6:00 P.M. PRESENTATION BY CDM REGARDING ALTERNATIVE CONTRACT DELIVERY – WASTEWATER TREATMENT PLANT UPGRADES

AGENDA FOR COUNCIL MEETING
KLAMATH FALLS CITY COUNCIL
NOVEMBER 2, 2015
7:00 P.M.

Matters for Council consideration not scheduled on the Agenda can be addressed by the general public under the "Public Comment" section on the agenda. Testimony must be presented according to Council procedure. Items of a non-emergency nature may be scheduled for future Council determination in order to provide sufficient time to analyze the issue.

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

1. CONSENT AGENDA

a. Approval of November 2, 2015 agenda and October 19, 2015 regular meeting minutes

LAND USE PUBLIC HEARING - QUASI JUDICIAL - NONE

LAND USE PUBLIC HEARING – LEGISLATIVE - NONE

GENERAL PUBLIC HEARING - NONE

LEGISLATIVE ACTION

2. AMENDMENT TO MEAD & HUNT CONTRACT FOR ENVIRONMENTAL PHASE II PROJECT 2014/2015

a. Report of Airport Director
b. Move to authorize staff to execute the contract amendment with Mead & Hunt for the Environmental Phase II Project 2014/2015 in the amount of $28,299.06

3. ENTER INTO AN EXCLUSIVE NEGOTIATING AGREEMENT WITH TOKOLA PROPERTIES FOR THE BALSIGER SITE DEVELOPMENT

a. Report of City Manager
b. Move to authorize staff to enter into an Exclusive Negotiating Agreement with Tokola Properties

OTHER MATTERS

ADJOURNMENT

The City Council may recess/adjourn to Executive Session under ORS 192.660 as follows: ORS 192.660(2):
(a) - Employment of Public Officers, Employees
(b) - Discipline of Public Officers and Employees and Agents
(d) - Labor Negotiations
(e) - Real Property Transactions
(f) - Exempt Public Records
(g) - Trade Negotiations
(h) - Consultation with Legal Counsel
(i) - Performance Evaluations of Public Officers and Employees
(j) - Public Investments

*****AMERICANS WITH DISABILITIES ACT NOTICE*****
Please contact the City Recorder's office, Klamath Falls City Hall, 500 Klamath Avenue, Klamath Falls, OR 97601, or call 541.883.5316 at least 48 hours prior to the scheduled meeting time if you need an accommodation to participate in the meeting. The City's TTY/TDD number is 541.883.5324

MINUTES
KLAMATH FALLS CITY COUNCIL
October 19, 2015

A regular meeting of the Klamath Falls City Council was held in the Council Chambers on the above date at 7:00 p.m. Mayor Todd Kellstrom called the meeting to order.

Council members present:

Councilman Dan Tofell
Councilman Bud Hart
Councilman Matt Dodson
Councilman Bill Adams
Councilwoman Trish Seiler

City staff members present:

Nathan Cherpeski, City Manager
Susan Kirby, Support Services Director
Mark Willrett, Public Works Director
John Barsalou, Airport Director
Dave Henslee, Police Chief
Joe Wall, Management Assistant to the City Manager
Maria Ramirez, Ella Redkey Pool Manager
Nickole Barrington, Paralegal
Kristina West, Assistant to the City Recorder

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

PRESENTATION OF SERVICE AWARDS

Mayor Kellstrom recognized and expressed appreciation for City Recorder Elisa Olson's 30 years of service to the City of Klamath Falls.

INTRODUCTION OF NEW KCEDA TEAM. KCEDA Special Projects Manager Andrew Stork stated Director Greg O'Sullivan had intended to be in attendance; however, he was double-booked and was at a conference. He introduced Business Retention and Development Manager Rick Abel. Mr. Abel stated he was hired for Business Development and Retention and his goal was to contact businesses centered on manufacturing who were already established in Klamath Falls with the hope of building a relationship to retain as many local businesses as possible and assist them with expansion and recruitment efforts. Mr. Stork stated he was the "right arm" of operations at KCEDA, which included assisting with projects that provided more exposure outside Klamath and in becoming central intelligence of information about Klamath Falls and the region to better assist with lead generation. The organization was in the process of creating a marketing and business plan, in addition they were in the final stages of a strong communication strategy both internally and externally to various partners. KCEDA saw itself as a startup so many things that had occurred had been operations-focused so they could be aggressive, efficient and successful in helping Klamath Falls grow its economy. Mr. Stork further stated Mr. O'Sullivan regretted not being in attendance and wanted to continue regular correspondence with the Council to maintain transparency with private and public partners.

PUBLIC COMMENT

Mayor Kellstrom opened the public comment.

Miles Day. Mr. Day stated the following:

"I wanted to know if you have a check ready for me, Miles Day? As we continuance of the case, we have to remember that the reason I'm here is because I believe you're better off to give me $50,000 and I think I came up with a summarization that it would cost the City $300 million if you don't make the settlement with me because I've got ahold of Dwight already with the Balsiger building. I believe that I'm talented enough to make a good case to them to not go forward with the City because I've got other options here that I've seen in the City that have failed so I'm telling them to count their failures. I brought one piece of paper; I told you I have a lot of evidence and in my hands is when I contacted the Contractor's Board in 2004 to begin the working process and the interference I had

with Police Department's mischief was costing me the money that I was going to be making in the process. So anyway it came up to the point of the broken windows and so I got to this point of, and I was thinking well if I sit back and sit still I'm not going to go anywhere and I believe this indictment is going to go forward anyway even if you do settle with me for the loss of my tools I still think the indictment for the dope is going to go forward because the way this works internationally in the United Nations and I've been educated in this so pay close attention; this is real important. They look at these areas where the drugs are present and they actually use a color code too and you've got numerous arrests for drugs. It doesn't make any difference how they got there. Internationally these police unions, the union of police international narcotics agents sees it as you're guilty of murder. Just stepping back at that point because my hands I'm going to keep them right behind my back because I know they're going forward and they're serious about it. So the broken window is going to be replaced whether it takes 5 years, 10 years, 20 years or they have to incarcerate another 100 veterinarians like Stacy Addison and I can look Irving Hart in the eyes and ask him did you know what they were doing with those animals up there and you don't have to answer me. But I think I know the answer to that and that's why I'm still here because I believe truly if you're going to do the right thing here, then you'll have a check for me. Thank you."

Hearing or seeing no one further, Mayor Kellstrom closed the public comment.

1. CONSENT AGENDA. Mayor Kellstrom recused himself from discussion and vote on Consent Agenda Item 1d due to an actual conflict of interest and passed the gavel to Council President Bud Hart. Councilman Adams asked to pull Agenda Item 1d for discussion. Council President Hart pulled Agenda Item 1c for the purposes of allowing the Ella Redkey Pool Manager to present the pool statistics.

Councilman Dodson **moved to approve the Consent Agenda as follows: Approved the Consent Agenda for October 19, 2015; Approved the October 5, 2015 regular meeting minutes; First Quarter Analysis of the 2015-2016 Budget.** Councilman Tofell seconded. The motion carried unanimously with all Council members present voting aye.

1c. POOL STATISTICS BY MONTH. Pool Manager Maria Ramirez reviewed the Ella Redkey Pool statistics from her written report. Councilman Dodson asked what type of feedback pool staff had received

in the past year and if business was flat lining. Ms. Ramirez responded it seemed to be getting better; the numbers were going up. The pool had consistent water temperature and a regular class schedule. The customers were better informed and aware of scheduling and administration. She noted the swim programs had always received positive feedback in the past year and a half that she had been employed at the pool. Councilman Dodson asked how confident she was that she could close the gap in funding. Ms. Ramirez stated staff was looking at options to hopefully close the gap but did not have a set solution; however, staff was confident enough with the programs and with word of mouth and communication that people would continue to come to the pool.

Councilman Hart asked about plans for pool closure and resurfacing. City Manager Nathan Cherpeski explained staff intended to do that over the summer but there were questions about geothermal and staff had anticipated closing the pool to resolve both the geothermal and resurfacing issues at the same time. Management Assistant to the City Manager Joe Wall was working with Public Works to prepare a bid package and staff anticipated that would go out in the spring.

The matter was informational only; no action was required or taken.

1d. INSTALLATION SERVICES CONTRACT WITH DIAMOND HOME IMPROVEMENT CENTER TO REPLACE CARPET IN CITY HALL ANNEX BUILDING IN THE AMOUNT OF $34,696.00. Public Works Director Mark Willrett reviewed the report. Councilman Adams stated he had pulled the item not because he had any questions but because he wanted the public to know that, while the City solicited bids from three local companies, only one chose to respond, which was unfortunate.

Councilman Adams **moved to approve the Installation Services Contract with Diamond Home Improvement Center to replace carpet in the City Hall Annex Building in the amount of $34,696.00**. Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye.

Council President Hart returned the gavel to Mayor Kellstrom.

LAND USE PUBLIC HEARING - QUASI JUDICIAL

There were no land use public hearing quasi-judicial matters.

LAND USE PUBLIC HEARING – LEGISLATIVE

There were no land use public hearing legislative matters.

GENERAL PUBLIC HEARING

2. RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR FISCAL YEAR 2015-2016 WITHIN THE FOOTPATHS/BICYCLE TRAILS FUND. Support Services Director Susan Kirby reviewed the written report. Councilman Hart asked if the project on Washburn Way was going to use the remaining amount not expended in the fund for the next fiscal year. Mr. Willrett responded yes.

Mayor Kellstrom opened the public hearing. Hearing or seeing no one, he closed the public hearing.

Councilman Hart **moved to introduce the Resolution by title.** Councilman Adams seconded. The motion carried unanimously with all Council members present voting aye. City Manager Nathan Cherpeski read the Resolution by title.

Councilman Hart **moved to approve the Resolution.** Councilman Adams seconded. On **Roll Call, Resolution No. 15-19** was approved with Councilman Tofell, Councilman Dodson, Councilman Hart, Councilman Adams, and Councilwoman Seiler voting aye.

LEGISLATIVE ACTION

3. CONSULTING SERVICES CONTRACT WITH ELAINE HOWARD CONSULTING, LLC TO PREPARE AN URBAN RENEWAL FEASIBILITY STUDY. Management Assistant to the City Manager Joe Wall reviewed his written report. Councilman Adams stated he was not sure the City needed to do the study. He did not want to see another Urban Renewal District put into place since Oregon changed the rules. He did not think it was proper for all of the citizens in Klamath Falls to have to pay for urban renewal in a specific portion of town and he realized the percentage was different than before to other taxing districts. He further stated the City never should have done the Town Center Urban Renewal; however, he did not disagree that something needed to be done in the old industrial area and parts of the downtown but it did not need to be done with an Urban Renewal District; rather the tools already in place should be used.

Councilman Dodson stated the Lakefront Urban Renewal had been in place since 2001 and it did not pay for itself. Town Center was done in 2005 and its cash flow was just enough to do nothing as well so there were two urban renewals that did not provide any benefit. He asked what staff envisioned as different that would work in a developmentally difficult part of town. City Manager Nathan Cherpeski stated that information would hopefully be discerned through the feasibility study. The Town Center was too small of a property to be an urban renewal and, had he been employed at the City then, he would not have recommended it. The only way urban renewal would work in Oregon, given the tax structure in Oregon, would be that nobody saw a tax increase. There was a value assessed within the area and because of a lawsuit in 2003, the state put it to a formula that said if it went up by $100,000 in value, those property owners could only pay 3% of their existing structure. The formula and that amount were then applied across the board in the entire area. That could only work with true new redevelopment so items such as planting flowers and buying benches would not be enough. Mr. Cherpeski further stated there were things that kept people from developing in that area and some were serious infrastructure items that could not be ignored so either the City had to pay for it or the developer and, in this case, urban renewal could "step in" and put money in to make a property more desirable to a developer. He added staff had discussed it at length, but an urban renewal would be a traditional way to deal with the Balsiger site. He hoped, with an urban renewal, to get the biggest "bang" in the shortest amount of time because the City needed more income but there was no way to know if it would work or not without a feasibility study and the data that study would provide.

Councilman Tofell asked what the legislature had done to change Urban Renewal Districts since the Downtown Urban Renewal District was formed. Mr. Cherpeski stated ballot issues on Measure 5 restructured, then there was a lawsuit and the state then adopted Oregon Administrative Rule (OARs) with the most recent and largest in 2009 when they changed to limit the maximum indebtedness.

Councilwoman Seiler stated the request was for a study only and she wanted to see what the numbers would be. She noted she was confused about the number of trips proposed in the contract and the total dollar amount requested. Mr. Wall explained Ms. Howard had put in a few potential extra costs in her proposal such as the need to acquire GIS

information, assessor information, etc. but staff hoped to be able to provide much of that information, thus saving costs. Mr. Cherpeski stated staff would amend the contract to read $21,000 with a portion of that figure to allow for any potential unforeseen costs.

Councilman Hart expressed concern for other taxing districts not being approached about the concept and whether they were on board or not. He noted he was aware the City could do an Urban Renewal District without having other districts approve but he preferred they be consulted prior. Mr. Cherpeski stated their consent was not required; however, in good government, once the feasibility study was done, then discussions with the districts could begin because there would be information to reference to answer their questions. Staff anticipated having those meetings with the other districts.

Councilman Hart stated many communities, prior to adopting an Urban Renewal Plan, referred it to the voters. He asked if staff had any intention, if establishing a new Urban Renewal District, to refer to the voters or would it be a Council action. Mr. Cherpeski responded it would be up to Council to decide. It could be done with Council approval only and some City Councils referred the matter to the voters and went with that outcome.

Councilman Hart reflected on the Municipal Utility District (MUD) that had a feasibility study performed and the outcome of that study was that the City needed to do more feasibility studies with that consultant and he was afraid of going down that path again. Mr. Cherpeski stated there would always be a point where Council could "get off the ride" and, unlike the MUD, there were many urban renewals and they were a great deal more straight forward.

Councilman Hart asked if there was sufficient staff to implement an Urban Renewal Plan without hiring new staff and he noted that information could come from the feasibility study. Councilman Adams stated when Councilman Hart asked about consulting the other districts, that was an important question because there was a Fire District with a proposed $.16 levy they were worried about passing and he did not see another district doing what was needed in the proposed area. He noted both he and Councilman Hart voted against the Town Center Urban Renewal when it went through and the $20,000 for the study would be a waste at this time. He did not think it would provide any information that staff and Council did not already know because it seemed obvious what needed to be done

in the proposed area.

Councilwoman Seiler stated the reason she supported the feasibility study was because the City did not have the answers to the questions that had been posed during the meeting and she could not drive through the proposed district area and say what building needed what and what building would benefit from what because the City did not have the information. The feasibility study was a first step in acquiring the clarification and solid information about an area that needed some help just as the Downtown Urban Renewal District started with a feasibility study. Without that information, she did not see the City with many tools left in the toolkit to work with the property owners to turn that area around. She further stated she did not see the Council or City as committing to an Urban Renewal District by agreeing to a feasibility study' rather the purpose was to get answers to questions. In order to start talking with the other districts as Councilman Adams stated, staff needed the information and data to answer any questions.

Councilman Tofell stated he did not remember specifically talking about the dollar amount in budget hearings. Mr. Cherpeski stated $50,000 was the dollar amount staff put in the budget for urban renewal so that would not be used. Councilman Tofell stated it was a difficult decision for him and he would reluctantly vote yes for only one feasibility study but after that it would be like "pulling teeth" to get him to go beyond that and he hoped the $20,000 was not a waste of money.

Councilman Dodson stated the Urban Renewal Districts currently in place were put in place to basically achieve the common good through a blanket approach. He noted Mr. Cherpeski said multiple times that urban renewal needed to be used to put a specific property back into balance to make it attractive to a private developer and that was wholesale different than had been done in other areas. He stated he was leaning toward letting staff hire the consultant to illustrate what and how of that area.

Councilwoman Seiler **moved to authorize staff to enter into a Consultant Services Contract with Elaine Howard Consulting, LLC, to prepare an Urban Renewal Feasibility Study in the amount not to exceed $21,000.00.** Councilman Dodson seconded. The motion carried with Councilman Tofell, Councilman Dodson, and Councilwoman Seiler voting aye. Councilman Hart and Councilman Adams voted no.

OTHER MATTERS

Sanford Clinic Signage. Councilman Adams requested staff look into signage issues at the Sanford Clinic as the current lack of signage caused parking issues for elderly and disabled. City Manager Nathan Cherpeski responded staff would contact Sky Lakes to attempt to assist in the matter.

Parks Division Accolades. Councilman Tofell commended Parks Division Staff for their maintenance work up to the Sky Lakes area. They had done a great job.

ADJOURNMENT

Councilman Hart **moved to adjourn the meeting.** Councilwoman Seiler seconded. The motion carried unanimously with all Council members present voting aye. The meeting was adjourned at 8:00 p.m.

_____

Kristina West, Assistant to the City Recorder

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 2

Date: November 2, 2015

Department: Airport	Contact/Title: John Barsalou, Airport Director
Staff Presenter: John Barsalou	Telephone No.: (541) 883-5373
City Manager Review:	Email: jbarsalou@flykfalls.com

TOPIC: Amendment to Mead & Hunt Contract for Environmental Phase II Project 2014/2015

SUMMARY AND BACKGROUND:

For several years, the City has not been able to establish a direction with the Modoc Wetlands that meets Department of State Lands and (expired) Corps of Engineers permit requirements. Many options were considered and formulated in the "Klamath Falls Airport Wetland Site Action Plan Update" of July 23, 2013. The Plan was provided to both the Corps of Engineers and Department of State Lands for review.

In August 2014, the Council approved an agreement with Mead & Hunt to proceed with Environmental Phase II Project 2014/2015. The tasks included a feasibility assessment, creating an Action Plan and investigate two possible wetland enhancements. Again, many options were considered and an Action Plan Update to the above mentioned plan was completed in July 2015. The Update document was provided to both the Corps of Engineers and the Department of State Lands for review. A meeting was held on August 12, 2015 with all agencies involved and a direction was agreed upon at the meeting.

The Action Plan Update recommends the connection of the wetland mitigation site to Lake Ewauna by installing two uncontrolled 48" culverts. The FAA, Corps of Engineers, and Department of State Lands agree this is the best option to provide water to the wetland mitigation site. At Airport staff's request, Mead & Hunt provided a scope and fee amendment to complete the work agreed upon by the agencies. The following tasks are included in the amendment:

Task 4: Investigate Wetland Enhancements (from the original contract scope) is deleted.
Task 5: Permitting and Monitoring Plan (assist the Airport in applying for and obtaining the necessary permits to proceed with the project)
Task 6: Engineering Design and Construction Contract Documents

Construction and construction administration will be covered under a future FAA grant and brought to Council for consideration in early 2016.

The scope of work and cost estimate provided by Mead & Hunt was reviewed by an independent fee consultant in accordance with FAA requirements. The proposed fees are considered reasonable to receive FAA reimbursement funding under a previously approved FAA grant.

2

FINANCIAL IMPACT:

The contract amendment is for $28,299.06, with 93.75% or $26,530.37 of the cost covered by the Airport Improvement Program Grant 3-41-0030-034. The remaining 6.25% or $1,768.69 will be covered by Airport budgeted funds.

COUNCIL OPTIONS:

1. Decline to approve the contract amendment and delay or abandon plans to implement the agency supported plan to complete the wetland mitigation site. No action will bring enforcement action by Corps of Engineers or Department of State Lands.

2. Approve the contract amendment and move forward with the permit applications, design and construction of the wetland site mitigation plan.

DOCUMENTS ATTACHED:

Contract Amendment/Environmental Phase II Project 2014/2015, Project Schedule and site improvement drawing.

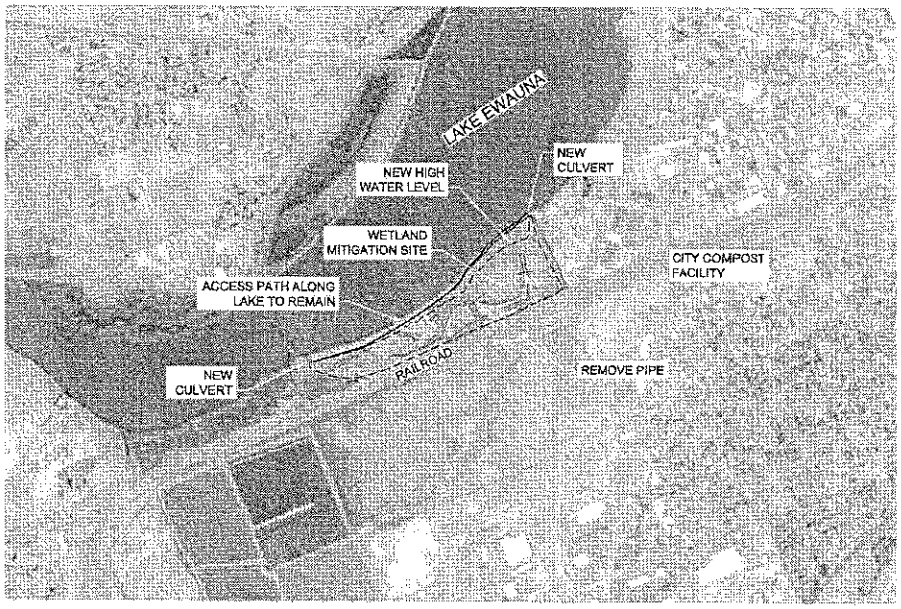
RECOMMENDED MOTION/ACTION:

Staff recommends Option 2 to move to authorize staff to execute the contract amendment with Mead & Hunt for the Environmental Phase II Project 2014/2015 in the amount of $28,299.06.

NOTICE SENT TO:

Mead & Hunt

2



City of Klamath Falls
Crater Lake - Klamath Regional Airport - Klamath Falls, Oregon

October 26, 2015

MITIGATION SITE IMPROVEMENTS

CRATER LAKE KLAMATH REGIONAL AIRPORT

Mead & Hunt

ATTACHMENT 1

2

CONTRACT AMENDMENT #1

The Agreement dated the 5th day of August, 2014 by and between the City of Klamath Falls and Mead & Hunt, Inc. for Consultant Services – Env. Phase II Project 2014/2015 is hereby amended as follows:

#1) Description of Work, is amended to include those additional services to the original scope of work set forth in attached Exhibit A incorporated herein by this reference.

#2) Payment, is amended to for an additional sum of $28,299.06 bringing the total lump sum not to exceed to $89,664.36.

In all other respects, the Agreement shall remain unchanged and in full force and effect.

In Witness Whereof, the parties have agreed to this Amendment this _____ day of _____, _____.

CITY OF KLAMATH FALLS

By: _____
City Manager

ATTEST:

_____
City Recorder

APPROVED AS TO FORM:

_____
City Attorney

CONTRACTING AGENT

By: _____

Name: _____

Title: _____

_____
Secretary

2

Exhibit A

ENVIRONMENTAL PHASE II PROJECT 2014/2015

Scope and Fee Amendment

October 15, 2015

Background

The Wetland Mitigation Site was constructed in 2009 to compensate for lost wetland functions on the Crater Lake – Klamath Regional Airport (Airport) property. The project was permitted by the Department of State Lands (DSL) and United States Army Corps of Engineers (USACE). Post-construction mitigation site monitoring requirements were required by state (DSL Permit 37409) and federal (USACE Permit NWP-2006-868) permits. The mitigation site is not meeting all the performance standards established by these permits. Specifically, low survival of tree and shrub plantings in Zone 5, increasing prevalence of invasive species, and higher elevations not meeting wetland hydrology due to drought. Annual precipitation levels have been below average for nine of the last ten years which has stressed the site vegetation during the critical site establishment period. The drought was especially severe between 2011 and 2014 and the site is heavily influenced by fluctuation in precipitation.

These challenges were addressed in the Klamath Falls Airport Wetland Site Action Plan and various remedial actions proposed and some implemented. Due to the ongoing drought, DSL and USACE agreed to postponement of additional plantings work and further site monitoring until drought conditions subside. Further the DSL and USACE recommended an alternate course of action for site success by opening the site up to Lake Ewauna and modifying the site vegetation.

The Airport undertook a feasibility assessment to evaluate the anticipated hydrology, vegetation, and habitat changes associated with this alternative of providing direct connection to Lake Ewauna. The feasibility assessment was completed in early 2015 and the Action Plan updated which included the mitigation plan modifications, construction considerations, and a construction cost estimate. The Airport obtained input and support from project stakeholders and regulatory agencies. The recommended alternative includes installation of two culverts open to Lake Ewauna and minor site grading. It is not anticipated that additional plantings will be required as wetland vegetation is expected to be established through natural recruitment.

The Airport is implementing the recommended alternative and is in need of consultant support services for the design, permitting, construction, and post-construction monitoring. It is expected that work will be authorized under the original DSL permit. The USACE permit has expired and a new permit is required. It is expected that the work can be accomplished under a Nationwide Permit for restoration work (NW-27).

It is anticipated that this project will be funded under the Federal Aviation Administration (FAA) Airport Improvement Plan (AIP) grant with local matching funds provided by the City of Klamath Falls (CITY). The project is located off Airport property on lands owned by the City and maintained by the Airport. A Construction Safety and Phasing Plan and other airport specific FAA conditions will not apply.

Scope of Services

Strike Task 4, Investigate Wetland Enhancements as described in the Contract Agreement between the CITY and Mead & Hunt, Inc. (CONSULTANT) dated August 5, 2014.

Add the following Scope of Services:

CONSULTANT will provide permitting and design as described in Tasks 5 and 6 below. CONSULTANT work depends on close collaboration with the Airport and CITY.

CONSULTANT is expected to provide construction administration and post-construction monitoring services under a future contract and are not included in this amendment.

Task 5. Permitting and Monitoring Plan

a. CONSULTANT will conduct a kick-off meeting via teleconference with the Airport and CITY prior to commencement of services.

b. CONSULTANT will prepare a Mitigation Plan as required by the USACE.

   i. The Mitigation Plan will include a 5-year monitoring plan with Performance Standards, maintenance plan, and supplemental vegetation planting plan.

   ii. The required elements will be extracted from the Action Plan Update (July 2015) and compiled in a standalone document for the USACE.

   iii. DSL does not require an updated mitigation plan but will be provided a copy of the plan for their documentation.

c. CONSULTANT will prepare an addendum to the original project Biological Assessment to address changes to the mitigation plan. It is expected that FAA will lead consultation with the United States Fish and Wildlife Service (USFWS). It is expected that the CONSULTANT will participate in one teleconference with the agencies and provide supplementation information as requested. It is not expected that additional field investigative services will be required.

d. CONSULTANT will prepare a fill-removal permit application for USACE which will qualify as a Nationwide Permit for restoration work (NW-27).

   i. The application will include a description of project plans, location and amount of removal and fill, preliminary drawings and cross-sections views of the project (30% engineering drawings).

   ii. The permit application will also address conservation measures which are expected to include performing construction during the in-water work period and isolating the work area from Lake Ewauna to avoid impacts to water quality and fish.

   iii. DSL does not require a new application as proposed actions will be conducted as contingency actions to the original mitigation project but will be provided a copy of the application for their documentation.

iv. It is not expected that additional field investigative services will be required.

e. CONSULTANT will provide drafts of the Mitigation Plan and fill-removal permit application to the Airport and FAA for review prior to submission to the USACE. CONSULTANT will address review comments, finalize, and submit the documents to the USACE. A courtesy copy will be sent to DSL for their files. There is no fee associated with the application to the USACE.

f. CONSULTANT will coordinate with USACE via teleconference and address review comments as provided.

Task 6. Engineering Design and Construction Contract Documents

a. CONSULTANT will prepare 60% construction contract documents (drawings, specifications, design report, and engineer's construction cost estimate) and submit to the Airport for review. Review period will be 10 business days. Review comments will be provided electronically to the CONSULTANT and discussed with the Airport via teleconference.

i. Drawings are expected to include the following sheets:

1. Title Sheet (1) including Project Name, Project Location and Sheet Index

2. Erosion and Sediment Control Plan and details (2) including conservation measures

3. Site Grading and Drainage Plan (1)

4. Drainage Profiles and Details (1)

ii. Specifications are expected to include FAA and City General Conditions, technical specifications in accordance with FAA standards, and special provisions as needed.

iii. Design Report will adhere to FAA standards and include an Engineer's Construction Cost Estimate.

b. CONSULTANT will address the 60% review comments, prepare the 90% construction contract documents, and submit to the Airport and FAA for review. Review period will be 10 business days. Review comments will be provided electronically to the CONSULTANT and discussed with the Airport and FAA as required via teleconference.

c. CONSULTANT will address the 90% review comments and prepare final construction contract documents for bidding. CONSULTANT will provide one hard copy and an electronic version of construction contract documents sealed by a professional engineer.

d. CONSULTANT will prepare request for bids advertisement details. The Airport will coordinate advertising and bid procurement with the CITY.

e. CONSULTANT will participate in a pre-bid meeting. The project engineer and wetland scientist will be in attendance and include a site visit with the prospective bidders.

f. CONSULTANT will address bidder requests for information as directed by the Airport.

g. CONSULTANT will review bid tabs received and provide an engineer's recommendation for award.

Project Schedule

Task 5 – Permitting and Monitoring Plan

Conduct Kick-off meeting	November 2015
Submit Permit application	February 2016

Task 6 - Engineering Design and Construction Contract Documents

Submit 60% documents	February 2016
Submit 90% documents	March 2016
Submit Final documents	April 2016
Bid Advertisement	April – June 2016
Contract Execution	July 2016

Compensation

The work described under the Task 4 will be deducted from the contract as follows:

TASK 4 - INVESTIGATE WETLAND ENHANCEMENTS	
Prepare concept plan	- $6,222.00
Soil testing	- $1,596.10
Prepare memorandum	- $3,049.00
Review with agencies	- $1,312.00
Prepare scope	- $1,493.00
LABOR AND EXPENSES TOTAL	**- $13,672.10**

The work described under the additional Scope of Services will be performed on a lump-sum basis and the CITY will pay the CONSULTANT the total amount for each task as follows:

TASK 5 - PERMITTING AND MONITORING PLAN	
Conduct kick-off meeting	$1,576.80
Prepare Mitigation Plan	$2,339.00
Prepare addendum to BA and supplemental info	$3,774.00
Prepare draft fill-removal permit application	$7,161.00
Address review comments and finalize permit application	$2,242.50
Review permit application with USACE	$2,217.08
LABOR AND EXPENSES TOTAL	**$19,310.38**

TASK 6 - ENGINEERING DESIGN AND CONSTRUCTION CONTRACT DOCUMENTS	
Prepare 60% construction contract documents	$6,272.70
Prepare 90% construction contract documents	$5,951.34
Prepare final construction contract documents	$3,872.29
Prepare bid advertisement details	$644.78
Attend pre-bid meeting	$3,433.25
Address bidder requests for information	$1,841.64
Review bid tabs and provide engineers' recommendation for award	$644.78
LABOR AND EXPENSES TOTAL	**$22,660.78**

The contract amount shall be increased by **$28,299.06**.

KLAMATH FALLS CITY COUNCIL
AGENDA REPORT

Agenda Item No. 3

Date: November 2, 2015

Department: Administration	Contact/Title: Nathan Cherpeski, City Manager
Staff Presenter: Nathan Cherpeski	Telephone No.: (541)883-5316
City Manager Review:	Email: ncherpeski@klamathfalls.city

TOPIC: Enter into an Exclusive Negotiating Agreement with Tokola Properties for the Balsiger site development.

SUMMARY AND BACKGROUND:

At the October 5, 2015, meeting City Council authorized staff to develop an exclusive negotiating agreement with Tokola Properties. The purpose of this agreement is to give Tokola time to evaluate the feasibility of the project. The contract states:

> During the term hereof, Owner (City) agrees Tokola shall have the exclusive right to conduct due diligence and negotiate with Owner for the rights to develop the Property and Owner will not accept, solicit, pursue or entertain other offer(s) or indications of interest with respect to the Property for any development, sale or other transaction.

This agreement will last 180 days with the ability to extend if necessary for the completion of due diligence. The City agrees to reimburse Tokola up to $35,750 or 50% of the necessary due diligence work.

Several of the assumptions for the feasibility study are as follows:

- Development of a landmark mixed use development consisting of market rate apartments and commercial space.

- Development is to incorporate a mix of residential floor plans, styles, and price points to help meet the diverse needs of those seeking an urban living experience in downtown Klamath Falls. Floor plans are to include a combination of urban lofts and flats and to vary in size from studio units up to two and three bedroom units with two baths.

- Development is to complement and enhance the Historic Main Street environment through appropriate scope and scale of architecture.

- New building facades are to have a strong pedestrian orientation along Main Street and Esplanade and create a vibrant street presence suitable for this important gateway to the central business district.

- City and Tokola, by mutual consent, shall evaluate the feasibility of a public plaza or publicly accessed plaza.

- Site design is to establish a pattern to improve public pedestrian connectivity through the site, particularly between Main and Esplanade.

FINANCIAL IMPACT:

The City and Tokola Properties will evenly split costs needed to prepare further project feasibility studies during the Exclusive Negotiating Period. Total expenditures are estimated at $71,500. The City's share will be $35,750 and the City will have the right to all studies and information created as part of the project. Feasibility study costs will be paid for through the Downtown Urban Renewal Fund.

COUNCIL OPTIONS:

- Authorize staff to enter into the attached Exclusive Negotiating Agreement with Tokola Properties.
- Decline to act at this time and give staff further direction.

DOCUMENTS ATTACHED:

Exclusive Negotiating Agreement

RECOMMENDED MOTION/ACTION:

Move to authorize staff to enter into an Exclusive Negotiating Agreement with Tokola Properties.

NOTICE SENT TO:

Tokola Properties

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EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the "Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between the City of Klamath Falls, a municipal corporation ("Owner"), and Tokola Properties, Inc., an Oregon corporation ("Tokola").

RECITALS

A. The City of Klamath Falls owns real property and all rights appurtenant thereto (hereinafter "Property"), located at the intersection of Main Street and Esplanade Avenue and known as Klamath County Assessor tax lots 3809-028CC-10700, 3809-028CC-10800, 3809-028CC-10900, 3809-028CC-11000 in the City of Klamath Falls, County of Klamath, State of Oregon, commonly known as the Balsiger redevelopment site.

B. The City of Klamath Falls has identified Tokola Properties, Inc. for further negotiations concerning redevelopment of the Property subject to the approval of the City of Klamath Falls City Council.

C. This Agreement confirms the basis upon which Owner and Tokola (the "Parties") are prepared to negotiate the terms of a Disposition and Development Agreement and related documents providing for the redevelopment of the Property (the "Project"), which then must be approved by the City of Klamath Falls City Council.

TERMS

1. Good Faith Exclusive Negotiations. Owner and Tokola agree and covenant to negotiate the terms of a Disposition and Development Agreement (DDA) and any intervening Memoranda of Understanding (MOU) (both defined below) in good faith. Owner and Tokola acknowledge and agree Tokola will expend time and expense in preparing its initial proposal, conducting due diligence, providing preliminary conceptual design aspects and refining its development proposal. During the term hereof, Owner agrees Tokola shall have the exclusive right to conduct due diligence and negotiate with Owner for the rights to develop the Property and Owner will not accept, solicit, pursue or entertain other offer(s) or indications of interest with respect to the Property for any development, sale or other transaction.

2. Duration. The Agreement's term is 180 days from the Effective Date which may be extended for two (2) additional 120-day renewal terms upon the written approval of the City of Klamath Falls City Manager. This Agreement automatically terminates upon execution and delivery of a DDA (assuming one is ultimately negotiated) which thereafter controls the rights of Owner and Tokola with respect to the Property. The Parties may terminate this Agreement by mutual agreement if latent conditions are discovered on the Property or events occur that would (either presently or with the passage of time) prevent the entry and execution of a DDA.

   Notwithstanding the above, either Owner or Tokola may at their option terminate this Agreement by notice in writing if the other makes a material misrepresentation in the course

of the negotiations hereof; otherwise fails to act in good faith; if Tokola becomes insolvent or (in the terminating party's reasonable estimation) otherwise is unable to perform as set forth below in the Base Development Criteria.

3. Base Development Criteria. The Base Development Criteria express Owner's expectations with regard to the transaction serving as guidance at the inception and during negotiations between Tokola and Owner but are not nor shall be construed as mandatory criteria. Base Development Criteria are attached as Exhibit A.

4. Memorandum of Understanding. Tentative agreements on the terms of a Disposition and Development Agreement (DDA) shall be memorialized in a written Memorandum of Understanding ("MOU") or series thereof during the Term of this Agreement. Any such MOUs will provide the framework for final negotiation and preparation of the DDA.

5. Pre-Development Assistance. Pre-development costs associated with this agreement are estimated to be $71,500. Owner agrees to contribute up to $35,750 toward Pre-development costs. Said owners contribution to be disbursed on a matching basis as Tokola incurs Pre-development costs, through the provision of paid or in-kind services. The value of Pre-development work provided by Tokola in the sum of $35,750 shall be set off against Tokola's total equity contribution to the Project.

5.1 Owner agrees to reimburse up to $35,750 for the purpose of assisting Tokola with preparatory design review work including schematic site development plan, schematic plans of each floor level for the mixed-use building, schematic elevations of the mixed-use building, schematic cross-sections of the mixed use building, schematic 3D modeling of the proposed development to demonstrate building form and massing, summary of development fees and charges, project statistical data, project cost estimates, and sources and uses of funds statement sufficiently specific to support the negotiation and execution of a Disposition and Development Agreement ("DDA").

5.2 Owner shall be responsible for and pay the costs it deems reasonable related to demolition of the existing structures at the Property as well as the costs related to the Property's general site preparation, including any grading and utility removal/capping Owner deems necessary. Owner shall also be responsible for costs associated with environmental reports and remediation, geo-technical reports, traffic study, partition or lot line adjustment and property survey.

5.3 All Pre-Development Work products are the property of Tokola and Owner except in the event of an early termination pursuant to Section 2 above or termination by Tokola in Section 19 below when all Pre-Development Work products become the sole property of Owner.

5.4 Owner monies paid pursuant to this Agreement will be added to the principal amount of future permanent financing provided by Owner for development or set off against any other financial assistance agreed to by Owner in a DDA with Tokola.

5.5 Tokola will submit monthly invoices to Owner for the Pre-development financial assistance provided herein, in a monthly amount of no more than $8,000. Invoices shall contain a detailed description of all Pre-Development Work accomplished during the

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period in question with invoices being paid within forty-five (45) days of their receipt by Owner. Additional work, if any, which is outside the scope of this agreement, must be approved in writing and in advance by Owner. In the event of early termination consistent with Section 2, Owner's obligation to assist in funding Pre-Development Work is limited to the Owners' pro rata share through the termination date).

6. Co-application/Cooperation.

6.1 Owner and Tokola shall be co-applicants on any land use permit application sought in connection with this Agreement or subsequent Memoranda issued during the term thereof. Tokola shall bear responsibility for all land use application and permit fees unless otherwise agreed to by Owner in writing.

6.2 Owner and Tokola shall each provide each other all information reasonably related to the Property and Project which may be obtained without material expense upon written request. Owner and Tokola shall cooperate in connection with any zoning and development code amendments, applications, permits, approvals or entitlements sought by Tokola from any governmental authority with respect to the Project, including easements, provided Owner is not required to incur any material cost or liability connection with such applications, permits or approvals.

6.3 Tokola understands that to the extent that Owner is a governmental authority that must approve any permit or land use application, that the permit or application will be processed through its normal procedures. Administrative, Planning Commission, and City Council approvals for such permits applications are not guaranteed.

7. Due Diligence. Tokola may conduct due diligence and inspections of the Property, including physical, legal and engineering inspections, tests and investigations as it deems necessary or desirable including soils and environmental studies. Such studies and investigations may include (without limitation) zoning, land use, environmental, title, design review, covenants, conditions and restrictions, financing, leasing markets, project feasibility and related matters. The scope and cost of the due diligence and inspections shall be the sole discretion and responsibility of Tokola. In event Tokola elects not to proceed with the DDA or development of the Project, Tokola shall nonetheless provide Owner copies of all studies, including environmental and soils studies, surveys, title reports and similar information developed by or provided to Tokola during Due Diligence.

8. Access. Owner shall provide Tokola full access to the Property for purposes of Due Diligence. Tokola shall repair or restore any damage caused by Tokola's or its agent's entry on or under the Property.

9. Indemnity and Insurance. Tokola hereby agrees to indemnify, defend and hold Owner, including its appointed and elected officials, officers, employees and agents harmless from and against any and all claims for injury to third persons or damage to property caused by or resulting from the acts of Tokola or its representatives or consultants on or about the Property. During the term of this Agreement, Tokola shall maintain insurance with respect to its activities on or about the Property, naming Owner as an additional insured, in amounts as

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follows: (i) commercial general liability insurance with a combined single limit of not less than $2,000,000 per occurrence and with at least $5,000,000 general aggregate; (ii) auto liability insurance with combined single limit of $2,000,000 per occurrence; (iii) employers liability insurance with a limit of not less than $2,000,000; and (iv) in addition to the primary limits specified in (i) and (ii) above, excess liability insurance with a limit of not less than $3,000,000 for each occurrence and in the aggregate. The indemnity required under this Section 9 survives termination of this Agreement.

10. No Assignment. Neither party shall assign or transfer its interest in this Agreement or the Property until termination of this Agreement or execution and delivery of the DDA.

11. Brokers. Owner and Tokola each represent and warrant to the other that no broker, finder or other representative acting on its behalf in connection with this Agreement. Owner and Tokola agree to indemnify, defend and hold the other harmless from any claim or liability for any fee, commission or other compensation with respect to this Agreement, the DDA or other transactions contemplated hereby, asserted by any other broker, finder or other representative claiming through the indemnifying party. This Section 11 survives termination of this Agreement.

12. Confidentiality. Owner and Tokola agree all information submitted by Tokola during the term hereof is submitted on the condition that Owner keep said information confidential. Owner agrees not to disclose said confidential information provided by Tokola, including but not limited to financial statements regarding Tokola or the Project and pro forma information. This nondisclosure agreement survives termination of this Agreement but does not apply to the extent any such information is publicly available, has been disclosed by other parties or is required to be disclosed by the Klamath County District Attorney under Oregon public records laws. Owner further agrees that Owner shall not disclose the terms of this Agreement, MOUs or DDA prior to the termination or expiration of this Agreement or execution of the DDA (whichever occurs first) unless disclosure is required by the Klamath County District Attorney under Oregon public records laws.

13. Governing Law. This Agreement shall be governed by the laws of the state of Oregon.

14. Time of the Essence. Time is of the essence of this Agreement.

15. Amendments. This Agreement may be amended only by the written agreement of the Parties hereto.

16. Notices. All notices given under this Agreement must be in writing and either (i) personally delivered, (ii) delivered by express mail, Federal Express or comparable courier service, or (iii) delivered by certified mail, postage prepaid, return receipt requested, as follows:

To Owner: City of Klamath Falls
Nathan Cherpeski
City Manager
500 Klamath Avenue
Klamath Falls, OR 97601

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To Tokola: Tokola Properties, Inc.
1700 N.W. Civic Dr., Suite 220
P.O. Box 1620
Gresham, OR 97030-1620

All notices shall be deemed effective upon receipt. Any party may from time to time change its address for purposes of this Section by notice in writing to the other party.

19. Binding Effect. During the Term hereof and any extensions thereto the Parties shall negotiate in good faith to complete and execute a definitive DDA upon terms and conditions consistent with this Agreement and any MOUs. No sale agreement or other right, obligation or estate in land shall be created except by delivery and appropriate execution of the definitive DDA and all other related and necessary instruments duly authorized by the Klamath Falls City Council and necessary Tokola authorized representatives. If the DDA is not executed and delivered prior to expiration of the Term (and any extension(s) thereto) or if Tokola elects in its sole discretion (by notice in writing to Owner) not to pursue development of the Project, this Agreement shall terminate and be of no further force or effect, except Sections 9, 11 and 12 hereof which all survive termination. If during the course of negotiations it becomes clear no agreement can be reached Tokola shall not unreasonably withhold consent to early termination of this Agreement.

TOKOLA:	OWNER:
_____	_____
Dwight Unti President and Owner	Nathan Cherpeski City Manager
Dated	Dated
_____	_____

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EXHIBIT A

Base Development Criteria for Negotiations

Development of a landmark mixed use development consisting of market rate apartments and commercial space.

Development is to incorporate a mix of residential floor plans, styles, and price points to help meet the diverse needs of those seeking an urban living experience in downtown Klamath Falls. Floor plans are to include a combination of urban lofts and flats and to vary in size from studio units up to two and three bedroom units with two baths.

Development is to complement and enhance the Historic Main Street environment through appropriate scope and scale of architecture.

New building facades are to have a strong pedestrian orientation along Main Street and Esplanade and create a vibrant street presence suitable for this important gateway to the central business district.

Owner and Tokola by mutual consent shall evaluate the feasibility of a public plaza or publicly accessed plaza.

Parking for residences shall be at a ratio of at least 1:1.

Development is to incorporate low-impact development features and site improvements that enhance the building exterior and improve ecological performance. Sustainable building elements and development approaches to be incorporated as feasible including but not limited to construction waste recycling, energy and water efficiency, materials selection and ecologically sound site design features.

Site design is to establish a pattern to improve public pedestrian connectivity through the site, particularly between Main and Esplanade.

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