen, all events must be held within City limits.

The Applicant is responsible for installing and removing event banners. Banners are usually posted two weeks in advance of the event and should be removed the day after the event, with the next event banner, if available, installed at that time. However, the actual date and duration of any posting may vary from the time requested at the discretion of the Director. Failure to comply with the terms of this agreement and the failure to remove banners the day after the event will result in the Applicant reimbursing the City for labor and equipment costs for removal and storage of banners at a minimum cost of \$500.00 per day. The Applicant's banners and hardware will not be available for pick up until all City costs are paid in full.

The Parks Department must receive your Application/Agreement at least 90 days before the event. Because the banners must be approved prior to installation, please consult with the Parks Department before banners are constructed. The City will take applications up to one year before the event and may not grant permission to proceed with making of the banners until two months before the event. The City review may result in changes to the banners before production. It is the duty of the applicant to confirm with its banner design and construction team to verify the lead time needed.

Organizations/agencies can reserve a maximum of two events during a calendar year (January through December). Organizations/agencies can reserve additional events if no one else has submitted and been approved, with these open time slots becoming available four weeks in advance.

Every Application/Agreement must be approved by the City's Parks Department and the Washington State Department of Transportation before posting. The City reserves the right to refuse to post any banner not compliant with these rules and policies or otherwise in violation of the law. If the banners have been made and do not meet the requirements as provided in these rules and policies, along with the City's recommended changes, the banners must be redesigned, or they will not be installed.

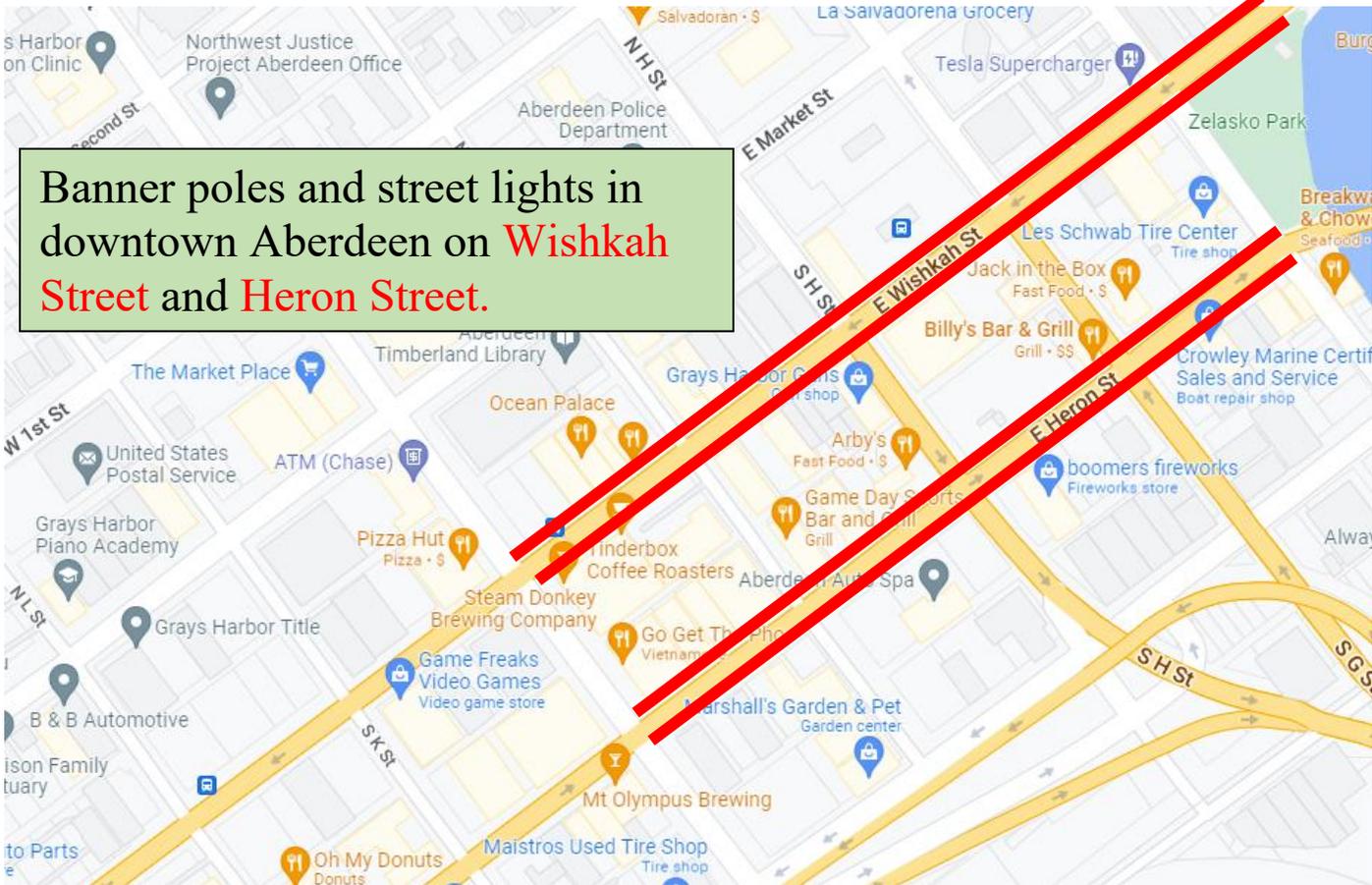
The City's policy is to prohibit discrimination against any participant, client, or user based on race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender, sexual orientation, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state, or local law.

BANNER SPECIFICATIONS

You may have any sign shop make the banner. All triangle banners are to be "finished size" of 22" across the top and 36" down along the pole. All banners should be triangular in shape, and you should purchase the bottom attachments for all banners (as indicated in the photo to the right). If you have any questions or comments regarding the manufacturing of a banner, please contact the City's Parks Department at (360) 537-3248 or aweber@aberdeenwa.gov.



**Bottom banner attachment to be
purchased by the Applicant.**



Approved by City Council on ????

**LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN**

MAYOR: Hon. Pete Schave

**THE MEMBERS OF
YOUR COMMITTEE ON:** Public Works and the Public Works Director

RE: Aberdeen-Hoquiam Interlocal Agreement for the North Shore Levee Project.

REPORTS AS FOLLOWS: Aberdeen and Hoquiam continue to work in partnership on the North Shore Levee Project as evidenced by Resolution 2022-11. With funding having been secured by both agencies, minor revisions to the Interlocal Agreement are warranted. While the agreement looks significantly different than the previous agreement approved in 2020, the only substantive change relates to either city can now be the funding nexus and fiscal agent of outside funding awarded to the project.

FISCAL IMPACT:

Project Number: N/A
Amount Requested: \$
Source of Funding: N/A
City Fund/Department: N/A
In Budget? Yes No
Supplemental Budget? Yes No Uncertain
BARS Numbers:

IT IS RECOMMENDED: The Mayor shall sign an Interlocal Agreement with the City of Hoquiam relating to the funding and implementation of the North Shore Levee Project.

Rick Sangder
Public Works Director

Dee Anne Shaw, Committee Chair

Joshua Francy, Vice-Chair

Reported _____, 2022

David Lawrence, Committee Member

Adopted _____, 2022

David Gakin, Committee Member



**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF ABERDEEN AND THE CITY OF HOQUIAM
RELATING TO THE JOINT FUNDING FOR DESIGN AND CONSTRUCTION OF THE
NORTH SHORE LEVEE PROJECT**

THIS AGREEMENT is made the _____ day of ____, 2022 by and between the City of Aberdeen, Washington, a municipal corporation (“Aberdeen”), and the City of Hoquiam, Washington, a municipal corporation (“Hoquiam”), together hereafter called “Cities.”

WHEREAS, both Cities are municipal corporations, and as such are authorized to enter interlocal agreements under the provisions of RCW 39.34; and,

WHEREAS, there exists a substantial regional need for coastal flood protection and storm drainage systems in low-lying parts of both Cities to protect the health, safety and well-being of the communities; and,

WHEREAS, the Cities have been working in partnership to develop a project to provide such protections, in part through the Timberworks Coastal Resiliency Master Plan process; and,

WHEREAS, the Cities have jointly identified the North Shore Levee Project (hereinafter “Project”) between the Wishkah and Hoquiam Rivers north of the Chehalis River and Grays Harbor Estuary as a means to comprehensively protect large sections of Aberdeen and Hoquiam; and,

WHEREAS, the Project includes a levee, whose alignment transits portions of both Cities, and related infrastructure including pump stations also within both Cities; and,

WHEREAS, the Fry Creek Pump Station in Aberdeen provides valuable flood control services to both Cities; and,

WHEREAS, the Federal Emergency Management Agency (“FEMA”) has issued a Conditional Letter of Map Revision (“CLOMR”) for the proposed North Shore Levee, that the revision would remove more than 3,100 homes and properties from the regulatory floodplain; and,

WHEREAS, the Cities have worked together, and continue to work together, to obtain financial support to pay for the design and construction of the Project, including relevant studies and permitting requirements; and

WHEREAS, through their coordinated efforts, the Cities have commenced planning, design, and implementation phase activities including real estate and right-of-way acquisition of properties along the levee alignment.

NOW THEREFORE it is hereby agreed between the Cities as follows:

1. Authority. This Agreement is executed pursuant to chapter 39.34 RCW as a cooperative endeavor of the Cities.
2. Purpose. The City of Aberdeen or Hoquiam may be the funding nexus and fiscal agent of state, federal, or other outside funding awarded to the Project.
3. Effective Date. This Agreement shall not take effect unless and until it has been duly executed by both Cities and filed in accordance with Chapter 39.34 RCW.
4. Term. This Agreement shall remain in effect until January 1, 2025. Either City may terminate this Agreement, prior to its expiration, by providing the other City at least 60 calendar days' prior written notice. The terminating City shall be responsible for paying its allocated share of costs up until the effective date of termination.
5. Ownership of Improvements. With the exception of the Fry Creek Pump Station, all finished improvements related to the Project will be owned, maintained, and operated by the City in whose boundaries that improvement is located.
6. Master Plan. A master plan for development of the site, including phasing and cost estimates, shall be approved by each party prior to being implemented. Methods of financing development and a construction management plan shall be approved by each of the City's Councils prior to being implemented.
7. Cooperation. The Cities will continue to cooperate together and with all others in seeking grants and other sources of funding for the Project.
8. Authority. Nothing in this Agreement is intended to, nor should be construed to, circumvent decision-making, or any other, authority or processes of the Cities.
9. Insurance. Each Party shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the exercise of the rights and privileges granted by this Agreement. The cost of such insurance shall be borne by each Party.
10. Indemnification. Each Party shall protect, defend, indemnify and hold harmless all other Cities to this Agreement, and their officers, employees and agents, from any and all costs,

claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of such Party, and its officers, employees and agents, in performing or administering this Agreement.

It is further specifically and expressly understood that the indemnification provided herein constitutes each Party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Cities.

11. Miscellaneous.

- a. Compliance with Laws. In the performance of its obligations under this Agreement, each Party shall comply with all applicable federal, state, and local laws, rules, and regulations.
- b. Construction and Venue. This Agreement shall be construed in accordance with laws of the State of Washington.
- c. Merger and Amendment. This Agreement contains the entire understanding of the Cities with respect to the matters set forth herein and any prior or contemporaneous understandings are merged herein. This Agreement shall not be modified except by written instrument executed by the Cities, parties hereto.
- d. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.
- e. No Waiver. A Party's forbearance or delay in exercising any right or remedy with respect to a default by any other Party under this Agreement shall not constitute a waiver of the default at issue. Nor shall a waiver by any Party of any default constitute a waiver of any other default or any similar future default.
- f. No Assignment. This Agreement shall not be assigned, either in whole or in part, by any Party without the express written consent of the other City, which may be granted or withheld in any such Party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a default under this Agreement.
- g. Warranty of Authority. Each of the signatories hereto warrants and represents that they are competent and authorized to enter into this Agreement on behalf of the Party for whom they purport to sign this Agreement.

- h. No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture, or other joint enterprise between the Cities.
- i. No Separate Entity Necessary. The Cities agree that no separate legal or administrative entities are necessary to carry out this Agreement.
- j. No Third-Party Beneficiaries. This Agreement and every provision hereof are for the sole benefit of the City, the School District and the Fire District. No other persons or parties shall be deemed to have any rights in, under, or to this Agreement. Nothing in this Agreement is intended to, nor should be construed to, create a right of action against or by any party not a party to this Agreement.
- k. Execution In Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.
- l. Filing. As provided by RCW 39.34.040, this Agreement shall be filed with the Snohomish County Auditor, or, alternatively, posted on the website of each Party.

Dated the day and date first above written.

CITY OF ABERDEEN

CITY OF HOQUIAM

Pete Schave, Mayor

Ben Winkelman, Mayor

ATTEST:

ATTEST:

Patricia Soule, Finance Director

Corri Schmid, Finance Director

Approved as to form:

Approved as to form:

Hillary Evans, Corporation Counsel

Steve Johnson, City Attorney