

**CITY COUNCIL MEETING
McMinnville, Oregon**

AGENDA

**McMINNVILLE CIVIC HALL
200 NE SECOND STREET**

**February 14, 2017
6:00 p.m. – Informal Dinner Meeting
7:00 p.m. – Regular Council Meeting**

Welcome! All persons addressing the Council will please use the table at the front of the Council Chambers. All testimony is electronically recorded. Public participation is encouraged. If you desire to speak on any agenda item, please raise your hand to be recognized after the Mayor calls the item. If you wish to address Council on any item not on the agenda, you may respond as the Mayor calls for "Invitation to Citizens for Public Comment."

NOTE: The Dinner Meeting will be held at the McMinnville Civic Hall and will begin at 6:00 p.m. The Agenda for the evening will be reviewed and Staff will be present to answer questions.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVITATION TO CITIZENS FOR PUBLIC COMMENT – *The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than:*

- 1) a topic already on the agenda;*
- 2) a matter in litigation,*
- 3) a quasi judicial land use matter; or*
- 4) a matter scheduled for public hearing at some future date.*

The Mayor may limit the duration of these comments.

1. CONSENT AGENDA

- a. Consider the Minutes of the January 10, 2017 Dinner and Regular Meeting.
- b. Request by Splash Gallery for a new liquor license at 405 NE 3rd Street Suite 8/9.
- c. Request by Three Marys Cellars LLC for a new liquor license at 845 NE 5th Street.
- d. Request by Jackson Family Wines DBA Consair Cellars C for a new liquor license at 3500/ 3600 SE 3 Mile Lane.
- e. Request by Vertical Success LLC for a new liquor license at 448 NE 3rd Street.
- f. **Resolution No. 2017-08:** A Resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as 2017 Fund Exchange Agreement, No. 31871.

2. JOINT MEETING 7:05 p.m.
McMINNVILLE URBAN RENEWAL AGENCY MEETING & McMinnville City Council
 - a. CALL TO ORDER
 - b. Presentation: Audit for Fiscal Year 2015-2016 presented by Merina and Company.
 - c. ADJOURNMENT OF JOINT MEETING
3. PRESENTATION
 - a. Mid-Year Budget Review
4. ORDINANCES
 - b. **Ordinance No. 5018**: An Ordinance restricting the distribution of single use plastic bags.
 - c. **Ordinance No. 5019**: An Ordinance repealing Ordinance No. 5010 and Resolution No. 2016-72.
5. RESOLUTIONS
 - a. **Resolution No. 2017-09**: A Resolution authorizing the City Manager or designee to enter into and manage a partnership agreement with Lafayette for substation use.
 - b. **Resolution No. 2017-10**: A Resolution awarding the contract for the construction of City Park Renovations, Project No. 2016-12.
 - c. **Resolution No. 2017-11**: A Resolution awarding the contract for the NE Alpine Avenue Improvements Project, Project 2016-8.
 - d. **Resolution No. 2017-12**: A Resolution establishing a list of firms qualified to provide consulting services related to the design and construction of sanitary sewer rehabilitation and repair projects.
 - e. **Resolution No. 2017-13**: A Resolution approving an Employment Agreement with Jeffrey Towery.
 - h. **Resolution No. 2017-14**: A Resolution terminating the Interim City Manager Employment Agreement with Candace Haines.
6. ADVICE / INFORMATION ITEMS
 - a. Reports from Councilors on Committee and Board Assignments
 - b. Department Head Reports
7. ADJOURNMENT



City Council- Regular

Meeting Date: 02/14/2017

Subject: Minutes

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Consider the Minutes of the January 10, 2017 Dinner and Regular Meeting.

BACKGROUND:

Attachments

Draft Minutes

CITY OF McMinnville
MINUTES OF DINNER MEETING of the McMinnville City Council
Held at the Kent L. Taylor Civic Hall on Gormley Plaza
McMinnville, Oregon

Tuesday, January 10, 2017, at 6:00 p.m.

Presiding: Scott A. Hill, Mayor

Recording: Melissa Grace, Recording Secretary

Councilors: Present
Remy Drabkin
Adam Garvin, Councilor-elect
Kevin Jeffries
Kellie Menke
Alan Ruden
Wendy Stassens, Councilor-elect
Larry Yoder

Also present were Interim City Manager Candace Haines, City Attorney David Koch, Finance Director Marcia Baragary, and members of the news media, Tom Henderson of the *News Register*, and Dave Adams of KLYC Radio.

DINNER MEETING: Mayor Hill called the Dinner Meeting to order at 6:22 p.m. and welcomed all in attendance.

UNIDOS DECLARATION (RESOLUTION NO. 2017-03): Mayor Hill shared that UNIDOS had approached him about the City showing support for concerned citizens. Mayor Hill then presented Councilors with two samples of resolutions regarding inclusiveness within the City. Discussion ensued regarding adopting a resolution declaring the City an Inclusive City and using a broad spectrum of language on inclusion and adding mental, physical and emotional ability to the proposed resolution.

BAG-IT-BETTER: Mayor Hill stated that representatives from Zero Waste would be attending the work session to provide a presentation to Council regarding a plastic bag restriction Ordinance.

RESOLUTION NO. 2017-01: Finance Director Baragary shared the services that Smith-Wagar Brucker Consulting, LLC would be providing include the development of preliminary information for strategic planning purposes and for making decisions related to the 2017-2018 fiscal year budget.

RESOLUTION NO. 2017-02: Finance Director Baragary explained the need to contract with PlanB Consultancy, Inc. (Plan B) for accounting services. She discussed the advantages of

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hiring PlanB over using a temporary staffing agency. Ms. Baragary shared that PlanB has governmental accounting experience that will enable them to be very efficient in the high level accounting work they will be performing. Discussion ensued regarding staffing in the Finance Department.

MAYOR'S BALL: Mayor Hill shared that the Mayor's Ball will be suspended this year due to constraints.

ADJOURNMENT: Mayor Hill adjourned the Dinner Meeting at 7:00 p.m.

Melissa Grace, Recording Secretary

CITY OF McMINNVILLE
MINUTES OF REGULAR MEETING of the McMinnville City Council
Held at the Kent L. Taylor Civic Hall on Gormley Plaza
McMinnville, Oregon

Tuesday, January 10, 2017, at 7:00 p.m.

Presiding: Scott A. Hill, Mayor

Recording: Melissa Grace, Recording Secretary

Councilors: Present
Remy Drabkin
Adam Garvin
Kevin Jeffries
Kellie Menke
Alan Ruden
Wendy Stassens
Larry Yoder (Outgoing)

Also present were Interim City Manager Candace Haines, City Attorney David Koch, Community Development Director Mike Bisset, Planning Director Heather Richards, Library Director Jenny Berg, Finance Director Marcia Baragary, Information Systems Director Scott Burke, Parks and Recreation Director Jay Pearson, Police Chief Matt Scales, and Dave Adams of KLYC Radio.

AGENDA ITEM

CALL TO ORDER: Mayor Hill called the meeting to order at 7:02 p.m. and welcomed all in attendance.

PLEDGE OF ALLEGIANCE: Councilor Yoder led in the recitation of the Pledge of Allegiance.

INVITATION TO CITIZENS FOR PUBLIC COMMENT: Mayor Hill asked for comments from citizens on topics not on the evening's agenda.

Larry Larson, 620 SW Arthur Street, shared that last month he caught ten rats. He stated that he has spoken with various City and County employees regarding his concerns and he has spoken with the City's Code Enforcement Officer who mentioned that there have been several rat complaints citywide. Mr. Larson stated that he feels that the City should

have an official and organized awareness program providing information on how to prevent rat problems.

Mayor Hill responded to Mr. Larson stating that the City will reach out to the County to work together and perhaps the *News Register* would be interested in an awareness piece.

1. PROCLAMATION

1.a. Proclamation recognizing Councilor Larry Yoder.

Mayor Hill read a proclamation honoring Councilor Yoder for his years of service. Mayor Hill also presented Councilor Yoder with a plaque reflecting his many years of service to the City. Mayor Hill shared that they have become close friends during their time together on Council.

Councilor Yoder thanked the Councilors and stated that he was honored and privileged to be able to serve on the City Council. He shared that being on the City Council was one of the most rewarding and fun things he has done.

Council Yoder left the dais.

2. OATH OF OFFICE – Mayor Hill and Councilors Garvin, Stassens, Menke

City Attorney Koch administered the oath of office to Councilors Garvin, Menke and Stassens.

City Attorney Koch administered the oath of office to Mayor Scott Hill.

Mayor Hill commented on the election highlighting the quality candidates that are passionate about living in the community and making sure the policies and procedures are what they want to be.

3. ELECTION OF COUNCIL PRESIDENT

Mayor Hill discussed Councilor Jeffries contributions as Council President noting his service as interim Mayor during the last several months since former Mayor's Olson's resignation.

Mayor Hill then reviewed the duties of Council President.

Councilor Ruden MOVED to nominate Councilor Menke as Council President; SECONDED by Councilor Jeffries. Motion PASSED unanimously.

4. UNIDOS DECLARATION

City Attorney Koch shared that UNIDOS approached the City concerned about tensions over immigration and how the City would respond to situations involving immigrants. He stated that it has always been the “McMinnville way” to be inclusive. City staff worked with representatives from UNIDOS to create a declaration that would express the City’s continued partnership.

Council discussed the draft Resolution presented during the Dinner meeting. Councilor Ruden asked that emotional ability be added to the Resolution as discussed at the Dinner meeting. Councilor Drabkin shared that she was pleased to have the Resolution come before Council and would be happy to have it move forward. Councilor Stassens shared that the Resolution was clear about the kind of community that is being built in McMinnville. Councilor Jeffries thanked community members for coming forward with their concerns. Councilor Garvin stated that this was a great discussion and was glad to be on the forefront. Councilor Menke shared that she is firmly in support of the Resolution.

Interim City Manager Haines shared that the Resolution will be translated into Spanish and will go on the City’s website. Police Chief Scales added that passing the Resolution is a great way to formalize the way the City already does business.

Resolution No. 2017-03: A Resolution to declare the City of McMinnville as an Inclusive City for all persons, regardless of race, color, national origin, immigration or refugee status, religion, sex, gender identity (including gender expression), sexual orientation, mental, emotional, and physical ability, age, or economic status.

Councilor Drabkin MOVED to adopt Resolution No. 2017-03 declaring the City of McMinnville as an Inclusive City for all persons, regardless of race, color, national origin, immigration or refugee status, religion, sex, gender identity (including gender expression), sexual orientation, mental, emotional, and physical ability, age, or economic status; SECONDED by Councilor Stassens. Motion PASSED unanimously.

5. WORK SESSION: Bag-it-Better

City Attorney Koch provided a brief history of the discussions with representatives from Zero Waste regarding the restriction of plastic bag use. He directed the Council to the summary included in the Council

packet stating that there are five cities in Oregon that have passed plastic bag restriction ordinances and a summary of the five ordinances has been provided to the Council.

Zero Waste Representatives Steve Iversen, Pam Vernon, Zach Dotson, and Ramsey McPhillips reviewed the following policy areas:

1. How to define the term “reusable bag”?
2. Whether exceptions will be allowed to the rule. If so, what exceptions?
3. Whether to prohibit plastic bags at City facilities, city-sponsored events, etc.
4. Whether to require mandatory charges for paper bags. If so, then what amount?
5. Whether to allow for hardship exceptions, and under what conditions.
6. Whether to provide for enforcement of the ban. If fines, then as what amount?
7. Whether to phase-in the requirements or include a minimum threshold based on the number of employees or size of the business.

A lengthy discussion ensued between City Attorney Koch, the Council and representatives from Zero Waste regarding the various policy areas and what should be included in an Ordinance.

Councilor Ruden commented that the transition should be a community effort. The representatives from Zero Wasted mentioned that they will be working with the City and business owners to help ease the transition.

Councilor Menke stepped out of the Council Chambers at 8:23 p.m. and returned at 8:26 p.m.

Kevin Jeffries stepped out of the Council Chambers at 8:30 p.m. and returned to the meeting at 8:32 p.m.

Councilor Drabkin stepped out of the Council Chambers at 8:35 p.m. and returned at 8:36 p.m.

Mayor Hill thanked the representatives from Zero Waste for their time and diligence. He shared that there will be a public hearing to discuss the draft Ordinance.

6. CONSENT AGENDA: Mayor Hill asked the Council if there were any items on the Consent Agenda that they wished to discuss or have removed.

There were no such requests.

- 6.a. Consider the Minutes of November 22nd and December 13th, 2016 Dinner and Regular Meetings.

Council President Menke MOVED to approve the Consent Agenda as presented. The motion was SECONDED by Councilor Garvin. Motion PASSED unanimously.

7. RESOLUTIONS

- 7.a. Resolution No. 2017-01: A Resolution approving the City Manager or designee to enter into and manage a contract with Smith-Wagar Brucker Consulting, LLC for budgetary and financial planning consulting services in an amount not to exceed \$10,000.

Finance Director Baragary shared that the budget process is beginning and short-term, long-term, strategic, and financial planning is also being discussed. She shared that the City has been working with Smith-Wagar Brucker Consulting, LLC. They have been providing accounting assistance and drafting financial statements. She stated that the proposed contract allows for Smith-Wagar Brucker Consulting, LLC to review the fiscal forecast, review the assumptions and conducting research. Ms. Baragary stated that they will also look at ways to maximize current revenues in the City's long-term fiscal forecast model and recommend revisions, analyze current revenue sources and identify potential areas to maximize those revenues, as well as research additional revenue sources.

Council President Menke MOVED to adopt Resolution No. 2017-01 approving the City Manager or designee to enter into and manage a contract with Smith-Wagar Brucker Consulting, LLC for budgetary and financial planning consulting services in an amount not to exceed \$10,000; SECONDED by Councilor Jeffries. Motion PASSED unanimously.

- 7.b. Resolution No. 2017-02: A Resolution approving the City Manager or designee to enter into and manage a contract with PlanB Consultancy, Inc. (PlanB) for accounting services in an amount not to exceed \$25,000.

Finance Director Baragary stated that the proposed contract with PlanB is to provide the City with professional accounting services. She reminded Council that there is an open position in the Finance Department and that from January through April Finance staff is focused and dedicated to budgeting and forecasting. The contract with PlanB would allow them to provide the City with general ledger support and month-end closing which will help the City stay current on the reports.

Councilor Drabkin stated that she supports the Finance Department and feels that it is unfortunate that the City has not been able to find a qualified

applicant for the open finance position. She commented that she is hoping for a resolution so that the supplemental support does not have to continue.

Finance Director Baragary discussed restructuring the department and stated that the Finance Department will continue pursuing to fill the vacant position.

Councilor Drabkin MOVED to adopt Resolution No. 2017-02 approving the City Manager or designee to enter into and manage a contract with PlanB Consultancy, Inc. (PlanB) for accounting services in an amount not to exceed \$25,000; SECONDED by Councilor Ruden. Motion PASSED unanimously.

8 ADVICE / INFORMATION ITEMS

8.a. REPORTS FROM COUNCILORS ON COMMITTEE AND BOARD ASSIGNMENTS

Councilor Drabkin shared that Councilor Ruden will be speaking at a forum on affordable housing at the Yamhill County Commissary on Monday, January 23rd.

Councilor Jeffries reminded Councilors of the Council of Governments Annual Dinner on Wednesday, January 25th.

8.b. REPORTS FROM DEPARTMENT HEADS

City Attorney Koch stated that there will be an open house at the Grand Ballroom to meet the City Manager Candidates on Wednesday, January 11th.

8.c. CASH AND INVESTMENT REPORTS – SEPTEMBER AND OCTOBER 2016

9. ADJOURNMENT: Mayor Olson adjourned the Regular City Council meeting at 8:49 p.m.

Melissa Grace, Recording Secretary

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City Council- Regular

Meeting Date: 02/14/2017

Subject: Liquor License Request

From: Melissa Grace, City Recorder / Legal
Assistant

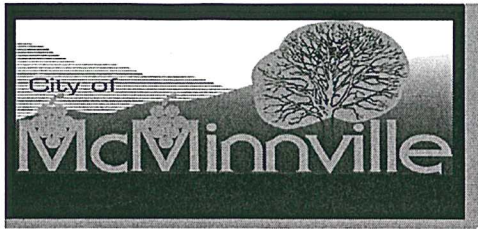
AGENDA ITEM:

Request by Splash Gallery for a new liquor license at 405 NE 3rd Street Suite 8/9.

BACKGROUND:

Attachments

Request



City Recorder Use

Final Action: _____

Approved Disapproved

Liquor License Recommendation

BUSINESS NAME / INDIVIDUAL: SPLASH GALLERY
 BUSINESS LOCATION ADDRESS: 405 NE 3rd ST SUITE 8/9
 LIQUOR LICENSE TYPE: LIMITED - ON PREMISE SALES - NEW OUTLET

Is the business at this location currently licensed by OLCC

Yes No ✓

If yes, what is the name of the existing business:

Hours of operation: TUESDAY - SATURDAY 3 TO 10 PM

Entertainment: KARAOKE, RECORDED MUSIC, DJ

Hours of Music: _____

Seating Count: 8 COUNCIL 40 IN STORAGE AREAS

EXEMPTIONS:

(list any exemptions)

Tritech Records Management System Check: Yes No ✓

Criminal Records Check: Yes No ✓

Recommended Action: Approve Disapprove ✓

COURTNEY POWELL HAS SEVERAL LOCAL POLICE RECORDS (VICTIM, COMPLAINANT AND SUSPECT)
 1 ARREST IN 2016 HARASSMENT & DISORDERLY CONDUCT
 DISMISSED BY MUNICIPAL COURT

Chief of Police / Designee

 City Manager / Designee



City Council- Regular

Meeting Date: 02/14/2017

Subject: Liquor License Request

From: Melissa Grace, City Recorder / Legal Assistant

AGENDA ITEM:

Request by Three Marys Cellars LLC for a new liquor license at 845 NE 5th Street.

BACKGROUND:

Attachments

Request



City Recorder Use

Final Action: _____

Approved Disapproved

Liquor License Recommendation

BUSINESS NAME / INDIVIDUAL: THREE MONYS CELLARS
 BUSINESS LOCATION ADDRESS: 845 NE 5TH ST
 LIQUOR LICENSE TYPE: NEW OUTLET - WINERY

Is the business at this location currently licensed by OLCC
 Yes No ✓

If yes, what is the name of the existing business:
SPARKLING ONECON! LLC

Hours of operation: N/A
 Entertainment: _____
 Hours of Music: A
 Seating Count: _____

EXEMPTIONS:
 (list any exemptions)

Tritech Records Management System Check: Yes No ✓
 Criminal Records Check: Yes No ✓
 Recommended Action: Approve Disapprove ✓



 Chief of Police / Designee

 City Manager / Designee



City Council- Regular

Meeting Date: 02/14/2017

Subject: Liquor License Request

From: Melissa Grace, City Recorder / Legal
Assistant

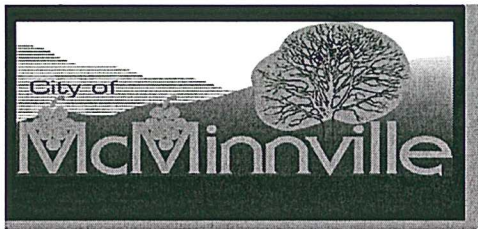
AGENDA ITEM:

Request by Jackson Family Wines DBA Consair Cellars C for a new liquor license at 3500/ 3600 SE 3 Mile Lane.

BACKGROUND:

Attachments

Request



City Recorder Use

Final Action: _____

Approved Disapproved

Liquor License Recommendation

BUSINESS NAME / INDIVIDUAL: JACKSON FAMILY WINES DBA CONSAR CELLARS
 BUSINESS LOCATION ADDRESS: 3500/3600 SE 3 MILE LN, McMINNVILLE
 LIQUOR LICENSE TYPE: WINERY

Is the business at this location currently licensed by OLCC

Yes No ✓

If yes, what is the name of the existing business:

N/A

Hours of operation: 7-5 SUN - SATURDAY

Entertainment: N/A

Hours of Music: N/A

Seating Count: N/A

EXEMPTIONS:

(list any exemptions)

Tritech Records Management System Check: Yes No ✓

Criminal Records Check: Yes No ✓

Recommended Action: Approve Disapprove ✓

Chief of Police / Designee

City Manager / Designee



City Council- Regular

Meeting Date: 02/14/2017

Subject: Liquor License Request

From: Melissa Grace, City Recorder / Legal
Assistant

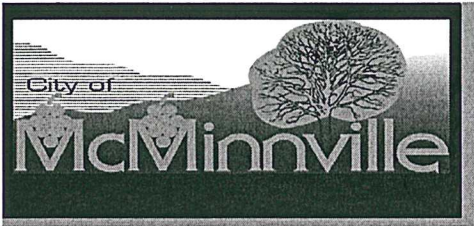
AGENDA ITEM:

Request by Vertical Success LLC for a new liquor license at 448 NE 3rd Street.

BACKGROUND:

Attachments

Request



City Recorder Use

Final Action: _____

Approved Disapproved

Liquor License Recommendation

BUSINESS NAME / INDIVIDUAL: VERTICAL SUCCESS, LLC DBA: PINEST VISTA VINEYARDS
 BUSINESS LOCATION ADDRESS: 448 NE 3RD ST, McMinnville
 LIQUOR LICENSE TYPE: ON-OLCC premises sales

Is the business at this location currently licensed by OLCC
 Yes No ✓

If yes, what is the name of the existing business:
FOLA HILLS WINE CELLAR

Hours of operation: 12 pm to 6 pm
 Entertainment: LIVE MUSIC
 Hours of Music: UNKNOWN
 Seating Count: 35

EXEMPTIONS:
 (list any exemptions)

Tritech Records Management System Check: Yes No ✓
 Criminal Records Check: Yes No ✓
 Recommended Action: Approve Disapprove ✓

Chief of Police / Designee

City Manager / Designee



City Council- Regular

Meeting Date: 02/14/2017

Subject: ODOT Fund Exchange Agreement
31871

From: Mike Bisset, Community Development
Director

AGENDA ITEM:

Resolution No. 2017-08: A Resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as 2017 Fund Exchange Agreement, No. 31871.

BACKGROUND:

In 2013, the City entered into a Oregon Transportation Infrastructure Bank (OTIB) loan agreement (attached) with the State of Oregon to cover the City's \$3,209,600.00 portion of the Newberg-Dundee Bypass project. Section 2.10 of the loan agreement allows for the use of the City's federal transportation fund allotment to cover the loan principal and interest payments.

That attached 2017 Fund Exchange Agreement No. 31871 provides for the exchange of \$201,248 of the City's federal allocation to cover the City's 2017 OTIB loan principal and interest payment. Per the agreement, the City will receive \$100 in state funds for every \$100 of federal funds exchanged.

RECOMMENDATION:

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to execute 2017 Fund Exchange Agreement No. 31871.

Attachments

2017 FUND EXCHANGE AGREEMENT 31871

OTIB LOAN AGREEMENT

Resolution No. 2017-08

2017 FUND EXCHANGE AGREEMENT
Newberg-Dundee Bypass Project (Phase 1)
Oregon Transportation Infrastructure Bank (OTIB) Loan #0048
City of McMinnville

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and CITY OF McMINNVILLE, acting by and through its designated officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572, and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the Newberg-Dundee Bypass (Phase 1) OTIB Loan payment project, hereinafter referred to as "Project."
2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds.
3. To assist in funding the Project, Agency has requested State to exchange 2017 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$100 state for \$100 federal
4. Based on this ratio, Agency wishes to trade \$201,248 federal funds for \$201,248 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) calendar years later, unless extended by an executed amendment.
6. The Parties agree that the exchange is subject to the following conditions:

- a. The federal funds transferred to State may be used by State at its discretion.
- b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
 - i. Purchase or Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
 - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
- c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.
- d. This Fund Exchange shall be on a reimbursement basis with state funds limited to a maximum amount of \$201,248. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.
- e. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
- f. Agency, and any contractors, shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- g. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530, and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
- i. Agency shall submit invoices to State on a monthly basis, for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$201,248, including all expenses. Travel expenses will not be reimbursed.
- j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
- k. All employers, including Agency, that employ subject workers in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
- l. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
 - i. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - A. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - B. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

- ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
 - A. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - B. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.
 - iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 - m. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
7. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or

representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on December 18, 2014 as a part of the 2015-2018 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on January 18, 2017.

SIGNATURE PAGE FOLLOWS

CITY OF McMINNVILLE, by and through
its designated officials

By _____
City Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY** (If required in Agency's
process)

By _____
City Legal Counsel

Date _____

Agency Contact:

Mike Bisset, Community Development Director
City of McMinnville
231 NE Fifth Street
McMinnville, OR 97128
Phone: (503) 434-7312
Email: bissetm@ci.mcminnville.or.us

STATE OF OREGON, by and through its
Department of Transportation

By _____
Region 2 Manager

Date _____

By _____
Area 3 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Agency Contact:

Shelly White-Robinson, Acting Local Project
Delivery Coordinator
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-6925
Email: shelly.white-robinson@odot.state.or.us

Loan Agreement

Between

State of Oregon acting by and through its Department of Transportation

And

City of McMinnville

Dated July 1, 2013

THIS LOAN AGREEMENT, is made and entered into effective on the 1st day of July, 2013, by and between the State of Oregon, acting by and through its Department of Transportation (the "State"), and the Borrower (as defined below). The reference number for this Loan Agreement is OTIF-0048. Terms not otherwise defined herein shall have the meanings assigned to them by Section 1.01 of this Loan Agreement.

WITNESSETH:

WHEREAS, the State, in accordance with the Act, will provide funds in the Oregon Transportation Infrastructure Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of transportation projects;

WHEREAS, the Borrower, along with Other Applicants, has made timely application to the State for a loan to finance all or a portion of the construction cost of a Oregon Department of Transportation transportation project, and the Oregon Transportation Commission and the State have approved the Borrower's application for a loan to finance a portion of the construction cost of such project;

WHEREAS, the Borrower has agreed to make payments sufficient to pay when due the principal of and interest on the Loan from the State pursuant to the terms of the Note and this Loan Agreement;

NOW, THEREFORE, for and in consideration of the Loan by the State, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein:

ARTICLE 1

DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 367.010 to 367.060 and related provisions, as the same may be from time to time amended and supplemented.

"Applicants" means collectively Yamhill County, the City of McMinnville, the City of Newberg, and the City of Dundee. "Applicant" means Yamhill County, the City of McMinnville, the City of Newberg, or the City of Dundee, individually without distinction,

"Authorized Officer" means, in the case of the Borrower, the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name is furnished in writing to the State.

"Borrower" means the City of McMinnville, and its successors and permitted assigns.

"Borrower's Portion" means the percentage of the Costs of the Project for which Borrower is responsible as determined pursuant to Section 5.06.

"Business Day" means any day other than

- (i) a Saturday, Sunday or legal holiday,
- (ii) a day on which banking institutions in Salem, Oregon are closed, or
- (iii) a day on which the New York Stock Exchange is closed.

"Costs of the Project" means the total costs of the Project as shown on Exhibit B to this Agreement.

"Counsel" means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State or the Borrower) duly admitted to practice law before the highest court of any state.

"Event of Default" means any occurrence or event specified in Section 7.01 hereof.

"Loan" means the loan evidenced by the Note and made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by the State from amounts held in the OTIF.

"Loan Agreement" or "Agreement" means this loan agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Closing Date" means the date on which all conditions to closing specified in Section 4.01 are satisfied by Borrower (or waived by State).

"Loan Prepayment" means, as to any payment, the amount paid by the Borrower that is in excess of the amount required to be paid as a Loan Repayment.

"Loan Repayment(s)" means the scheduled payment(s) of principal and interest required to be made by the Borrower pursuant to the provisions of the Note and this Loan Agreement.

"Maturity Date" means the date on which the Loan is payable in full, which date shall be, January 25, 2036.

"Municipality" means a city, county, road district, school district, special district, metropolitan service district or an intergovernmental entity organized under ORS 190.010.

"Note" means the promissory note of the Borrower substantially in the form of Exhibit D, as it may be amended, extended or renewed.

"Other Applicants" means the Applicants other than the Borrower.

"ODOT" means the Oregon Department of Transportation.

"Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, Public Law 104-59, and a cooperative agreement between the Federal Highway Administration, Federal Transit Administration, of the United States Department of Transportation and the Oregon Department of Transportation dated August 20, 1996.

"Oregon Transportation Infrastructure Fund" or "OTIF" means the fund created by the Act. Loans from the OTIF may include OTIB loans or loans to finance transportation projects from any accounts established within the OTIF.

"Project" means the transportation project of ODOT described in Exhibit A, a portion of the Costs of the Project of which is financed or refinanced by the State through the making of the Loan under this Loan Agreement.

"Project Completion Date" means the earlier of

(i) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent; or

(ii) the date on which ODOT completes construction of the Project; or

(iii) December 1, 2016.

"Project Completion Deadline" means December 1, 2016.

"Rule" or "Rules" means Oregon Administrative Rules, chapter 731, division 30, as they may be supplemented, modified or amended from time to time.

"State" means the State of Oregon, acting by and through its Department of Transportation.

"Transportation project" has the meaning assigned to that term by the Rule.

Section 1.02. General Rules. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

ARTICLE II

LOAN

Section 2.01. Loan Amount. On the Loan Closing Date the State hereby agrees to make to the Borrower, and the Borrower agrees to borrow and accept from the State, a Loan in the maximum aggregate principal amount of Three Million Two Hundred Nine Thousand Six Hundred and No/100 Dollars (\$3,209,600.00). A disbursement under this Loan Agreement shall not exceed the product of the Borrower's Portion multiplied by the amount of the disbursement request.

Section 2.02. Use of Loan Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 5.01 hereof. Borrower shall be responsible to pay a portion of only those specified construction costs incurred by ODOT that are listed in Exhibit B which do not include

- (i) costs in excess of one-hundred percent (100%) of the total cost of the Project,
- (ii) the purchase of equipment and other property not directly related to the Project,
- (iii) construction or repair of facilities owned or operated by private parties,
- (iv) costs incurred prior to the date of the Loan, except as provided in Section 5.01,
- (v) administrative and oversight expenses of the Borrower or the Oregon Department of Transportation not related to the construction of the Project, and
- (vi) design and preliminary construction engineering costs related to the Project.

Section 2.03. Loan Term. The term of the Loan is set forth in the Note. The term of the Loan commences on the date of the first disbursement of the Loan and ends on the Maturity Date, which is January 25, 2036.

Section 2.04. Interest. The principal balances due under the Note shall bear interest at the rate of Two and 26/100 percent (2.26%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date hereof until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

Section 2.05. Loan Repayments.

The Loan shall be due and payable in scheduled payments as set forth in the Note.

Section 2.06. Loan Prepayments; General.

(a) *Optional Prepayment* Subject to the following terms and conditions, the Borrower may make Loan Prepayments upon prior written approval of the State:

(1) The Borrower shall provide prior written notice of not less than one hundred twenty (120) days to the State; and

(2) The Borrower shall pay to the State all or a portion of the principal amount of the Loan outstanding plus the unpaid interest accrued on such amount to the date of prepayment.

(b) *General.* Loan Repayments and Loan Prepayments shall be applied first to any accrued interest (in the case of Loan Prepayments, on the portion of the Loan prepaid), and then to principal payments on the Loan. In the case of a Loan Prepayment that does not prepay all the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

Section 2.07. Unconditional Obligation. Except as provided in Section 2.10, the obligation of the Borrower to make the Loan Repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein is payable solely from the sources of repayment described in Section 2.10 hereto and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments under this Loan Agreement remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement, the State's loan agreement with any Other Applicant, or any intergovernmental agreement related to the Project or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State, or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Borrower shall not be obligated to make any payments required to be made by any other Applicants or any Municipality, or any other borrower under any separate loan agreement.

Section 2.08. Disclaimer of Warranties and Indemnification. The Borrower acknowledges and agrees that:

(a) the State makes no warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) in no event shall the State or its commissioners, officers, agents or employees be liable or responsible for any direct, incidental, indirect, special, consequential, punitive or other damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project; and

(c) to the extent authorized by law, the Borrower shall indemnify, save, hold harmless and defend the State and its commissioners, officers, agents and employees, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower or its officers, employees, agents or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this clause (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or the laws of the United States of America or other laws of the State of Oregon.

Section 2.09. Termination of Availability Hereunder. Ninety (90) days after the Project Completion Deadline, the State's obligation to make any further disbursements of the Loan hereunder shall terminate.

Section 2.10. Sources of Repayment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement, including, without limitation, the amounts payable by the Borrower pursuant to Section 2.05, Section 2.06, Section 2.08(c) and Section 7.04 of this Loan Agreement, are payable from the sources of repayment described in subsections (b) and (c) of this Section 2.10. Nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement are payable from the following:

(i) Borrower's federal surface transportation program allocation being exchanged for state funding on a dollar for dollar basis without deduction;

(ii) Borrower's proceeds from the Jobs and Transportation Act;

(iii) Any other funds payable from the Oregon Department of Transportation to Borrower; and

(iv) Any other funds legally available to the Borrower.

(c) The Borrower acknowledges that the State of Oregon is entitled to withhold any amounts due to the Borrower from the State of Oregon, including but not limited to any amounts due to the Borrower from the State of Oregon pursuant to ORS 366.785 to 366.820, and to apply

any such amounts to payments due under this Loan Agreement if the Borrower defaults on payments due under this Loan Agreement.

Section 2.11. Loan Fee. The Borrower shall pay to the State a one-time loan fee equal to one percent (1%) of the Loan. This fee shall be in addition to any interest charged on the Loan. The Borrower may elect to (check the appropriate box):

Pay the entire amount of this loan fee on the Loan Closing Date; or

Authorize the State to deduct the loan fee from the Loan proceeds disbursed to Borrower;

provided however that if the Loan is not fully disbursed, the State shall refund to the Borrower the portion of the loan fee allocated to the undisbursed portion of the Loan.

Section 2.12. Late Fee. If the payment of any Loan Repayment required under the Note is delinquent more than fifteen (15) days, the Borrower shall pay to the State a late charge of five percent (5%) of the delinquent Loan Repayment in addition to the Loan Repayment due under the Note.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the State as follows:

Section 3.01. Organization and Authority.

(a) The Borrower is a Municipality.

(b) Based on information received from ODOT and to the best of Borrower's knowledge, the Oregon Department of Transportation (ODOT), the entity that will own, manage and operate the Project for which the Borrower is providing funding hereunder for the Borrower's Portion of the Costs of the Project, has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project, other than licenses and permits relating to the Project which the ODOT expects to receive in the ordinary course of business, to carry on its activities relating thereto, and to undertake and complete the Project.

(c) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is a project which ODOT may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(d) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the Note and authorizing the execution, issuance and

delivery of this Loan Agreement and the Note on behalf of the Borrower and authorizing Borrower to finance the Borrower's Portion of the Costs of the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law and at which quorums were present and acting throughout.

(e) This Loan Agreement and the Note are duly authorized by a resolution or ordinance of the Borrower which was adopted in accordance with ORS 367.035(4) and in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(f) This Loan Agreement and the Note have been duly authorized, executed and delivered by an Authorized Officer of the Borrower, and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement, this Loan Agreement and the Note constitute the legal, valid and binding obligation of the Borrower in accordance with its terms.

(g) Based on information received from ODOT and to the best of Borrower's knowledge, the information contained in Exhibit A and Exhibit B is true and accurate in all respects.

Section 3.02. Full Disclosure. There is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the ability of the Borrower to finance the Borrower's Portion of the Costs of the Project or make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement. Neither the Borrower's application for the Loan nor the Borrower's representations and warranties in this Loan Agreement contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Based on information received from ODOT and to the best of Borrower's knowledge, there is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Project

Section 3.03. Pending Litigation. There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect

(a) The Project or the Borrower's ability to finance Borrower's Portion of the Costs of the Project,

(b) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower or

(c) The ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.04. Compliance with Existing Laws and Agreements. The authorization, execution and delivery of this Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, and the financing by Borrower of the Borrower's Portion of the Costs of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge arising under this Loan Agreement or any of the documents related hereto) to which the Borrower is a party or by which the Borrower or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, rules, regulations or court orders to which the Borrower or its properties or operations is subject.

Section 3.05. No Defaults. No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it or its properties may be bound, which violation would materially adversely affect the

(a) Project,

(b) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower or

(c) The ability of the Borrower to finance the Borrower's Portion of the Costs of the Project or to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.06. Governmental Consent. The Borrower has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance or performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or for Borrower providing the financing (or refinancing thereof) for the Borrower's Portion of the Costs of the Project; and the Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or Borrower providing the financing (or refinancing thereof) for the Borrower's Portion of the Costs of the Project. No consent, approval or authorization of, or filing,

registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement.

Section 3.07. Compliance with Law. The Borrower:

Is in compliance with all laws, ordinances, rules and regulations to which it is subject, non-compliance with which would materially adversely affect the condition (financial or otherwise) of the Borrower or the ability of the Borrower to provide financing for the Borrower's Portion for the Costs of the Project.

Section 3.08. The Project.

(a) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is feasible. There will be adequate funds available to repay the Loan.

(b) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is in compliance with the Rules.

Section 3.09. Costs of the Project.

(a) Based on information received from ODOT and to the best of Borrower's knowledge, costs of the Project is a reasonable and accurate estimation.

(b) The principal amount of the Loan is not in excess of the Borrower's Portion of the Costs of the Project.

Section 3.10. Term of the Loan. Based on information received from ODOT and to the best of Borrower's knowledge, the term of the Loan is not in excess of the useful life of the Project.

ARTICLE IV

CONDITIONS TO LOAN AND DISBURSEMENTS

Section 4.01. Conditions Precedent to Loan. The State shall be under no obligation to make the loan pursuant to the terms hereof unless the Borrower delivers to the State, on or prior to June 30, 2013, the following documents in form and substance satisfactory to the State and its Counsel:

(a) An opinion of Borrower's Counsel to the effect that:

(i) The Borrower is duly formed and operating under applicable State of Oregon law,

(ii) The Borrower has full legal right and authority to execute and deliver the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements hereunder and to provide financing for the Borrower's Portion of the Costs of the Project,

(iii) The Loan Agreement has been authorized pursuant to official action of the Borrower that has been adopted and authorized in accordance with applicable Oregon law,

(iii) The Loan Agreement has been duly authorized and executed and delivered by Authorized Officers of the Borrower and constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,

(iv) The authorization, execution and delivery of the Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, the consummation of the transactions contemplated herein and the financing by the Borrower of the Borrower's Portion of the Costs of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over the Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing agreement to which the Borrower is a party or by which the Borrower or its property or assets is bound,

(v) All approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement and its undertaking to provide a portion of the financing for the Project have been obtained or made to the extent it is possible to obtain or make them on or prior to the Loan Closing Date, and

(vi) There is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State of Oregon or federal) questioning the creation, organization or existence of the Borrower, the validity, legality or enforceability of the Loan Agreement or the Borrower's authority to finance Borrower's Portion of the Costs of the Project (such opinion or portions of such opinion may be given by one or more counsel).

(b) Counterpart of this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;

(c) The Note duly executed and delivered by an Authorized Officer of the Borrower;

(d) Copy of the official action of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement and the documents, instruments and agreements required by this Loan Agreement, certified by an Authorized Officer of the Borrower;

(e) Such other certificates, documents, opinions and information as the State may require.

Section 4.02. Conditions to Disbursement.

(a) On the Loan Closing Date, the State will authorize disbursement of Loan funds in the amount of Borrower's Portion of the Costs of the Project incurred by ODOT that will be reimbursed by Borrower pursuant to Section 5.06. If, as of the Loan Closing Date, the Project is not completed and the aggregate amount of the Loan disbursed is less than the maximum Loan amount available under Section 2.01, the State shall make subsequent Loan disbursements directly to ODOT on the 15th day of each quarter following initial Loan disbursement, each in an amount equal to Borrower's Portion of the Costs of the Project incurred during the previous quarter. Such quarterly disbursements shall continue until the earlier of (a) the date the Project is completed, (b) the Project Completion Deadline or (c) the date there is no further availability under this Loan Agreement. The State's obligation to make any disbursement is subject to satisfaction of the conditions set forth in this Section 4.02, and in no event shall the aggregate of all Loan disbursements made hereunder exceed the maximum aggregate principal amount set forth in Section 2.01.

(b) The obligation of the State to make any disbursement to ODOT on behalf of the Borrower is subject to the following conditions:

(i) All the conditions set forth in Section 4.01 of this Loan Agreement have been satisfied;

(ii) There shall exist no Event of Default or event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both;

(iii) All representations and warranties of the Borrower made in this Loan Agreement shall be true and correct on the date of disbursement with the same effect as if made on such date;

(iv) [reserved]

(v) There is availability of sufficient moneys in the OTIF for use in the Project;
and

(vi) The State receives:

(1) A requisition executed by the Borrower in substantially the form of Exhibit F and

(2) Any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursements of the Loan. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and

that such labor and materials were actually expended and used in connection with the Project.

(c) Further, the State shall have no obligation to make any disbursement to ODOT on behalf of the Borrower if:

(i) On or before disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement;

(ii) If ODOT does not receive sufficient funding, appropriations, limitation, allotments and other expenditure authority to allow ODOT or OTIF, in the exercise of its reasonable administrative discretion, to provide such funding;

(iii) The requisition is submitted by the Borrower after the Project Completion Deadline; or

(iv) The closing(s) for the loans to be made by the State to the Other Applicants for the Project, which together with the Loan to the Borrower total the maximum aggregate amount of \$16,000,000, have not occurred.

ARTICLE V

COVENANTS OF BORROWER

Section 5.01. Use of Proceeds. The Borrower will apply the proceeds of the Loan:

(a) To finance the Borrower's Portion of Costs of the Project; and

(b) With the advance written approval of the State, to reimburse the Oregon Department of Transportation the Borrower's Portion of Costs of the Project, which portion was paid or incurred in anticipation of reimbursement by the Borrower.

Section 5.02. Source of Repayment. The Loan shall be paid from the sources of repayment described in Section 2.10 of this Loan Agreement. Such sources shall be applied to the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement according to the terms hereof.

Section 5.03. Performance Under Loan Agreement. The Borrower covenants and agrees to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement.

Section 5.04. [reserved]

Section 5.05. Construction Accounting and Reporting to Borrower. ODOT shall keep and periodically provide construction cost accounting records pertaining to the Project to Borrower in

support of the payment requisition(s) to be made by Borrower to the ODOT in connection with the Project.

Section 5.06. Proportionality Formula for Payment Requisitions. At the time of the first payment requisition from Borrower, ODOT shall state its estimate of the total Costs of the Project. The Borrower and the Other Applicants will be paying to ODOT a portion of the Costs of the Project, which portion shall not in the aggregate exceed (in the dollar equivalent) \$16,000,000. As between the Borrower and the Other Applicants, an Applicant shall pay its portion of the aggregate payments made by all the Applicants for the Costs of the Project in accordance with the applicable percentage set forth below:

Yamhill County	64.15%
City of McMinnville	20.06%
City of Newberg	13.82%
City of Dundee	1.97%

The Borrower Portion of the Costs of the Project and the portion of the Costs of the Project for each of the Other Applicants shall be determined by multiplying the applicable percentage set forth above for an Applicant by \$16,000,000 divided by the Costs of the Project estimated by ODOT at the time of the first payment requisition. These percentages for the Borrower and the Other Applicants, as well as ODOT's share of the Costs of the Project, shall remain constant during the Project with respect to all payment requisitions. For example:

If the Costs of the Project are estimated by ODOT at the time of the first payment requisition to be \$215,497,360, then the combined share of the Costs of the Project to be paid by the Borrower and the Other Applicants for the first and all subsequent requisitions will be 7.4247 percent of the Costs of the Project up to a maximum aggregate payment of \$16,000,000. If the first requisition is in the amount of \$10,000,000, then the portion of such requisition payable by Borrower and the Other Applicants shall be \$742,470 allocated to Borrower and the Other Applicants as follows:

Yamhill County	4.76295%	\$476,294.51
City of McMinnville	1.48939%	\$148,939.48
City of Newberg	1.02609%	\$102,609.35
City of Dundee	<u>.14627%</u>	<u>\$14,626.66</u>
Totals	7.4247%	\$742,470.00

Section 5.07. [reserved]

Section 5.08. Records; Accounts. The Borrower shall keep accurate records and accounts for the revenues and funds that are the sources of repayment of the Loan (the "Repayment Revenues Records"), as a part of its other records and accounts (the "General Records"). Such Repayment Revenues Records and General Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant,

as part of the annual audit of the Borrower. Such Repayment Revenues Records and General Records shall be made available for inspection by the State and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) at any reasonable time, and a copy of such annual audit(s) therefor, including all written comments and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) calendar days of the close of the fiscal year being so audited.

Section 5.09. [reserved]

Section 5.10. [reserved]

Section 5.11. [reserved]

Section 5.12. Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 5.13. [reserved]

Section 5.14. Financial Statements; Reports. The Borrower shall deliver to the State in form and detail satisfactory to the State:

(a) As soon as reasonably possible and in any event within ninety (90) days after the close of each fiscal year of the Borrower, unaudited statements of revenues, expenditures, cash flows, and changes in retained earnings for such period and for the portion of the fiscal year ended with such period, all in comparative form and all in reasonable detail and certified by the chief financial officer of the Borrower, subject to year-end audit adjustments.

(b) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

Section 5.15. Compliance with Applicable Laws. ODOT will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to ODOT's construction of the Project. In particular, but without limitation, the Borrower shall comply with the following, as applicable:

- a. The National Environmental Policy Act (NEPA), and other environmental laws and requirements;
- b. The Uniform Relocation Assistance Act (Right of Way);
- c. The Civil Rights Act of 1964 and other civil rights laws and requirements including the DBE program;
- d. The Davis Bacon Act and other labor laws and requirements;

- e. The Common Rule (49 C.F.R.19) with respect to procurement;
- f. The Brooks Act;
- g. Competitive Bidding Requirements and state labor standards and wage rates found in Oregon Public Contracting Code, ORS 279A, 279B and 279C, as applicable;
- h. Buy America;
- i. Manual of Uniform Traffic Control Devices;
- j. The Americans with Disabilities Act (ADA) and other federal and state laws prohibiting discrimination against persons with disabilities;
- k. OAR, Chapter 731, Division 30, as amended from time to time at the discretion of the State;
- l. State municipal bonding requirements found in ORS Chapters 280, 286A, and 287A.

Section 5.16. Continuing Representations. The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

ARTICLE VI

ASSIGNMENT

Section 6.01. Assignment and Transfer by State.

(a) The Borrower expressly acknowledges that, other than the right, title and interest of the State under Sections 2.08 and 7.04 of this Loan Agreement, all right, title and interest of the State in, to and under this Loan Agreement either has been or may, at the sole discretion of the State, be assigned and that if any Event of Default shall occur and if this Loan Agreement has been assigned, the assignee, shall be entitled to act hereunder in the place and stead of the State. The Borrower consents to assignment of this Loan Agreement. The Borrower is only required to observe and perform its covenants, agreements and obligations under this Loan Agreement and the Note and, if and when requested by the State, to cooperate with the State to enable the State to comply with the State's covenants, agreements or obligations arising out of such assignment. This Loan Agreement, including, without limitation, the right to receive payments required to be made by the Borrower hereunder and to compel or otherwise enforce observance and performance by the Borrower of its other duties, covenants, obligations and agreements hereunder, may be sold by the State to a third party or may be further transferred, assigned and reassigned in whole or in part by such third party to one or more assignees or subassignees at any time subsequent to its execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Borrower.

In the event of the assignment of this Loan Agreement, the State shall retain the right to compel or otherwise enforce observance and performance by the Borrower of its duties, covenants, obligations and agreements under Section 3.06 of this Loan Agreement; provided, however, that in no event shall the State have the right to accelerate the outstanding balance

payable pursuant to the Loan Agreement in connection with the enforcement of Section 3.06 of this Loan Agreement.

(b) The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement that the State deems to be necessary in connection with any pooled loan program of the State.

Section 6.02. Assignment by Borrower. This Loan Agreement may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees or costs of in-house Counsel.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Event of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay, or cause to be paid, any Loan Repayment required to be paid hereunder on the due date thereof; or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal and interest on any bonds, notes or other obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including without limitation, a trustee, receiver, custodian, liquidator, or the like of Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) [reserved]

(f) [reserved]

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State agrees in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) calendar days of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected.

Section 7.02. Notice of Default. The Borrower shall give the State prompt telephone notice of the occurrence of any Event of Default referred to in Section 7.01(d) hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 7.02 shall be confirmed in writing as soon as is practicable by the Borrower.

Section 7.03. Remedies on Default. Whenever an Event of Default referred to in Section 7.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including, without limitation,

(a) Declaring all Loan Repayments and all other amounts due hereunder to be immediately due and payable, and upon notice to Borrower the same shall become due and payable without further notice or demand,

(b) Appointment of a receiver,

(c) Refusal to disburse any Loan proceeds,

(d) Barring the Borrower from applying for future OTIF assistance, or

(e) Withholding other State of Oregon funds, including but not limited to, the Borrower's apportionment of State Highway Fund revenues due under ORS 366.762 to 366.768 and ORS 366.785 to 366.820, to the extent permitted by Section 2.10(c).

Section 7.04. Attorney Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and

expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan payments.

Section 7.05. Application of Moneys. Except as otherwise provided in any other provision of this Loan Agreement, any moneys collected by the State pursuant to Section 7.03 hereof shall be applied in the following order:

- (a) to pay any attorney fees or other fees, costs and expenses incurred by the State,
- (b) to pay interest due and payable on the Loan, and
- (c) to pay principal due and payable on the Loan.

Section 7.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

Section 7.07. Retention of State's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or anything else to the contrary contained herein, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.08(c), 3.06, and 7.04 hereof.

Section 7.08. Default by the State. In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Notices. All notices hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed, postage prepaid, to the Borrower and the State at the addresses set forth below or at such other address of which such party shall have notified in writing the other parties hereto:

If to the State: Oregon Department of Transportation
Financial Services -- MS21
355 Capitol St. NE
Salem, OR 97301-3871
Attn: Chief Financial Officer

If to the Borrower: City of McMinnville
230 NE Second
McMinnville, OR 97128
Attn: City Manager

Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered.

Section 8.02. Successors and Assigns; No Third Party Beneficiaries.

(a) This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns.

(b) The State and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce its terms. Nothing in this Loan Agreement gives or provides any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in this Loan Agreement and expressly described as intended beneficiaries of the terms of this Loan Agreement.

Section 8.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 8.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act or the Rules.

Section 8.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.06. Headings. The Section headings in this Loan Agreement are intended to be for reference purposes only and shall in no way modify or restrict any of the terms or provisions hereof.

Section 8.07. No Construction against Drafter. Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

Section 8.08. Choice of Law; Designation of Forum; Federal Forum.

(a) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Loan Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Loan Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(c) Notwithstanding Section 8.08(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity.

Section 8.09. Loan not an Obligation of the United States of America. The covenants, agreements and obligations of the State contained in this Loan Agreement shall not be construed to be covenants, agreements or obligations of the United States of America.

Section 8.10. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State unless otherwise provided by law or by rules, regulations or resolutions of the State or unless expressly delegated.

Section 8.11. [reserved]

Section 8.12. Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

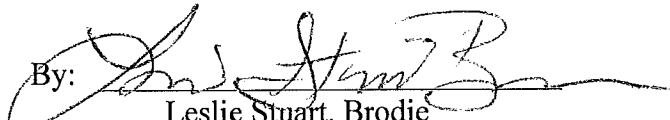
Section 8.13. Merger; No Waiver. This Loan Agreement and attached exhibits (which are by this reference incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or

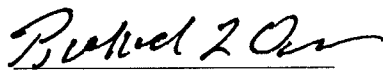
written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall be binding unless in writing and signed by the party against whom it is being enforced and (if against the State) all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered as of the date first above written.

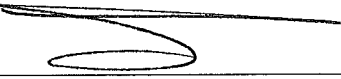
STATE OF OREGON, acting by and
through its Department of Transportation

CITY OF MCMINNVILLE
(Borrower)

By: 
Leslie Stuart. Brodie
Chief Financial Officer

By: 
Title: MAYOR

Approved for legal sufficiency.


Lynn T. Nagasako, Sr. AAG

Date: 6/26/13

Exhibit A to Loan Agreement

Project Description

Borrower: City of McMinnville

ODOT will construct Phase 1 of the Newberg-Dundee Bypass.

The Bypass encompasses a section of Oregon 99W that extends northeast across Yamhill County from the Oregon 99W/Oregon 18 intersection to Rex Hill east of Newberg. The Bypass corridor will be at least 330' wide, be located along the south sides of Newberg and Dundee, and be approximately 11 miles long. The eastern terminus is located east of Newberg in the Rex Hill area of Oregon 99W at mile post 20.08. The western terminus is located where Oregon 99W intersects with Oregon 18 (McDougal Corner) west of Dundee near Dayton at Oregon 18 mile post 51.84.

The Bypass includes the following proposed interchanges:

- Dayton Interchange – located at the junction of Oregon 99W and Oregon 18 and represents the western terminus of the Bypass; it replaces the existing Oregon 18/Oregon 99W intersection at McDougal Corner and the South Dundee Interchange.
- East Dundee Interchange – located between Dundee and Newberg; a new connector road will link the interchange at Oregon 99W to the Bypass.
- Oregon 219 Interchange – located in south Newberg along Oregon 219.
- East Newberg Interchange - located southwest of Rex Hill; this interchange will be the eastern terminus of the Bypass

Phase 1 of the Bypass will begin at a new signalized intersection on Oregon 219, traveling through south Newberg into Dundee. South of Dundee, Phase 1 will leave the eventual full Bypass alignment, proceeding west, parallel to the Dundee city limits, and cross over the Willamette and Pacific Railroad and Oregon 99W. After crossing over Oregon 99W, Phase 1 of the Bypass will loop around and connect to Oregon 99W at a new signalized intersection.

Other Phase 1 improvements include:

- Additional southbound left turn lane on Oregon 99W at Springbrook Road.
- Widening Springbrook Road to three lanes (one northbound lane, one southbound lane, and a center left turn between Oregon 99W and Oregon 219)

Exhibit B to Loan Agreement

Approved Project Budget

Borrower: City of McMinnville

Borrower's Portion of the Costs of Project (in dollars): \$3,209,600

Sources	
ODOT/JTA	\$192,000,000
STIP	12,000,000
Confederated Tribes of Grand Ronde	4,000,000
City of Dundee (OTIB Loan)	315,200
City of McMinnville (OTIB Loan)	3,209,600
City of Newberg (OTIB Loan)	2,211,200
Yamhill County (OTIB Loan)	10,366,640
Total	\$224,102,640.00
Uses	
Construction	\$166,067,919
Preliminary Engineering	8,557,662
Right of Way	45,291,168
Utility Relocation	4,025,891
Loan Fees	\$160,000
Total	\$224,102,640.00

Exhibit C to Loan Agreement

[Reserved]

Exhibit F to Loan Agreement

Payment Requisition

TO: Oregon Transportation Infrastructure Bank
Oregon Department of Transportation
Financial Services, MS – 21
355 Capitol Street, NE
Salem, Oregon 97301-3871

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0048

On behalf of the City of McMinnville, I hereby request that the Oregon Transportation Infrastructure Fund (OTIF) disburse to the Oregon Department of Transportation the following amount from the account established in the OTIF for this Loan:

[Insert Amount]

The foregoing disbursement is for Costs of the Project as such term is defined in, and which are permitted under, the Loan Agreement dated July 1, 2013, between the State of Oregon acting by and through its Department of Transportation and the City of McMinnville. I have attached all necessary documentation as required by Section 4.02(b)(vi) of the Loan Agreement. No Event of Default has occurred or is continuing under the Loan Agreement.

DATED this _____ day of _____, _____.

CITY OF MCMINNVILLE

By: _____

Authorized Officer

Name & Title (print): _____

Attachments

RESOLUTION NO. 2017-08

A Resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as 2017 Fund Exchange Agreement, No. 31871.

RECITALS:

The Oregon Department of Transportation allows the City to exchange its allocation of Federal Transportation Funds for State revenues. It is to the City's benefit to exchange the funds because the requirements attached to Federal projects do not apply to State revenues.

The agreement will provide for the exchange of \$201,248 of the City's federal allocation to cover the City's 2017 Oregon Transportation Infrastructure Bank loan principal and interest payment (Newberg-Dundee Bypass project). Per the agreement, the City will receive \$100 in state funds for every \$100 of federal funds exchanged.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That entry into an agreement with the State of Oregon, Department of Transportation, for the exchange of the City's \$201,248 allocation of Federal Highway Funds for \$201,248 of State funds is approved.
2. The City Manager is hereby authorized and directed to execute the agreement between the State of Oregon, acting by and through its Department of Transportation, and the City of McMinnville.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a meeting held the 14th day of February 2017 by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February, 2017.

MAYOR

Approved as to form:



CITY ATTORNEY



City Council- Regular

Meeting Date: 02/14/2017

Subject: Audit Presentation

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Presentation: Audit for Fiscal Year 2015-2016 presented by Merina and Company.

BACKGROUND:



City Council- Regular

Meeting Date: 02/14/2017

Subject: Mid-Year Budget Review

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Mid-Year Budget Review

BACKGROUND:

Attachments

Memo

Report to City Manager and McMinnville City Council
Mid-Year General Fund Financial Review for Fiscal Year 2016-17

February 14, 2016

The following report provides an overview of the 2016-17 General Fund budget at midpoint of the fiscal year (December 31, 2016) and a brief preview of the 2017-18 budget. The mid-year review provides management with an opportunity to adjust spending in the current fiscal year, if appropriate, and to begin planning for the next fiscal year's budget.

To recap information that was included in the 1st Quarter report presented to the Council in November 2016, the General Fund beginning fund balance and General Fund revenues for fiscal year 2016-17 are consistent with the adopted budget. Assessed property values and property tax revenues were projected to increase by 4% in 2016-17 compared to the prior year. The actual assessed value increase for 2016-17 is slightly more than 4% and the collection rate of taxes year-to-date is consistent with prior years.

Estimates for General Fund expenditures in 2016-17 were updated to include staffing level changes that were made after the 2016-17 budget was adopted, including the addition of three police officers and the decision to not fill two budgeted Park Maintenance positions or add Saturday morning Library hours.

To better understand the impact of these changes, the long term General Fund forecast has been extended to include the upcoming budget year and four subsequent years (i.e., fiscal years 2017-18 through 2021-22). The table below shows the General Fund reserve as a percentage of annual expenditures, comparing the reserve percentages based on the 2016-17 adopted budget to the updated reserve percentages.

Fiscal Year	Based on 2016-17 Adopted Budget	With 1 st Quarter Revisions
2016-17	32%	27% to 28%
2017-18	29%	25% to 27%
2018-19	25%	20% to 22%
2019-20	---	12% to 17%
2020-21	---	5% to 13%

The fund balance policy that was adopted by the Council in 2011-12 established a goal for General Fund reserve levels that would be appropriate for cash flow needs, bond credit ratings, and unforeseen emergencies. Generally, a reserve equal to 25% of annual operating expenditures will meet these needs. The table above indicates that the reserve could reach the 25% threshold by the end of the 2017-18 fiscal year, primarily due to staffing changes made in the current year. The policy does not *require* the reserve to be at or above the 25% recommended threshold.

Challenges in 2017-18 and beyond

PERS employer contribution rates – Escalating PERS employer contribution rates will continue to impact the ability of the City to provide services for many years into the future. For context, contributions paid by the City for General Fund employees have increased from \$1.8 million in 2013-14 to an estimated \$2.3 million in 2016-17. According to PERS, City contribution rates are likely to increase by an additional 20% for the 2019-21 biennium.

Employer contribution rates are contingent on the funding level of the PERS actuarially determined liability. PERS currently has assets to cover only 71% of its future obligations. The shortfall must be made up by the system's only two sources of funding – income from investments or employer contributions - and it is highly unlikely that a spike in investment returns will make up for the shortfall. The PERS problem is systemic in that PERS' heaviest obligations are owed to public employees hired before 1996, when the Legislature began reducing pension benefits. Unfortunately, *current* public employees and citizens are paying to fund these benefits. Oregon legislators and the PERS Board are discussing changes that could, over time, reduce the unfunded liability; however, these changes would most likely be subject to the same legal challenges that prevented previous legislative reform.

To somewhat mitigate the impact of future rate increases, the City executed a bank loan of \$3.5 million in October 2016 and used the proceeds to pay off the City's PERS transition liability. In effect, the City replaced the PERS transition liability, with a 7.5% interest rate, with a bank loan, with a 2.75% interest rate. Over the 10 year life of the loan, net present value savings will be approximately \$950,000. In addition, the demographics of the employee population is shifting away from Tier 1/Tier 2 plan employees (hired prior to August 2003) to OPSRP plan employees (hired after August 2003). OPSRP contribution rates are significantly lower than Tier 1/Tier 2 rates due to the differences in pension benefits.

Repairs and maintenance of City facilities – Maintenance projects for certain City facilities, including the Fire Station, Police Station, Aquatic Center, Senior Center, and Community Center are paid for with General Fund dollars. The 2016-17 budget includes \$214,000 for building repairs and improvements. From 2012 through 2016, an average of \$145,000 was allocated for maintenance of buildings. This is not sufficient funding for maintenance of buildings with a net value of \$15.0 million. Based on current resources, we expect that the allocation for maintenance of buildings will continue to be limited in the 2017-18 budget and critical facilities projects will continue to be deferred.

Opportunities in 2017-18 and beyond

State and local marijuana tax – According to information recently released by the League of Oregon Cities (LOC), the State is estimating \$7.1 million in marijuana tax will be distributed to cities for 2015-16 and 2016-17. This is 10% of the net of \$146.0 million in revenue less \$12.6 million in administrative costs. Distribution of the tax for the 2015 – 2017 biennium will be made to cities in August 2017. The State is projecting \$117.1 million in tax revenue for the 2017-2019 biennium. Administrative costs are estimated at \$2.1 million, leaving \$11.5 million to be distributed to cities. After the initial "catch up" distribution in August 2017, distributions will be made to the cities quarterly.

Since the State will use a statutory distribution formula that is not based on per capita, it is difficult to predict how much State tax the City will actually receive.

The State is also collecting the local marijuana tax on behalf of the City. We will receive the first distribution of our 3% local tax with the distribution of the State tax in August 2017. At that time, we'll know more about how much the City can expect to receive for local marijuana taxes.

Property tax revenue – Bankruptcy proceedings on the holdings of the Evergreen Aviation and Space Museum and Wings & Waves Waterpark have been completed. All assets have been purchased and are being repositioned into new ownership and management. The developer that purchased the Space Museum and Waterpark is currently moving forward with plans to develop a new hotel on the Evergreen campus, as well as developing a master plan for the rest of the campus that continues the vision of a world class event center in McMinnville. With the sale of the Evergreen properties, all delinquent taxes have been collected and paid to the City and it is expected that the new owners will add value to the Evergreen properties and remain current on their tax payments.

Long range financial and strategic planning – The City's management team is discussing long range financial and strategic planning, with the goal of addressing the challenges previously mentioned and ultimately achieving long-term financial sustainability. As defined by the Government Finance Officers Association (GFOA), long-term financial planning is the process of aligning financial capacity with long-term service objectives. It is a highly collaborative process that includes, but is not limited to, an analysis of revenues and expenditures, debt position and affordability, capital asset replacement, and strategies for achieving long-term financial balance. Staff will begin the process of more clearly defining the scope and objectives of the long range financial and strategic planning process.

The 2017-18 Proposed Budget will be presented to the Budget Committee on May 17, 2017. A long-term forecast based on the 2017-18 Proposed Budget and the four subsequent years will also be presented. Staff looks forward to partnering with the new City Manager to bring a strategic, forward-looking 2017-18 Budget to the Committee for their consideration.

Respectfully submitted,

Marcia Baragary
Finance Director



City Council- Regular

Meeting Date: 02/14/2017

Subject: Ordinance No. 5018

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Ordinance No. 5018: An Ordinance restricting the distribution of single use plastic bags.

BACKGROUND:

The City Council held a work session on January 10th, 2017 to discuss restricting the distribution of single use plastic bags. Representatives from Zero Waste discussed a proposal for the City of McMinnville to adopt a ban against the use of most single-use plastic bags at retail stores located within the City. There was considerable discussion regarding the various policy issues related to the proposed ban and Council provided the City Attorney with direction on details for the draft ordinance.

The following policy areas were addressed during the work session:

- How to define the the term "reusable bag"?
- Whether exceptions will be allowed to the rule. If so, then what exceptions?
- Whether to prohibit plastic bags at City facilities, city-sponsored events, etc.
- Whether to require mandatory charges for paper bags. If so, then what amount?
- Whether to allow for hardship exceptions, and under what conditions.
- Whether to provide for enforcement of the ban. If fines, then what amount?
- Whether to phase-in the requirements or include a minimum threshold based on the number of employees or size of the business.

Using the feedback from the work session, the City Attorney prepared a draft ordinance.

On January 24th the City Council held a public hearing on to hear comments on the proposed draft ordinance. Written testimony was received by Council along with many public comments. Council provided the City Attorney with direction on the draft ordinance and asked that it be brought back for consideration at the February 14th City Council Meeting.

Attachments

Ordinance 5018

ORDINANCE NO. 5018

An Ordinance restricting the distribution of single use plastic bags.

RECITALS

The City Council has taken an interest in sustainability on many levels, including wishing to encourage the reduction of single use items that negatively impact the local environment.

The City Council wishes to encourage the use of reusable products when safe and practical to reduce the volume of the community's waste stream.

The City Council further desires to reduce the negative impacts caused by single use plastic bags, which increase litter, degrade local wildlife habitat, and are seldom recycled.

NOW, THEREFORE, THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. The attached language in Exhibit 1 is incorporated into this Ordinance by reference.
2. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.
3. This ordinance shall take effect 30 days from the date of approval.

Passed by the Council February 14, 2017, by the following votes:

AYES: _____

NAYS: _____

Approved February 14, 2017.

MAYOR

Attest:

Approved as to Form:

CITY RECORDER



CITY ATTORNEY

Exhibit 1

TITLE 5 – BUSINESS TAXES LICENSES AND REGULATIONS

CHAPTER 5.36
SINGLE-USE PLASTIC CARRYOUT BAGS

5.36.010 Purpose. The purpose of this Chapter is to prohibit use of single-use plastic carryout bags at retail establishments, city facilities, city managed concessions, city sponsored events and/or city permitted events, and to require retailers to charge at least five cents when providing a paper bag to a customer.

5.36.020 Plastic Bag Use; Definitions. For purposes of this Chapter, the following terms are defined as follows:

1. ASTM standard. The American Society for Testing and Materials (ASTM)'s International D-6400.
2. Carryout bag. Any bag that is provided by a retail establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods or food, from the retail establishment. "Carryout bag" does not include:
 - a. Bags used by consumers inside retail establishments to:
 - i. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
 - ii. Contain or wrap meat, fish, or frozen foods, whether packaged or not;
 - iii. Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
 - iv. Contain unwrapped prepared foods or bakery goods; or
 - v. Pharmacy prescription bags.
 - b. Laundry-dry cleaning bags or bags sold in packages containing multiple bags intended to be used for home food storage, garbage waste, pet waste, or yard waste; or
 - c. Product bags.
3. City sponsored event. Any event organized or sponsored by the city or any department of the city.
4. Customer. Any person obtaining goods from a retail establishment.
5. Food provider. Any entity in the City that provides prepared food for public consumption on or off its premises.
6. Grocery store. Any retail establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items.
7. Pharmacy. A retail establishment where a pharmacist licensed by the State of Oregon's Board of Pharmacy practices pharmacy and where prescription medications are offered for sale.
8. Product or produce bag. Any bag without handles provided to a customer for use within a retail establishment to assist in the collection or transport of products to the point of sale. A product or produce bag is not a carryout bag.
9. Recyclable paper bag. A paper bag that meets all of the following requirements:
 - a. Is 100% recyclable and contains a minimum of 40% post- consumer recycled content; and
 - b. Is capable of composting consistent with the timeline and specifications of the ASTM Standard D6400 as defined in this section.
10. Retail establishment. Any store or vendor located within or doing business within the geographical limits of the city that sells or offers for sale goods at retail.
11. Reusable bag. A bag made of machine washable cloth or other material with handles that is specifically designed and manufactured for long-term multiple reuses.
12. Single-use plastic carryout bag. Any plastic carryout bag made predominately of plastic, either petroleum or biologically based, and made available by a retail establishment to a

customer at the point of sale. It includes compostable and biodegradable bags but does not include reusable bags, recyclable paper bags, or product or produce bags.

13. Undue hardship. Circumstances or situations unique to the particular retail establishment which results in no reasonable alternatives to the use of single-use plastic carryout bags or which results in the inability to collect a recyclable paper bag pass-through.

5.36.030 Regulations. Except as exempted in Section 5.36.050 of this Chapter:

1. No retail establishment will provide or make available to a customer a single-use plastic carryout bag; and
2. No person will distribute or provide a single-use plastic carryout bag at any city facility, city managed concession, city sponsored event, or city permitted event.

5.36.040 Cost Pass-Through. When a retail establishment with more than 10 full-time-equivalent employees makes a recyclable paper bag available to a customer at the point of sale, the retail establishment will:

1. Charge the customer a reasonable pass-through cost of not less than 5 cents per recyclable paper bag provided to the customer; and not rebate or otherwise reimburse any customer any portion of the pass-through cost; and
2. Except for the exemptions in 5.36.050(1) and (5), indicate on the customer's transaction receipts the total amount of the recyclable paper bag pass-through charge.

5.36.050 Exemptions. Notwithstanding Sections 5.36.030 and 5.36.040 of this Chapter:

1. Retail establishments with 10 or fewer full-time-equivalent employees may charge for provided paper bags but are not required to do so. If such establishments do charge for paper bags, they are exempt from the requirement to note the cost on receipts.
2. Single-use plastic carryout bags may be distributed to customers by food providers for the purpose of safeguarding public health and safety during the transportation of prepared take-out foods and prepared liquids intended for consumption away from the food provider's premises.
3. Retail establishments may distribute product bags and make reusable bags available to customers whether through sale or otherwise.
4. A retail establishment may provide a reusable bag or a recyclable paper bag at no cost at the point of sale upon the request of a customer who uses:
 - a. A voucher issued under the Women, Infants and Children Program established in the Oregon Health Authority under ORS 413.500; or
 - b. An Electronic Benefits Transfer (EBT) card, such as an Oregon Trail Card, to access Supplemental Nutrition Assistance Program (SNAP) benefits.
5. Vendors at retail fairs such as a farmers' market or holiday fair are not subject to indicating on the customer's transaction receipt the total amount of the recyclable paper bag pass-through charge required in section 5.36.040 of this Chapter.
6. The provisions of this Chapter shall be effective:
 - a. September 1, 2017, for retail establishments or food providers with greater than 10,000 square feet in specific store size; and
 - b. March 1, 2018, for all other retail establishments or food providers.
7. The City Manager or their designee may exempt a retail establishment from the implementation deadline set forth in subsection 6 of this Section for a period of not more than six months upon the retail establishment showing, in writing, that this Chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption will be in writing, and the City Manager's or designee's decision will be final.

5.36.060 Promotion of Reusable Bags. Retail establishments are strongly encouraged to educate their staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

5.36.070 Violations and Penalties.

Any retail establishment violating Sections 5.36.010 – 5.36.050 is subject to:

1. Upon the first violation in a calendar year, the Enforcement Officer will issue a warning to the retail establishment that a violation has occurred.
2. Upon subsequent violations, the Enforcement Officer will issue a citation into Municipal Court and the punishment, upon conviction, will be:
 - a. \$100 for the first violation after the written warning in a calendar year;
 - b. \$200 for the second violation in the same calendar year; and
 - c. \$500 for any subsequent violation within the same calendar year.
3. No more than one citation will be issued to any single location of a retail establishment within a 7-day period.



City Council- Regular

Meeting Date: 02/14/2017

Subject: Ordinance No. 5019

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Ordinance No. 5019: An Ordinance repealing Ordinance No. 5010 and Resolution No. 2016-72.

BACKGROUND:

The McMinnville Committee for Public Art (CPA) was created through Ordinance No. 5010 which took effect October 27, 2016. The McMinnville CPA served as the successor to the McMinnville Downtown Association Committee for Public Art. Over the last three months, the members of the McMinnville CPA and the McMinnville Downtown Association have determined that their work can be done most efficiently by reverting back to the non-profit umbrella of the MDA. The attached Ordinance repeals Ordinance No. 5010 and Resolution No. 2016-72 which established standards, procedures and guidelines for the McMinnville CPA.

RECOMMENDATION:

Staff recommends Council approve Ordinance No. 5019; an Ordinance repealing Ordinance No. 5010 and Resolution No. 2016-72.

Attachments

Ordinance No. 5019

ORDINANCE NO. 5019

An Ordinance repealing Ordinance No. 5010 and Resolution No. 2016-72.

RECITALS:

In partnership with the City of McMinnville, the McMinnville Downtown Association Committee for Public Art (MDACPA) was established in 2007 with the goal of placing quality art pieces in public places to give citizens and visitors to historic downtown McMinnville an opportunity to interact with art as an integral part of the design of the community.

To promote the continuing development and maintenance of the art collection within the Downtown Historic District and to extend that work throughout the City, the McMinnville Downtown Association (MDA) and the MDACPA requested that the City create a new McMinnville Committee for Public Art (McMinnville CPA), to serve as a successor to the MDACPA.

The City Council created the McMinnville CPA through the adoption of Ordinance 5010, which took effect on October 27, 2016. In addition, the City established standards, procedures and guidelines for the McMinnville CPA through the adoption of Resolution 2016-72.

Following a 3-month trial period, members of the McMinnville CPA and the MDA have determined that the work of the Committee for Public Art can be most efficiently accomplished by reverting back to the non-profit umbrella of the MDA.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. Ordinance 5010 and Resolution 2016-72 are hereby repealed.
2. This Ordinance will take effect 30 days after passage by the Council.

Passed by the Council on February 14, 2017, by the following votes:

Ayes: _____

Nays: _____


Approved on February 14, 2017.

MAYOR

Attest:

CITY RECORDER

Approved as to form:



CITY ATTORNEY



City Council- Regular

Meeting Date: 02/14/2017

Subject: Resolution No. 2017-09

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Resolution No. 2017-09: A Resolution authorizing the City Manager or designee to enter into and manage a partnership agreement with Lafayette for substation use.

BACKGROUND:

Please see attached memo.

Attachments

Memo

Agreement

Resolution No. 2017-09



McMinnville Fire Department

M E M O R A N D U M

DATE: January 13, 2017

TO: Candace Haines, City Manager

FROM: Rich Leipfert, Fire Chief

Subject: McMinnville FD and Lafayette Partnership

The McMinnville Fire Department has been working on developing partnerships for some time. We have been working with the City of Lafayette on positioning an ambulance in their proposed Fire Station once it is built. The co-location could result in improved response times in both communities for both fire and ambulance, if the opportunity were to develop fully.

The first step in this partnership would be to place an existing ambulance in Lafayette to determine actual response time capabilities. Currently we have computer models that indicate this would be successful. This test period would allow for data samples to verify the accuracy of the computer models.

The City Council of Lafayette authorized the McMinnville Fire Department to use one half of a duplex located directly behind the fire station for this testing period. The unit assigned to the Lafayette project would be M-12 for M-F 8-5. This would give us a good data set when staffing levels for Lafayette are at their lowest. It would also allow us to return the M-12 crew to Station 12 at night, and not incur costs of creating a full sub-station. The costs associated with the project would be utilities. The current rental house budget has the capacity to sustain this test project.

Since the costs associated with this pilot project are within current budget limits, I am asking permission to move forward in establishing a formal agreement with the City of Lafayette for this test project.

Use of the McMinnville staff would be for fire and ambulance responses in both jurisdictions deploying from the Lafayette Fire station.

**INTERGOVERNMENTAL AGREEMENT FOR ENHANCED
PARAMEDIC AMBULANCE AND FIREFIGHTING SERVICES
TO CITY OF LAFAYETTE FIRE DEPARTMENT**

This Intergovernmental Agreement (the "IGA") is entered into by and between the City of McMinnville (the "City") and City of Lafayette (LFD) (the "Parties") for the purpose of developing and implementing a program relating to enhanced Paramedic Ambulance and Firefighting services to the City of Lafayette.

RECITALS

A. Whereas, the City provides Paramedic Ambulance services through its McMinnville Fire Department (MFD) within the McMinnville Ambulance Service Area (ASA2), which includes the City of Lafayette, the south end of Dayton Fire District and the City of McMinnville; and

B. Whereas, the Parties desire to enhance the availability of Paramedic Ambulance services within the City of Lafayette area by providing enhanced Advanced Life Saving (ALS) Ambulance Service during normal business hours; and

C. Whereas, the MFD has qualified and trained Firefighter Paramedics and the equipment available to provide this service, and the LFD has appropriate and secure quarters for both the apparatus and the personnel at their station and neighboring duplex located in Lafayette, Oregon; and

D. Whereas, the Parties are currently also parties to the Yamhill Fire Defense Board 2012 Intra-County Mutual and Emergency Assistance Agreement (the "Mutual Aid Agreement"), which would allow MFD to provide emergency assistance to LFD using any MFD personnel assigned to the ALS Ambulance Unit at the Lafayette Fire Station; and

E. Whereas, Oregon Revised Statutes (ORS) Chapter 190, authorizes units of local government, including cities and special districts, to enter into written agreements with other units of local government for the performance of any or all functions and activities that a party to the agreement has authority to perform;

Now therefore, the parties agree as follows:

1. TERM

This agreement shall be effective as of the date this agreement is signed by all parties ("Effective Date"). This agreement shall remain in effect until January 31, 2018 unless terminated by either party by providing thirty days' written notice of termination to the other party.

2. RESPONSIBILITIES OF MCMINNVILLE FIRE DEPARTMENT

Beginning with the effective date, and for the duration of this agreement, MFD shall:

- a. Stage an Oregon Health Authority licensed ALS Ambulance Unit at the Lafayette duplex located at 435 4th Street between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. The Ambulance Unit will be staffed with a minimum of one Oregon Certified dual role Firefighter/ Paramedic, and one Firefighter EMT. The assigned personnel will assist with EMS related training of LFD personnel while assigned to the LFD station, will respond to incidents as needed and as appropriate, and will perform appropriate Station Duties at the direction of the LFD.
- b. Provide the appropriate training for assigned personnel, in the discretion of MFD.
- c. Provide appropriate IT infrastructure in LFD's Fire Station that will allow the MFD and LFD employees to remotely connect to EMS report writing software, City email and other business related programs.
- d. Arrange for and pay all utilities at the duplex during the duration of the IGA. Such utilities include water and sewer utilities provided by the City of Lafayette.
- e. Provide furniture for assigned personnel use (i.e. kitchen table, chairs and basic office furniture).
- f. Provide lawn care, including personnel and equipment, for the duplex tax lot.
- g. Provide access to the duplex when requested by the City of Lafayette.

3. RESPONSIBILITIES OF CITY OF LAFAYETTE

Beginning with the effective date, and for the duration of this agreement, LFD shall:

- a. Provide secure facilities for the personnel at their duplex in Lafayette, Oregon, to include at a minimum: one parking space for the ambulance, living quarters, office space, kitchen areas, and bathroom.
- b. Provide for the day to day supervisory needs of the Paramedic Ambulance crew while assigned to LFD, to include the scheduling of station duties, training, equipment and station maintenance.
- c. Provide a single residence, one-half of the duplex, rent-free to the MFD.

4. REVIEW, EVALUATION AND QUALITY ASSURANCE

The parties shall collaborate, as required, to deliver excellent patient care and customer service, and shall notify each other as soon as possible of incidents that affect the quality of service delivery under this agreement. Both parties will work diligently toward resolving any issues that may arise for the mutual benefit of the parties. In addition, the parties shall jointly perform an annual evaluation of the effectiveness of the program. For the purposes of evaluating the program, the parties shall consider at a minimum: financial impacts/revenue, response times, unit availability, transport times, crew interoperability and overall program success.

5. PERSONNEL

The personnel assigned to the ALS Ambulance Unit by MFD shall at all times remain and be employed by the City, subject to the rules and regulations of the City, notwithstanding that LFD may provide for the day to day supervisory needs of the personnel under the terms of this agreement. If available, MFD assigned personnel may be utilized by MFD to provide emergency assistance to LFD, pursuant to the terms and condition of the Mutual Aid Agreement.

6. LIABILITY AND INDEMNITY

- a. To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, each party shall defend, indemnify and hold harmless the other party, and each of that second party's elected officials, officers, agents and employees, from and against any and all losses, claims, actions, costs, judgments, damages or other expenses resulting from injury to any person (including injury resulting in death) or damage to property (including loss or destruction), of whatever nature, arising out of or incident to the performance of this agreement by the first party, including, but not limited to, any acts or omissions of the first party's officers, employees, agents, volunteers and others, if any, designated by the first party to perform services under this agreement; provided however that the first party shall not be held responsible for any losses, claims, actions, costs, judgments, damages or other expenses directly, solely and proximately caused by the negligence of the second party.
- b. This section does not confer any right to indemnity on any person or entity other than the parties, waive any right of indemnity or contribution from any person or entity, or waive any governmental immunity.
- c. The obligations of the parties under this section will survive expiration or termination of this agreement.

7. **GENERAL**

- a. Relationship of the Parties. The relationship of the parties shall be that of independent contractors collaborating for purposes of the ALS Ambulance and Firefighting Program, and this Agreement shall not make either party the agent or partner of the other or create any form of partnership or joint venture between the parties.
- b. Assignment and Amendment. Any changes to this Agreement must be agreed to in writing by authorized representatives of each party.
- c. Notice. Any written notification required for this Agreement shall be made to the following:

If to LFD:

N. Terry Lucich
Fire Chief
P.O. Box 55
Lafayette, Oregon 97127

If to City:

Rich Leipfert
Fire Chief
175 NE 1st Street
McMinnville, Oregon
97128

With a copy to

David Koch
City Attorney
230NE 2nd Street
McMinnville, Oregon 97128

- d. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
- e. Authority. Each party represents and warrants that it is free to enter into this Agreement and to perform each of the terms and conditions of the Agreement.

CITY OF McMINNVILLE

CITY OF LAFAYETTE

By: _____
Candace A. Haines

By: _____
Preston Polasek

Its: City Manager

Its: City Administrator

Date: _____

Date: _____

Fire Chief

Fire Chief

RESOLUTION NO. 2017-09

A Resolution authorizing the City Manager to execute an Intergovernmental Agreement with the City of Lafayette.

RECITALS:

The City provides Paramedic Ambulance services through its McMinnville Fire Department (MFD) within the McMinnville Ambulance Service Area (ASA2), which includes City of Lafayette and the City of McMinnville; and

The City and the City of Lafayette (LFD) desire to enhance the availability of Paramedic Ambulance and Fire Services within the Cities of McMinnville and Lafayette, by providing enhanced Advanced Life Saving (ALS) Ambulance and Fire Services during normal business hours; and

The MFD has qualified and trained Firefighter Paramedics and the equipment available to provide this service, and the LFD has appropriate quarters for both the apparatus and the personnel at their station located in Lafayette, Oregon; and

The Parties are currently also parties to the Yamhill Fire Defense Board 2012 Intra-County Mutual and Emergency Assistance Agreement (the "Mutual Aid Agreement"), which would allow MFD to provide emergency assistance to LFD using any MFD personnel assigned to the ALS Ambulance Unit at the Lafayette Fire Station; and

Oregon Revised Statutes (ORS) Chapter 190, authorizes units of local government, including cities and special districts, to enter into written agreements with other units of local government for the performance of any or all functions and activities that a party to the agreement has authority to perform.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. This Intergovernmental Agreement (the "IGA"), attached hereto as Exhibit A, is entered into by and between the City of McMinnville (the "City") and the City of Lafayette (LFD) (the "Parties") for the purpose of developing and implementing a program relating to enhanced Paramedic Ambulance and Fire Service to both the City of Lafayette and the City of McMinnville.
2. The City Manager is hereby authorized and directed to execute the IGA in duplicate and to deliver one fully executed copy thereof to the City of Lafayette and to retain one executed copy thereof to be kept on file in the office of the City Recorder.
3. This Resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of February, 2017 by the following votes :

Ayes: _____

Nays: _____

Approved this 14th day of February, 2017.

MAYOR

Approved as to Form:



CITY ATTORNEY



City Council- Regular

Meeting Date: 02/14/2017

Subject: Resolution No. 2017-10

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Resolution No. 2017-10: A Resolution awarding the contract for the construction of City Park Renovations, Project No. 2016-12.

BACKGROUND:

Please see attached memo.

Attachments

Memo

Results

Resolution No. 2017-10



DATE: February 14, 2017
TO: McMinnville City Council
FROM: Jay Pearson, Director
McMinnville Parks and Recreation Department

SUBJECT: Award of Contract – City Park Renovations

As you may recall, the City of McMinnville has received a grant from the Land and Water Conservation Fund (via Oregon State Parks and Recreation Department) for various renovations within McMinnville's City Park. Those renovations will include the replacement of the previously removed lower City Park footbridge across Cozine Creek, the replacement of the lower City Park kitchen shelter (and concrete shelter slab) that was lost to arson several years ago, security cameras, and other improvements to the picnic plaza including the addition of a drinking fountain and bar-b-q, as well as unit pavers to make the picnic area more accessible. The original project estimate submitted to State Parks for professional services and construction was approximately \$124,300 with ½ of that total being reimbursed from the Land and Water Conservation Grant.

On January 5 of this year, the City advertised an invitation for proposals in the Daily Journal of Commerce, to construct the intended City Park improvements mentioned above (exception: intended security cameras will be handled separately). The invitation including complete project plan set with drawings and specifications was also listed on the Engineering Department project site from which interested contractors could download the information.

Four (4) project proposals were received before the 3PM, Thursday, January 26 deadline. The four proposals from Glacier Construction (Amity), Emery & Sons Construction Group (Salem), Banzer Construction (Salem) and Blue Spruce Builders (Dallas) were evaluated on Price, Contractor Experience and Project Schedule. As you can see from the submittal summary (attached), Glacier Construction submitted the most successful proposal; Glacier Construction also submitted the only price proposal (\$91,750) that fell within the anticipated cost range (\$88,000-92,000) for the intended improvements. Based on the final scoring assessment and

positive references received, I am recommending that the City Council award the City Park Renovation Project (Project 2016-12) to Glacier Construction of Amity.

The Glacier Construction proposal, coupled with the previously completed design and engineering services and anticipated camera installation, brings the total project cost to \$137,745. The project is budgeted within the Park Development Fund and supported by the State Parks Grant (\$62,150), Fire Insurance for the kitchen shelter (approx. \$25,000), a previous donation from the Howard F. Nice Estate Trust (\$15,000) and Park Development Funds.

City of McMinnville
City Park Renovation-Project 2016-12

Project Quotes-Submittal Results
January 26, 2017

CONTRACTOR	Project Cost	Price-70%	Experience-20%	Schedule-10%	Total
Glacier Construction	\$ 91,725	70	17	10	97
Emery & Sons Const.	\$100,000	65	17	9	91
Banzer Construction	\$114,300	58	20	10	88
Blue Spruce Builders	\$122,600	55	15	10	80

RESOLUTION 2017-10

A Resolution awarding the contract for the construction of City Park Renovations, Project No. 2016-12.

RECITALS:

In the late fall of 2014, the Oregon State Parks and Recreation Department awarded the City of McMinnville a Land and Water Conservation Grant to support the renovation improvements within City Park. Planned improvements include the replacement of a pedestrian footbridge across Cozine Creek, the replacement of the picnic area cook shelter destroyed by an arson fire several years ago, improvements to the picnic area plaza to make it more accessible, and the addition of a drinking fountain and bar-b-q.

This past January, the City invited the submittal of quotes to provide the construction of the intended improvements. Four quotes were received by the submittal deadline last of January 26 and were evaluated for cost, contractor experience in construction of similar projects in the past, and contractor capacity to meet the project deadline of May 26, 2017. After considering proposed project costs and other criteria, it is our recommendation to Award the contract to Glacier Construction of Amity, Oregon, whose price of \$91,725, experience and capacity to meet the project deadline represents our best option to successfully complete the project as intended.

The City Park Renovations Project will be funded with a combination of LWCF grant dollars, insurance funds, a local estate donation as well as funds from McMinnville's Park Development Fund. The funds are identified and approved within the 2016-17 fiscal year budget.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCMINNVILLE AS FOLLOWS:

1. That entry into a contract between the City of McMinnville and Glacier Construction, being the most favorable submittal, for the City Park Renovations Project No. 2016-12, in the amount of \$91,725 is hereby approved.
2. That the City Manager is authorized to execute the contract for the City Park Renovations Project.
3. That this Resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held this 14th day of February, 2017 by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February, 2017.

MAYOR

Approved as to Form:



CITY ATTORNEY



City Council- Regular

Meeting Date: 02/14/2017

Subject: Alpine Avenue Contract Award
Resolution

From: Mike Bisset, Community Development
Director

AGENDA ITEM:

Resolution No. 2017-11: A Resolution awarding the contract for the NE Alpine Avenue Improvements Project, Project 2016-8.

BACKGROUND:

The voter approved 2014 Transportation Bond measure included approximately \$2.1-million for improvements to a portion of Alpine Avenue in the City's NE Gateway district. Alpine Avenue is a central spine and the primary pedestrian route through the district, and the planned improvements will create a low traffic, pedestrian-friendly connection between downtown and destinations within the district.

Upon recommendation from the McMinnville Urban Renewal Advisory Committee (MURAC), the Urban Renewal Agency voted to add approximately \$2.2-million to the project budget to allow for expansion of the project.

As envisioned and designed, the project includes improvements to Alpine Avenue in the "festival" district (7th to 10th), and in the "craft" district (10th to 11th). The project includes a variety of street surfacing materials, attractive landscaping, storm water planters and unique architectural elements. Upgrades to the storm drain and water main systems are also included as part of the project.

The total project budget (transportation bond and urban renewal funds) includes approximately \$960,000 for project design and inspection services, and approximately \$3.4-million for project construction.

The project was originally bid in 2016, with bids received in late October 2016. Four bids, ranging from \$4.4-million to \$5.4-million, were received. Given that all of the received bids were well in excess of the available construction budget of \$3.4-million, all bids were rejected.

Subsequent to the original bid, the design team made adjustments to the project materials, plans and specifications in an effort to get the project back within the available construction budget. The emphasis of the value engineering effort was to reduce construction costs without impacting project functionality or aesthetics. Changes included revisions to the street surfacing elements to simplify construction and reduce costs, and changes to site furnishing designs to include off the shelf products instead of expensive, custom made elements.

The project was rebid in early 2017, and at 2:00pm on February 2, 2017, bids for the project were received, publicly opened, and read aloud. Nine bids were received.

The project proposals for the work were separated into three elements, including:

- The base bid, representing completion of the festival district (NE 7th Street to NE 10th Ave);
- Additive alternate #1 for work in the craft district (NE 10th Ave to NE 11th Ave); and
- Additive alternate #2 for water & electrical improvements throughout the project limits.

The base bid and additive alternate #1 will be funded by the City, via transportation bond and urban renewal funds. Additive alternate #2 will be funded by McMinnville Water & Light.

A summary of the received proposals is attached (detailed breakdowns of the received bids are on file in the Engineering Department). As noted, the proposal received from Emery & Sons Construction Group represents the lowest overall bid for the City work (base bid + add alternate #1), and the lowest total bid (all work).

The Emery & Sons Construction Group proposal was checked for completeness, including a review of the following:

- Was the bid submitted, on time, in a properly sealed and labeled envelope?
- Was the bid form properly filled out and executed?
- Were addendums acknowledged?
- Did the bid include a 10% Bid Bond?
- Was the 1st tier subcontractor disclosure form submitted as required?

The proposal met of the requirements, and therefore the bid from Emery & Sons Construction Group was deemed to be the lowest responsible and responsive bid.

Given that the Emery & Sons Construction Group proposal of \$3,133,442.00 for the City work is within the available construction budget of \$3.4-million, staff is recommending the award of the construction contract for the project work. McMinnville Water & Light has indicated that they will accept the bid of \$421,058.00 for their portion of the work (additive alternate #2).

The attached bid award resolution reflects the award of a contract for the base bid and both additive alternates. Note that the award of additive alternative #2 will be made contingent upon the City's execution of an Intergovernmental Agreement with McMinnville Water & Light, in a form approved by the City Attorney, allocating the duties and responsibilities of each party relative to McMinnville Water & Light's portion of the work.

It is expected that the project construction will commence in March 2017, and will be completed in early 2018. The project design reflects extensive coordination with adjacent property owners to minimize impacts, and the project specifications require that the contractor have limited impact to the Alpine Avenue corridor during the 2017 grape harvest and crush.

RECOMMENDATION:

Staff recommends that the City Council award the contract for the NE Alpine Avenue Improvements Project, Project 2016-8, to Emery & Sons Construction Group at a total cost of \$3,554,500.00, representing award of the base bid, additive alternate #1, and additive alternate #2.

Attachments

BID SUMMARY
RESOLUTION

Alpine Avenue Bid Results

February 2, 2017

BIDDER		BASE BID - Festival District	ADD ALT #1 - Craft District	SUBTOTAL CITY WORK (BASE + ADD ALT #1)	ADD ALT #2 - MWL WORK	TOTAL BID AMOUNT - ALL WORK
1	Emery & Sons	\$ 2,136,147.96	\$ 997,294.04	\$ 3,133,442.00	\$ 421,058.00	\$ 3,554,500.00
2	Carter & Company	\$ 2,378,784.23	\$ 905,056.88	\$ 3,283,841.11	\$ 317,001.14	\$ 3,600,842.25
3	Brown Contracting	\$ 2,319,302.00	\$ 1,058,063.00	\$ 3,377,365.00	\$ 404,115.00	\$ 3,781,480.00
4	Pacific Excavation	\$ 2,486,849.00	\$ 1,071,706.00	\$ 3,558,555.00	\$ 398,440.00	\$ 3,956,995.00
5	Kodiak Pacific	\$ 2,441,390.35	\$ 1,094,936.05	\$ 3,536,326.40	\$ 426,508.00	\$ 3,962,834.40
6	Westech Construction	\$ 2,520,762.40	\$ 1,115,196.45	\$ 3,635,958.85	\$ 345,340.00	\$ 3,981,298.85
7	Pihl	\$ 2,422,544.30	\$ 1,140,011.70	\$ 3,562,556.00	\$ 473,966.00	\$ 4,036,522.00
8	Canby Excavating	\$ 2,466,145.55	\$ 1,166,568.85	\$ 3,632,714.40	\$ 415,462.00	\$ 4,048,176.40
9	Landis & Landis	\$ 2,707,934.00	\$ 1,093,546.85	\$ 3,801,480.85	\$ 422,382.00	\$ 4,223,862.85

RESOLUTION NO. 2017 - 11

A Resolution awarding the contract for the NE Alpine Improvements Project, Project 2016-8.

RECITALS:

The voter approved 2014 Transportation Bond measure included approximately \$2.1-million for improvements to a portion of Alpine Avenue in the City's NE Gateway district. Alpine Avenue is a central spine and the primary pedestrian route through the district, and the planned improvements will create a low traffic, pedestrian-friendly connection between downtown and destinations within the district.

Upon recommendation from the McMinnville Urban Renewal Advisory Committee (MURAC), the Urban Renewal Agency voted to add approximately \$2.2-million to the project budget to allow for expansion of the project.

As envisioned and designed, the project includes improvements to Alpine Avenue in the "festival" district (7th to 10th), and in the "craft" district (10th to 11th). The project includes a variety of street surfacing materials, attractive landscaping, storm water planters and unique architectural elements. Upgrades to the storm drain and water main systems are also included as part of the project.

The total project budget (transportation bond and urban renewal funds) includes approximately \$960,000 for project design and inspection services, and approximately \$3.4-million for project construction.

At 2:00pm on February 2nd, 2017, nine bids were received, opened, and publicly read for the construction of the NE Alpine Avenue Project.

The bid from Emery & Sons Construction Group, in the amount of \$3,554,500.00 (representing the base bid and additive alternates #1 and #2), was deemed to be the lowest responsible and responsive bid.

The Emery & Sons Construction Group proposal of \$3,133,442.00 for the City work is within the available construction budget of \$3.4-million, and McMinnville Water & Light has indicated that they will accept the bid of \$421,058.00 for their portion of the work (additive alternate #2).

It is expected that the project construction will commence in March 2017, and will be completed in early 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That entry into a contract between the City of McMinnville and Emery & Sons Construction Group for the construction of the NE Alpine Avenue Improvements Project, in the amount of \$3,554,500.00 (representing award of the base bid and additive alternates #1 and #2), and with a substantial completion date of April 28, 2018, is hereby approved.
2. That the award of additive alternative #2 is made contingent upon the City's execution of an Intergovernmental Agreement with McMinnville Water & Light in a form approved by the City Attorney allocating the duties and responsibilities of each party relative to McMinnville Water & Light's portion of the work

3. The City Manager is hereby authorized and directed to execute the contract for the NE Alpine Avenue Improvements Project, Project 2016-8, and the Intergovernmental Agreement with McMinnville Water & Light referenced in Section 2, above.
4. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a meeting held the 14th day of February 2017 by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February 2017.

MAYOR

Approved as to form:

CITY ATTORNEY



City Council- Regular

Meeting Date: 02/14/2017

Subject: Sanitary sewer projects request for qualifications (RFQ) results

From: Mike Bisset, Community Development Director

AGENDA ITEM:

Resolution No. 2017-12: A Resolution establishing a list of firms qualified to provide consulting services related to the design and construction of sanitary sewer rehabilitation and repair projects.

BACKGROUND:

Staff recently completed a Request for Qualifications (RFQ) process to develop a short list of qualified firms or individuals to provide engineering or other professional services related to completing sanitary sewer rehabilitation and repair projects contained in the City's adopted Wastewater Conveyance Master Plan and associated Wastewater Financial Plan. The RFQ documents are attached for the Council's reference.

Per the adopted Wastewater Financial Plan, the City plans to spend approximately \$6-million on sanitary sewer rehabilitation and repair projects over the next four fiscal years. Four project areas have been identified that will require consultant assistance, as outlined in the RFQ documents. Those project areas are (see attached project vicinity maps):

- 12th Street Sanitary Sewer Rehabilitation Project: 16,587 feet of pipe repair;
- NE High School Sanitary Sewer Rehabilitation Project: 15,974 feet of pipe repair;
- NW High School Sanitary Sewer Rehabilitation Project: 16,103 feet of pipe repair; and
- Chandlers Addition Sanitary Sewer Project: 4,829 feet of pipe repair.

Seven proposals were received prior to the RFQ due date of January 18, 2017. The proposals were reviewed, evaluated, and ranked, by a selection committee of Community Development Department staff. The evaluation criteria, as outlined in the RFQ documents, included a review of each firm's experience and qualifications; the understanding of the projects and services requested; project management capabilities; consultant availability; and cost estimating capabilities.

The results of the evaluation process are attached. Based upon the evaluation, staff recommends that the four highest ranked firms be included on the short list of consultants or consultant teams that will be used to provide services to complete the planned sanitary sewer rehabilitation and repair projects.

The list of qualified firms is as follows:

- AKS Engineering & Forestry LLC
- Murray, Smith & Associates, Inc.

- Century West Engineering Corporation
- Carollo Engineers

Per the RFQ documents, it is the intention of the City to rotate through the list of firms to accomplish the projects. The City will negotiate separate Personal Services Contracts for specific projects on an as needed basis.

Each Personal Services Contract will identify the type of services, work scope, project team, sub-consultants, fee, schedule, and terms of payment for services. It is expected that the City Council will approve each consultant contract prior to the design work commencing.

RECOMMENDATION:

Staff recommends that the City Council adopt the attached resolution establishing a list of firms qualified to provide engineering or other professional services related to completing sanitary sewer rehabilitation and repair projects.

Attachments

- Resolution No. 2017-12
 - RFQ SCORES
 - RFQ DOCUMENTS
 - PROJECT VICINITY MAPS
-

RESOLUTION NO. 2017-12

A Resolution establishing a list of firms qualified to provide consulting services related to the design and construction of sanitary sewer rehabilitation and repair projects.

RECITALS:

Staff recently completed a Request for Qualifications (RFQ) process to develop a short list of qualified firms or individuals to provide engineering or other professional services related to completing sanitary sewer rehabilitation and repair projects contained in the City's adopted Wastewater Conveyance Master Plan and associated Wastewater Financial Plan.

Seven proposals were received prior to the RFQ due date of January 18, 2017. The proposals were reviewed, evaluated, and ranked, by a selection committee of Community Development Department staff, using the evaluation criteria outlined in the RFQ documents.

Based upon the evaluation, staff recommends that the four highest ranked firms (noted below) be included on the short list of consultants or consultant teams that will be used to provide services to complete the sanitary sewer improvements. The City will negotiate separate Personal Services Contracts for specific projects on an as needed basis.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMinnville, OREGON, as follows:

1. That the following list of firms qualified to provide consulting services related to the design and construction of the street improvement and repair bond projects is hereby approved:
 - AKS Engineering & Forestry LLC
 - Murray, Smith & Associates, Inc.
 - Century West Engineering Corporation
 - Carollo Engineers
2. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of February, 2017 by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February, 2017.

MAYOR

Approved as to form:



CITY ATTORNEY

SANITARY SEWER REHAB RFQ RESULTS

	FIRM	TOTAL <i>(100 points max)</i>
1	AKS Engineering & Forestry	89
2	Murray, Smith& Associates, Inc.	83
3	Century West Engineering Corp.	78
4	Carollo Engineers	70
5	Keller Associates, Inc.	66
6	Tetra Tech, Inc.	42
7	Civil West Engineering Services Inc.	24



**CITY OF McMINNVILLE
REQUEST FOR QUALIFICATIONS**

QUALIFICATION BASED SELECTION (QBS) PROCESS FOR CONSULTING
SERVICES RELATED TO THE DESIGN AND CONSTRUCTION OF THE:

VARIOUS SANITARY SEWER REHABILITATION PROJECTS

PROPOSALS DUE: January 18, 2017 by 5:00 p.m.

SUBMIT PROPOSAL TO: Community Development Center
City of McMinnville
231 NE Fifth Street
McMinnville, OR 97128

REFER QUESTIONS TO: Roy Markee, Project Manager
(503) 434-7312
roy.markee@mcminnvilleoregon.gov

RFP ISSUE DATE: November 23, 2016

REQUEST FOR QUALIFICATIONS

The City of McMinnville will receive written, sealed proposals until 5:00 p.m. on January 18, 2017 at the Community Development Center, 231 NE Fifth Street, McMinnville, OR 97128, for the following services:

CONSULTING SERVICES RELATED TO THE DESIGN OF VARIOUS SANITARY SEWER REHABILITATION PROJECTS

This solicitation and selection will be conducted using the Qualification Based Selection (QBS) process. The intent is to develop a short list of qualified firms or individuals to provide engineering or other professional services related to completing design of various sanitary sewer rehabilitation projects. Facsimile or electronically transmitted proposals will not be accepted. Late proposals will not be considered. There will be no formal Proposal opening.

The Request for Qualifications (RFQ) documents may be obtained from the City's website free of charge at: <http://www.mcminnvilleoregon.gov/rfps> The documents may be obtained by creating a new user account and registering for the project. General information, including the planholder list, is available without registering.

The RFQ documents are also available for review at the offices of the City of McMinnville Engineering Department (231 NE Fifth Street, McMinnville, OR 97128) on working days between the hours of 8:00am and 5:00pm.

Addenda, clarifications and notices will be distributed through the City's online planholder system. Potential proposers are responsible for ensuring contact information is registered correctly and that email updates are being received. It is in the best interest of potential proposers to check the website periodically to ensure all updates are received. The City is not responsible for failure of proposers to receive notifications.

The City reserves the right to reject any and all proposals, to waive any irregularities, and to accept the proposals deemed in the best interest of the City. The City may reject any proposal not in compliance with all prescribed procedures and requirements, and may reject for good cause any or all proposals upon a finding by the City that it is in the public interest to do so.

ROY MARKEE, PROJECT MANAGER
CITY OF McMINNVILLE

PUBLISHED: Daily Journal of Commerce, November 23, 2016

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SECTION I – BACKGROUND AND SCOPE OF WORK

A. GENERAL INFORMATION

The City of McMinnville is requesting proposals for professional engineering services to provide design and construction support services for the rehabilitation of various sanitary sewer projects for inflow and infiltration (I&I) reduction. The City will complete a Request for Qualifications (RFQ) process to develop a short list of the qualified design consultants or consultant teams to assist with completing the projects.

Following the selection of short listed individuals and/or firms, the City will negotiate separate Personal Services Contracts for specific projects on an as needed basis. Each Contract will identify the type of services, work scope, project team, sub-consultants, fee, schedule, and terms of payment for services.

The City makes no representation as to the frequency or amount of service, if any, to be obtained from any short-listed consultant. Proposers responding to the RFQ do so solely at their expense, and the City is not responsible for any costs or expenses associated with the preparation of RFQ.

B. BACKGROUND

The City of McMinnville has a population of nearly 33,000 and is located approximately 35 miles southwest of Portland, in the heart of Oregon’s wine country. The City’s Community Development Department is tasked with providing wastewater collection and treatment services to the residents, businesses, and industries within the City’s urban growth boundary.

The City has invested over \$85 million in the sanitary sewer system since 1991. The \$28 million Water Reclamation Facility (WRF) was completed in 1996, and since that time it has consistently complied with some of the most stringent treatment requirements in the state. A \$13 million dollar expansion and upgrade was completed to the WRF in 2016, winning an APWA award.

The City has focused on rehabilitation and replacement of aging pipelines in the conveyance system (which currently totals nearly 150 miles of public sanitary sewer lines) to reduce inflow and infiltration (I&I) in the system. Also, the implementation of the private sewer lateral ordinance, adopted by the City Council in 1997, has resulted in the review of over 1,850 private laterals, and property owner replacements and repairs to over 1,287 defective sewer laterals. These efforts have significantly reduced unwanted storm water in the sanitary sewer system, increasing the capacity of the system and limiting the chances of system overflows.

In May 2010, the City adopted both an updated *Conveyance System Master Plan* and an updated *Water Reclamation Facilities Plan* that strike a balance between conveyance and treatment to reach a cost-effective comprehensive plan for wastewater management for a 20-year planning period through 2029. (Note: The *Conveyance System Master Plan* and the *Water Reclamation Facilities Plan* can be viewed on the City’s website at:

<http://www.mcminnvilleoregon.gov/engineering/page/documents-publications>

Concurrently, the City adopted an associated *Wastewater System Financial Plan*. The adopted financial plan indicated that the City can rely on a “pay as you go” approach to funding the significant operations, maintenance, and capital needs contained in the wastewater master plans.

The approximately \$63 million of identified necessary wastewater capital improvements can be accommodated under the City’s existing wastewater rate structure with only slight rate increases and no additional debt over the life of the Plans. While it is clear that the system needs are great, it is equally apparent that these plans represent the continuation of a *tremendous McMinnville success story*. In short, the often difficult decisions and commitments regarding investments in the City’s sanitary sewer pipelines and treatment facilities over the last 20 years have positioned the City well to address the needs of the next planning period.

It is expected that the project work will occur over the next several years (between 2017 and 2021), and the City plans to issue more than one contract for the design of the sanitary sewer rehabilitation projects.

C. DESCRIPTION OF PLANNED PROJECTS

12 th Street Sanitary Sewer Rehabilitation Project	(16,587 feet of rehabilitation)
NE High School Sanitary Sewer Rehabilitation Project	(15,974 feet of rehabilitation)
NW High School Sanitary Sewer Rehabilitation Project	(16,103 feet of rehabilitation)
Chandlers Addition Sanitary Sewer Project	(4,829 feet of rehabilitation)

Selected consultants will aid with neighborhood meetings and community outreach.

See attached maps detailing selected sewer rehabilitation projects

D. ANTICIPATED PROJECT SCHEDULE

12 th Street Sanitary Sewer Rehabilitation Project	
Design	March - December 2017 +/-
Bidding	January - February 2018 +/-
Construction	March - October 2018 +/-
NE High School Sanitary Sewer Rehabilitation Project	
Design	January - December 2018 +/-
Bidding	January - February 2019 +/-
Construction	March - October 2019 +/-
NW High School Sanitary Sewer Rehabilitation Project	
Design	January - December 2019 +/-
Bidding	January - February 2020 +/-
Construction	March - October 2020 +/-
Chandlers Addition Sanitary Sewer Project	
Design	January - July 2020 +/-
Bidding	August - September 2020 +/-
Construction	October - February 2020/2021 +/-

E. QUALIFICATIONS AND REQUESTED SERVICES

The selected consultant shall provide design and consulting services for the Sanitary Sewer Rehabilitation projects. Expected consultant work will include all services necessary to design and permit the planned sanitary sewer rehabilitation project. Inspection of construction work may be required depending on work load of City staff.

The City will work jointly with the selected consultant to develop a final, comprehensive scope of work, project schedule, and associated consulting services fees for the proposed project. Submitted proposals should demonstrate the consultant’s (both the firm and key staff) experience and expertise with the following broad range of services that may be included in the project scope of work:

- Sanitary sewer rehabilitation planning and pre-design activities, including dye testing, smoke testing, surveying, and cctv video analysis;
- Consultant should be well versed in open cut pipe replacement as well as no dig technology such as pipe bursting and cured in place pipe repair methods;
- Preparation of final project plans, specifications, and bid documents for the purpose of construction bidding;
- Consultant will aid with neighborhood meetings and community outreach via preparation and distribution of door knockers and project notices.
- Construction bidding support services including facilitation of pre-bid meetings, engineers estimate, preparation and issuance of addenda, bid review, and recommendation of bid award;
- Construction support services including technical assistance and construction staking, setting monuments as well as onsite inspection and contract administration services as needed.

Projects normally will be designed and constructed in accordance with the American Public Works Association, Oregon Administrative Rules, Oregon Department of Transportation, Yamhill County, and/or City of McMinnville standards. Construction contracts shall be prepared in accordance with the Oregon Standard Specifications for Construction, as published by the Oregon Chapter of the American Public Works Association and the Oregon Department of Transportation, latest edition as amended.

SECTION II – PROPOSAL PROCESS

A. RFQ SCHEDULE

The approximate schedule for the RFQ process follows. The dates and times are subject to change.

November 23, 2016	RFQ advertisement in Daily Journal of Commerce
January 11, 2017	Deadline for questions, requests for clarification, and solicitation protests
January 13, 2017 (5:00pm)	Deadline for City responses to questions, requests for clarification, and solicitation protests
January 18, 2017 (5:00pm)	Proposals due
February 1, 2017 (tentative)	Notify consultants of results of selection process
February 8, 2017 (tentative)	Deadline for written protest of selection results
February 14, 2017 (tentative)	City response to protest
February 28, 2017 (tentative)	City Council approval of on-call list

B. PROPOSAL DUE DATE

Proposers shall submit sealed proposals containing one (1) signed, clearly marked, easily reproducible original and four (4) complete copies to:

Roy Markee, Project Manager
City of McMinnville Community Development Center
231 NE Fifth Street
McMinnville, OR 97128

The sealed proposals are due no later than 5:00 p.m. on Wednesday, January 18, 2017.

Proposals received after the deadline will be rejected and returned unopened. Proposals may be mailed to the City, but must be received by the above stated date and time. Facsimile and electronically transmitted proposals will not be accepted.

C. QUESTIONS AND CLARIFICATION

Questions and requests for clarification regarding this RFQ solicitation must be directed in writing (either email or fax is acceptable) to:

Roy Markee, Project Manager
City of McMinnville Community Development Center
231 NE Fifth Street
McMinnville, OR 97128
Phone: (503) 434-7312
Fax: (503) 474-4955
Email: roy.markee@mcminnvilleoregon.gov

The deadline for submitting questions or requests for clarification is seven (7) days prior to the proposal due date. If a substantive clarification is necessary, an addendum will be issued no later than 72 hours prior to the due date to all recorded holders of the RFQ solicitation. Note that statements made by the City are not binding upon the City unless confirmed by written addendum.

D. SOLICITATION PROTEST

A proposer who believes the proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a protest, or request to change, in writing. Protests or requests to change any provision of this RFQ, including the submittal requirements, evaluation criteria, or contract terms, **must be submitted no later than seven (7) days prior to the proposal due date.** No protest of the selection of a consultant, or award of a contract, because of a RFQ provision, submittal requirements, evaluation criteria, or contract term will be considered after such time.

The protest or request for change shall include:

- The reason for the protest or change;
- The proposed language to address the protest or change; and
- The reason(s) why the proposed language will benefit the City.

The City shall consider the protest or request for change, and may reject the protest or request for change, issue an addendum, or cancel the RFQ.

Protests or requests for change must be submitted in writing to:

Roy Markee, Project Manager

City of McMinnville Community Development Center

231 NE Fifth Street

McMinnville, OR 97128

Phone: (503) 434-7312

Fax: (503) 474-4955

Email: roy.markee@mcminnvilleoregon.gov

E. PROPOSAL MODIFICATIONS OR WITHDRAWAL

Proposal modifications or erasures made before signing by the authorized representative must be initialed in ink. Once submitted, proposals may be modified in writing before the time and date set for proposal closing. Any modifications shall be prepared on company letterhead, signed by an authorized representative, and state that the new document supersedes or modifies the prior proposal. Modifications must be submitted in a sealed envelope clearly marked "Proposal Modification", and identifying the proposal title and closing date and time. Proposer may not modify proposal after proposal closing time.

Any proposal may be withdrawn at any time before the proposal due date and time by providing a written notification on company letterhead by an authorized person. The withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal.

F. CANCELLATION, DELAY OR SUSPENSION OF RFP SOLICITATION; REJECTION OF PROPOSALS

Nothing in this RFQ shall restrict or prohibit the City from cancelling, delaying, or suspending the RFQ solicitation at any time. The City may reject any or all proposals, in whole or in part, if in the best interest of the City, as determined by the City.

G. IRREGULARITIES

The City reserves the right to waive any non-material irregularities or information contained in this RFQ, or in any received proposal.

H. PROPOSAL COSTS

The City is not liable for any costs incurred by a proposer in the preparation and/or presentation of a proposal. Execution of a contract is subject to the availability of funds.

I. AVAILABILITY OF RFQ RESPONSES; PROPRIETARY INFORMATION

Per the terms of ORS 279C.107, the City will open the proposals so as to avoid disclosing the contents to competing proposers during the process of negotiation. Proposals will not be available for public review until after the issuance of the Notice of Intent to Award.

The City will withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to the City in confidence, as described in ORS 192.502, that are contained in the proposal. Proposals must clearly identify such material, keep it separate, and provide separate notice in writing of the status of this material to:

Roy Markee, Project Manager

City of McMinnville Community Development Center
231 NE Fifth Street
McMinnville, OR 97128

Phone: (503) 434-7312

Fax: (503) 474-4955

Email: roy.markee@mcminnvilleoregon.gov

SECTION III – PROPOSAL FORMAT AND EVALUATION CRITERIA

A. ORGANIZATION OF PROPOSAL

Proposals shall be prepared simply and economically, providing a straightforward and concise description of the proposer’s capabilities to satisfy the requirements of this RFQ. Emphasis should be on the completeness, clarity, and succinctness of the content of the proposal.

Proposers shall submit one (1) signed, clearly marked, easily reproducible original and four (4) complete copies of the proposal. Proposals shall be easily recyclable; plastic and wire bindings are discouraged.

The proposal shall not exceed twenty (20) pages in length, including pictures, charts, graphs, tables, and text. Pages shall be 8 ½” x 11”, and the text font shall not be less than 10-point type. Resumes of key individuals proposed to be involved in the project are exempted from the 20-page limit if they are appended to the end of the proposal. All pages of the proposal shall be consecutively numbered.

B. TRANSMITTAL LETTER

All proposals shall contain a transmittal letter identifying the authorized representative of the business; the existing location(s) of the business; and a summary of the key provisions of the proposal. This letter is included in the 20-page limit.

C. EVALUATION CRITERIA

Evaluation of the written response portion to the RFQ will be based on a point system where responses to the following requests for information will be scored by members of the Evaluation Committee. The possible point values are listed by each evaluation criterion. Please see SECTION IV – PROPOSAL EVALUATION AND CONTRACT AWARD for a summary of the complete evaluation process.

Results obtained in reference checks may be used to score any relevant evaluation criteria. Reference checks will be limited to information that is listed within the evaluation criteria.

The Evaluation Committee may contact Proposers for clarification of proposal responses; however no additions, deletions or substitutions that cannot be termed as clarifications may be made to proposals.

1. PROPOSERS EXPERIENCE & QUALIFICATIONS (Maximum 40 points)

Provide a brief history of the Proposer’s firm, type of work executed, and capabilities.

Highlight recent and local project experience within the last five (5) years, with a particular emphasis on experience that is relevant to the type of work outlined in this RFQ. Provide project descriptions including project scope, type of facility, year completed, project size, and project setting. For all projects listed, provide name of the owner, the owner's contact person and current phone number. Contact information must be current and accurate to be considered. No special measures will be taken by the City to locate incorrectly listed contacts.

The proposer shall highlight projects that demonstrate the qualifications, specialized experience, and technical competence of the staff that will work directly with the City rather than describing the general experience and qualifications of the firm. Identify key project personnel by name, title and work they perform, and describe their relevant experience with similar sanitary sewer rehabilitation projects. The City will not consider promotional literature of a general nature.

Provide any other information that the proposer feels applicable to the evaluation of their qualifications for accomplishing the project. Use this section to identify and address those aspects of proposer's services that distinguish the proposer from other proposers.

2. UNDERSTANDING OF PROJECT AND SERVICES REQUESTED
(Maximum 15 points)

Demonstrate a clear and concise understanding of the development, design and construction of the I&I projects and the services being requested. Discuss your approach to completing the required tasks necessary to complete the design and bidding documents for the I & I projects.

3. PROJECT MANAGEMENT (Maximum 15 points)

Describe the proposer's ability to manage projects, including information regarding processes used to:

- Ensure project completion on schedule and within the allocated budget.
- Minimize errors and omissions.
- Foster successful Owner – Design Team – Construction Contractor relations.

4. AVAILABILITY (Maximum 15 points)

Describe current work load and ability to deliver this project within the schedule outlined in the RFP.

5. COST ESTIMATING (Maximum 15 points)

This evaluation criterion will help determine how well the proposer estimates consulting services costs. Describe proposer's approach to developing cost estimates. Provide a breakdown of a minimum of two (2) recently completed, similar projects with consulting cost of at least \$150,000. Include the following:

- Proposed consulting cost estimates for listed projects.
- Associated consulting cost change orders for listed projects

- Actual final consulting costs for listed projects.
- Explanation of any differences between proposed cost and final cost.

For the projects listed, provide the name of the owner, the owner’s contact person and current phone number.

SECTION IV – PROPOSAL EVALUATION AND CONTRACT AWARD

A. RESPONSIVE PROPOSER

Proposers that submit all of the required information, on time and in the requested format, per the requirements of this RFQ will be considered responsive proposers. Only those proposals from responsive proposers will be considered for evaluation. Non-responsive proposers will be notified in writing that they did not meet the submittal requirements and will be disqualified for further consideration.

B. EVALUATION CRITERIA

The City will make a selection based on the evaluation of the written proposals from responsive proposers, and any interviews it conducts. The City may elect to interview all responsive proposers or only the highest ranked responsive proposers. The City reserves the right to make a selection based only on the evaluation of the written proposals and not conduct any interviews. Written proposals and interviews will be evaluated based on the following criteria:

EVALUATION CRITERIA	POINTS
1. PROPOSERS EXPERIENCE & QUALIFICATIONS	40
2. UNDERSTANDING OF PROJECT AND SERVICES REQUESTED	15
3. PROJECT MANAGEMENT	15
4. AVAILABILITY	15
5. COST ESTIMATING	15
TOTAL POINTS POSSIBLE :	100

Information gained during an interview may be used to re-evaluate proposals according to the above criteria.

C. METHOD OF SELECTION

A selection committee, comprised of the Community Development Department Staff, will evaluate each submitted written proposal and each interview, when applicable, based on the criteria and weight given to each as set forth in the table in Section IV (B) above. Based upon the evaluation, the City will select the highest ranked firms to be included on the short list of consultants or consultant teams that will be used to provide services to complete the proposed projects.

D. CONSULTANT SELECTION FOR SPECIFIC WORK

Following the selection of short listed individuals and/or firms, the City will negotiate separate Personal Services Contracts (*see Section V, Exhibit 1*) for specific projects (*see Section V, Exhibit*

2) on an as needed basis. The City makes no representation as to the frequency or amount of service, if any, to be obtained from any short-listed consultant.

While the City intends to rotate through the short-list of firms to accomplish the proposed projects, the City may ask for proposals and fee estimates for individual projects. The City reserves the right to not rotate the firms, depending on proven expertise, previous involvement in a similar project, or if it is in the best interest of the City to do so. If a firm is offered a project and declines it, they will lose their turn in the rotation list and the City will offer the project to the next firm on the list.

Each Personal Services Contract will identify the type of services, work scope, project team, sub-consultants, fee, schedule, and terms of payment for services. The matters subject to negotiation shall be limited to the following:

1. Comprehensive scope of work.
2. Proposer personnel committed to the project.
3. Availability to begin work.
4. Proposed sub-consultant(s).
5. Professional fees, including reimbursable expenses.
6. Agreement to the City's contract terms (Note: A copy of the City's standard Personal Services Contract is attached to this RFP as Exhibit 1).

Nothing in this RFQ shall restrict or prohibit the City from cancelling the solicitation at any time, and the City reserves the right to award work covered under this solicitation using a different procurement method if deemed by the City to be in the best interest of the City.

E. NOTICE OF INTENT TO AWARD

Based on upon the completion of the evaluations, the City will issue a Notice of Intent to Award. The official award is anticipated to occur at the February 28, 2017 City Council meeting.

F. RIGHT TO PROTEST

Proposers who disagree with the City's selection decision may protest that decision. The judgment used in the scoring by individual evaluators is not grounds for appeal. No protest because of a solicitation provision, evaluation criteria, scope of work, specification or contract term that could have been raised as a solicitation protest will be considered. The selection protest must be submitted in writing within seven (7) calendar days of the Notice of Intent to Award. The protest shall be submitted to the Community Development Director's office at the following address:

Roy Markee, Project Manager
City of McMinnville
231 NE Fifth Street
McMinnville, OR 97128

The selection protest must state all the relevant facts that establish that higher ranked proposers were ineligible for selection because their proposals were nonresponsive or the proposer was not responsible. A written decision will be sent to the protester.

The award by the City Council shall constitute a final decision of the City if no written protest of the award is filed with the City within seven (7) calendar days of the Notice of Intent to Award. The City will not entertain a protest submitted after the time period established in this section.

SECTION V – ADDITIONAL INFORMATION

- Exhibits:
1. Example Personal Services Contract
 2. Project Maps
 - 12th Street Sanitary Sewer Rehabilitation Project
 - NE High School Sanitary Sewer Rehabilitation Project
 - NW High School Sanitary Sewer Rehabilitation Project
 - Chandlers Addition Sanitary Sewer Project

CITY OF McMinnville, Oregon

PERSONAL SERVICES CONTRACT

for
TITLE

This Contract is between the CITY OF McMinnville, a municipal corporation of the State of Oregon (City) and **CONSULTANT**. (Contractor). The City's Project Manager for this Contract is Roy Markee, Project Manager.

The parties mutually covenant and agree as follows:

- 1. Effective Date and Duration.** This contract is effective on the date at which every party has signed the contract and will expire, unless otherwise terminated or extended, on **COMPLETION DATE**.
- 2. Statement of Work.** The work to be performed under this contract consists of **PROJECT SCOPE AND TITLE**. The statement of work, including the delivery schedule for the work, is contained in Exhibit A.
- 3. Consideration.**
 - a. City agrees to pay Contractor for actual hours worked, and allowable expenses incurred for accomplishing the work required by this contract, with a total sum not to exceed **COST**.
 - b. Contractor will furnish with each invoice for services an itemized statement showing both the work performed and the number of hours devoted to the project by the Contractor and its agents. City will pay the Contractor for services within 30 days of receiving an itemized bill that has been approved by the Project Manager.
 - c. City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this contract.
- 4. Additional Services.** Additional services, not covered in Exhibit A, will be provided if mutually agreed upon by the parties and authorized or confirmed in writing by the City, and will be paid for by the City as provided in this Contract in addition to the compensation authorized in subsection 3a. If authorized by the City, the additional services will be performed under a series of Task Orders defining the services to be performed, time of performance, and cost for each phase of services.

[CONTINUED ON NEXT PAGE]

CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

Name (please print):

Address:

Social Security #: _____

Federal Tax ID #: _____

State Tax ID #: _____

Citizenship: Nonresident alien Yes No

Business Designation (check one): Individual Sole Proprietorship Partnership
 Corporation Government/Nonprofit

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions for Personal Services Contracts and Exhibits A, B, C, and D are an integral part of this contract and agree to perform the work described in Exhibit A in accordance with the terms and conditions of this contract; certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and certify I am an independent contractor as defined in ORS 670.600.

Signed by Contractor:

Signature/Title

Date

NOTICE TO CONTRACTOR: This contract does not bind the City of McMinnville unless and until it has been fully executed by the appropriate parties.

CITY OF McMINNVILLE SIGNATURE

Approved:

City Manager or Designee

Date

Reviewed:

City Attorney or Designee

Date

CITY OF McMinnville
STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICES CONTRACTS

1. Contractor is Independent Contractor.

a. Contractor will perform the work required by this contract as an independent contractor. Although the City reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit D.

c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.

d. If Contractor is a contributing member of the Public Employees' Retirement System, City will withhold Contractor's contribution to the retirement system from Contractor's compensation or payments under this contract and make a corresponding City contribution. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments to Contractor under this contract, except as a self-employed individual.

2. Subcontracts and Assignment. Contractor will not subcontract any of the work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of the City. Contractor agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

3. No Third Party Beneficiaries. City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

4. Successors in Interest. The provisions of this contract will be binding upon and will inure to the benefit of the parties, and their respective successors and approved assigns, if any.

5. Early Termination

a. The City and the Contractor, by mutual written agreement, may terminate this Contract at any time.

b. The City, on 30 days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.

c. Either the City or the Contractor may terminate this Contract in the event of a breach of the Contract by the other party. Prior to termination, however, the party seeking the termination will give to the other party written notice of the breach and of the party's intent to terminate. If the Party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

6. Payment on Early Termination

a. If this contract is terminated under 5(a) or 5(b), the City will pay the Contractor for work performed in accordance with the Contract prior to the termination date. Payment may be pro-rated as necessary.

b. If this contract is terminated under 5(c) by the Contractor due to a breach by the City, then the City will pay the Contractor as provided in subsection (a) of this section.

c. If this contract is terminated under 5(c) by the City due to a breach by the Contractor, then the City will pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7, Remedies.

7. Remedies

a. In the event of termination under 5(c) by the City due to a breach by the Contractor, the City may complete the work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, the Contractor will pay to the City the amount of the reasonable excess.

b. The remedies provided to the City under section 5 and section 7 for a breach by the Contractor are not exclusive. The City will also be entitled to any other equitable and legal remedies that are available.

c. In the event of breach of this Contract by the City, the Contractor's remedy will be limited to termination of the Contract and receipt of payment as provided in section 5(c) and 6(b).

8. Access to Records. Contractor will maintain, and the City and its authorized representatives will have access to, all books, documents, papers and records of Contractor which relate to this contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records will be made available upon request. Payment for the cost of copies is reimbursable by the City.

9. Ownership of Work. All work products of the Contractor, including background data, documentation, and staff work that is preliminary to final reports, and which result from this contract, are the property of the City. Contractor will retain no ownership interests or rights in the work product. Use of any work product of the Contractor for any purpose other than the use intended by this contract is at the risk of the City.

10. Compliance with Applicable Law. Contractor will comply with all federal, state, and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279B.220, 279B.230, and 279B.235, as set forth on Exhibit B. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

11. Indemnity and Hold Harmless

a. Except for the professional negligent acts covered by paragraph 11.b., Contractor will defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents under this contract.

b. Contractor will defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions arising out of the professional negligent acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents under this contract.

12. Insurance. Contractor will provide insurance in accordance with Exhibit C.

13. Waiver. The failure of the City to enforce any provision of this contract will not constitute a waiver by the City of that or any other provision.

14. Errors. The Contractor will perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

15. Governing Law. The provisions of this contract will be construed in accordance with the laws of the State of Oregon and ordinances of the City of McMinnville, Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Yamhill County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it will be brought and conducted in the United States District Court for the District of Oregon.

16. Severability. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular term or provision held invalid.

17. Merger Clause. THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING, SIGNED BY BOTH PARTIES. ANY WAIVER, CONSENT, MODIFICATION, OR CHANGE, IF MADE, WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

EXHIBIT A
STATEMENT OF THE WORK

(See attached)

EXHIBIT B
COMPLIANCE WITH APPLICABLE LAW

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. [2003 c.794 §76a]

279B.230 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

279B.235 Condition concerning hours of labor; compliance with pay equity provisions; employee discussions of rate of pay or benefits. (1) Except as provided in subsections (3) to (6) of this section, every public contract subject to this chapter must provide that:

(a) A contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the contractor shall pay the employee at least time and a half pay for:

(A)(i) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(ii) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(B) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020.

(b) The contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause.

(c) The contractor may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(2) A contractor shall give notice in writing to employees who work on a public contract, either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(3) A public contract for personal services, as described in ORS 279A.055, must provide that the contractor shall pay the contractor's employees who work under the public contract at least time and a half for all overtime the employees work in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) A public contract for services at a county fair, or for another event that a county fair board authorizes, must provide that the contractor shall pay employees who work under the public contract at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. A contractor shall notify employees who work under the public contract, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(5)(a) Except as provided in subsection (4) of this section, a public contract for services must provide that the contractor shall pay employees at least time and a half pay for work the employees perform under the public contract on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time the employee works in excess of 10 hours in any one

day or in excess of 40 hours in any one week, whichever is greater.

(b) A contractor shall notify in writing employees who work on a public contract for services, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(6) This section does not apply to public contracts:

(a) With financial institutions as defined in ORS 706.008.

(b) Made pursuant to the authority of the State Forester or the State Board of Forestry under ORS 477.406 for labor performed in the prevention or suppression of fire.

(c) For goods or personal property. [2003 c.794 §77; 2005 c.103 §8f; 2015 c.454 §4]

**EXHIBIT C
INSURANCE**

(The Project Manager must answer and initial 2, 3, and 4 below).

During the term of this contract, Contractor will maintain in force at its own expense, each insurance noted below:

1. **Workers Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt under ORS 656.027).

Required by City I am exempt. Signed _____

2. **Professional Liability** insurance with a combined single limit of not less than \$1,200,000, \$2,000,000, or \$3,000,000 each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this contract. The coverage must remain in effect for at least one year two years after the contract is completed.

Required by City Not required by City By: _____

3. **General Liability** insurance, on an occurrence basis, with a combined single limit of not less than \$1,200,000, \$2,000,000, or \$3,000,000 each occurrence for Bodily Injury and Property Damage. It must include contractual liability coverage. This coverage will be primary and non-contributory with any other insurance and self-insurance.

Required by City Not required by City By: _____

4. **Automobile Liability** insurance with a combined single limit, or the equivalent of not less than \$1,200,000, \$2,000,000, or \$3,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles.

Required by City Not required by City By: _____

5. **Notice of cancellation or change.** There will be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without prior written notice from the Contractor or its insurer(s) to the City.

6. **Certificates of insurance.** As evidence of the insurance coverages required by this contract, the Contractor will furnish acceptable insurance certificates to the City at the time the Contractor returns the signed contracts. For general liability insurance and automobile liability insurance, the certificate will provide that the City, and its agents, officers, and employees, are additional insureds, but only with respect to Contractor's services to be provided under this contract. The certificate will include the cancellation clause, and will include the deductible or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies will be provided to the City. The Contractor will be financially responsible for all pertinent deductibles, self-insured retentions, and self-insurance.

EXHIBIT D
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR
(Contractor complete A or B below, Project Manager complete C below.)

A. CONTRACTOR IS A CORPORATION

CORPORATION CERTIFICATION: I am authorized to act on behalf of the entity named below, and certify under penalty of perjury that it is a corporation.

Entity	Signature	Date

B. CONTRACTOR IS INDEPENDENT.

Contractor certifies he/she meets the following standards:

1. The individual or business entity providing services is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results,
2. The individual or business entity is licensed under ORS chapters 671 or 701 if the individual or business entity provides services for which a license is required by ORS chapters 671 or 701,
3. The individual or business entity is responsible for obtaining other licenses or certificates necessary to provide the services,
4. The individual or business entity is customarily engaged in an independently established business, as any three of the following requirements are met **(please check three or more of the following):**
 - ___ A. The person maintains a business location i) that is separate from the business or work location of the person for whom the services are provided or ii) that is in a portion of the person's residence and that portion is used primarily for the business.
 - ___ B. The person bears the risk of loss related to the business or the provision of services as shown by factors such as i) the person enters into fixed-price contracts, ii) the person is required to correct defective work, iii) the person warrants the services provided, or iv) the person negotiates indemnification agreements or purchases liability insurance, performance bonds, or errors and omissions insurance.
 - ___ C. The person provides contracted services for two or more different persons within a 12 month period or the person routinely engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 - ___ D. The person makes a significant investment in the business, through means such as i) purchasing tools or equipment necessary to provide the services, ii) paying for the premises or facilities where the services are provided, or iii) paying for licenses, certificates, or specialized training required to provide the services.
 - ___ E. The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

Contractor Signature	Date
----------------------	------

(Project Manager complete C below.)

C. CITY APPROVAL

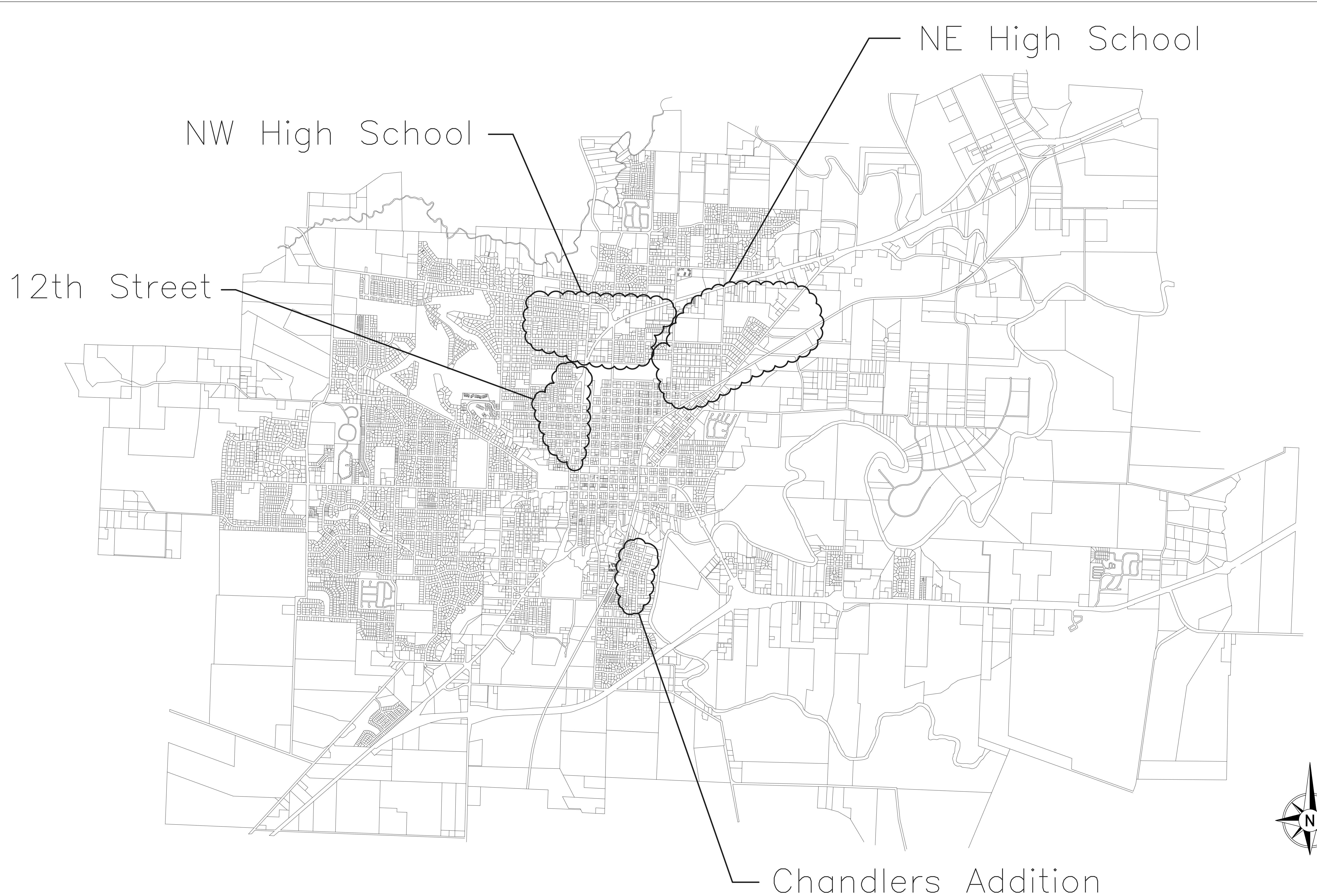
ORS 670.600 Independent contractor standards. As used in various provisions of ORS chapters 316, 656, 657, 671, and 701, an individual or business entity that performs services for remuneration will be considered to perform the services as an "independent contractor" if the standards of this section are met. The contractor meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the services, subject only to the right of the City to specify the desired results,
2. The Contractor is responsible for obtaining licenses under ORS chapters 671 and 701 when these licenses are required to provide the services,

3. The Contractor is responsible for obtaining other licenses or certificates necessary to provide the services,
4. The Contractor has the authority to hire and fire employees to provide or assist in providing the services, and
5. The person is customarily engaged in an independently established business as indicated in B. 4 above.

Project Manager Signature

Date

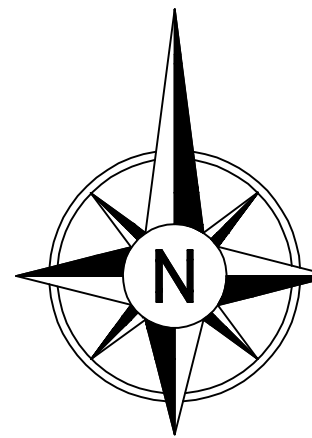


NW High School

NE High School

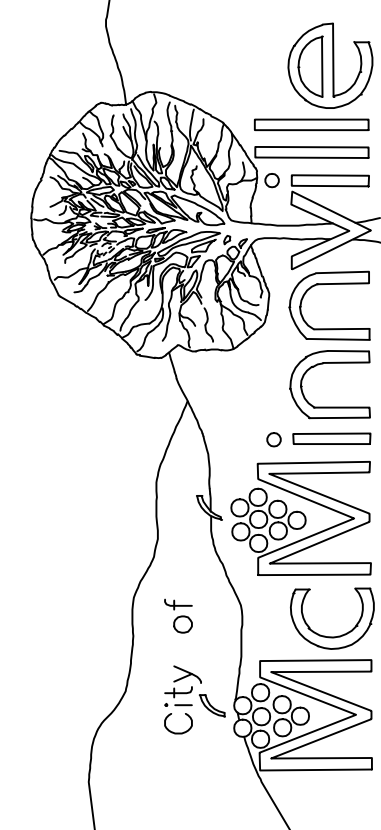
12th Street

Chandlers Addition



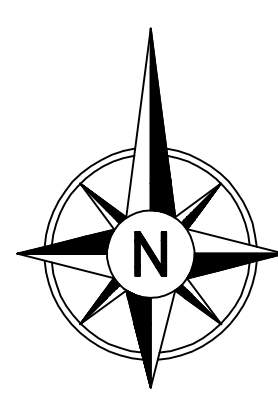
SCALE:	
Drawn:	RM
Checked:	
Date:	October 27, 2016
Project No.	
SHEET	1 of 5

CITY OF McMINNVILLE, OREGON
 ENGINEERING DEPARTMENT
 VARIOUS SANITARY SEWER REHABILITATION PROJECTS
 VICINITY MAP

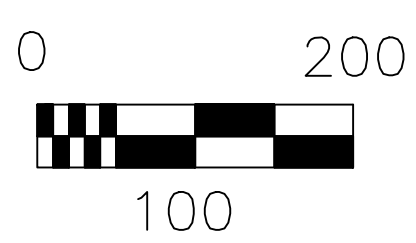




Approximate Quantity	
Diameter	Length (ft)
6	2492
8	7125
10	2639
12	2542
18	525
24	1264
Total	16587



SEWER MAIN TO REHABILITATE



CITY OF McMinnville, OREGON
 ENGINEERING DEPARTMENT
 VARIOUS SANITARY SEWER REHABILITATION PROJECTS
 12TH STREET SANITARY SEWER
 REHABILITATION PROJECT

SCALE:
 Drawn: RM
 Checked:
 Date: October 27, 2016
 Project No.
 SHEET 2 of 5

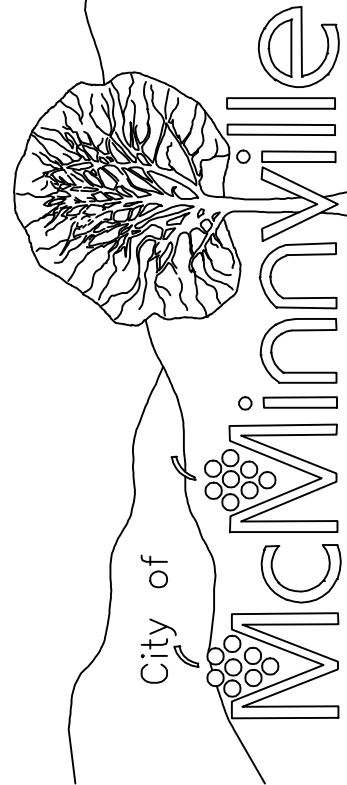


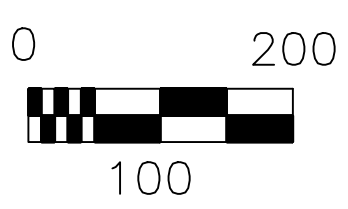
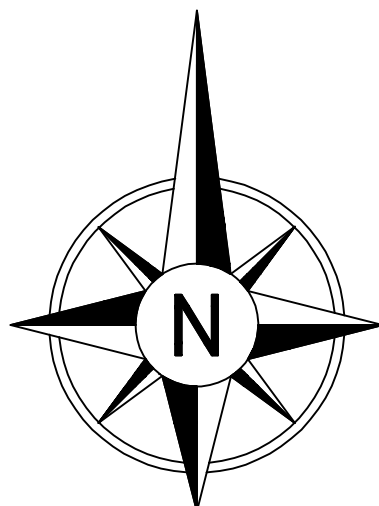
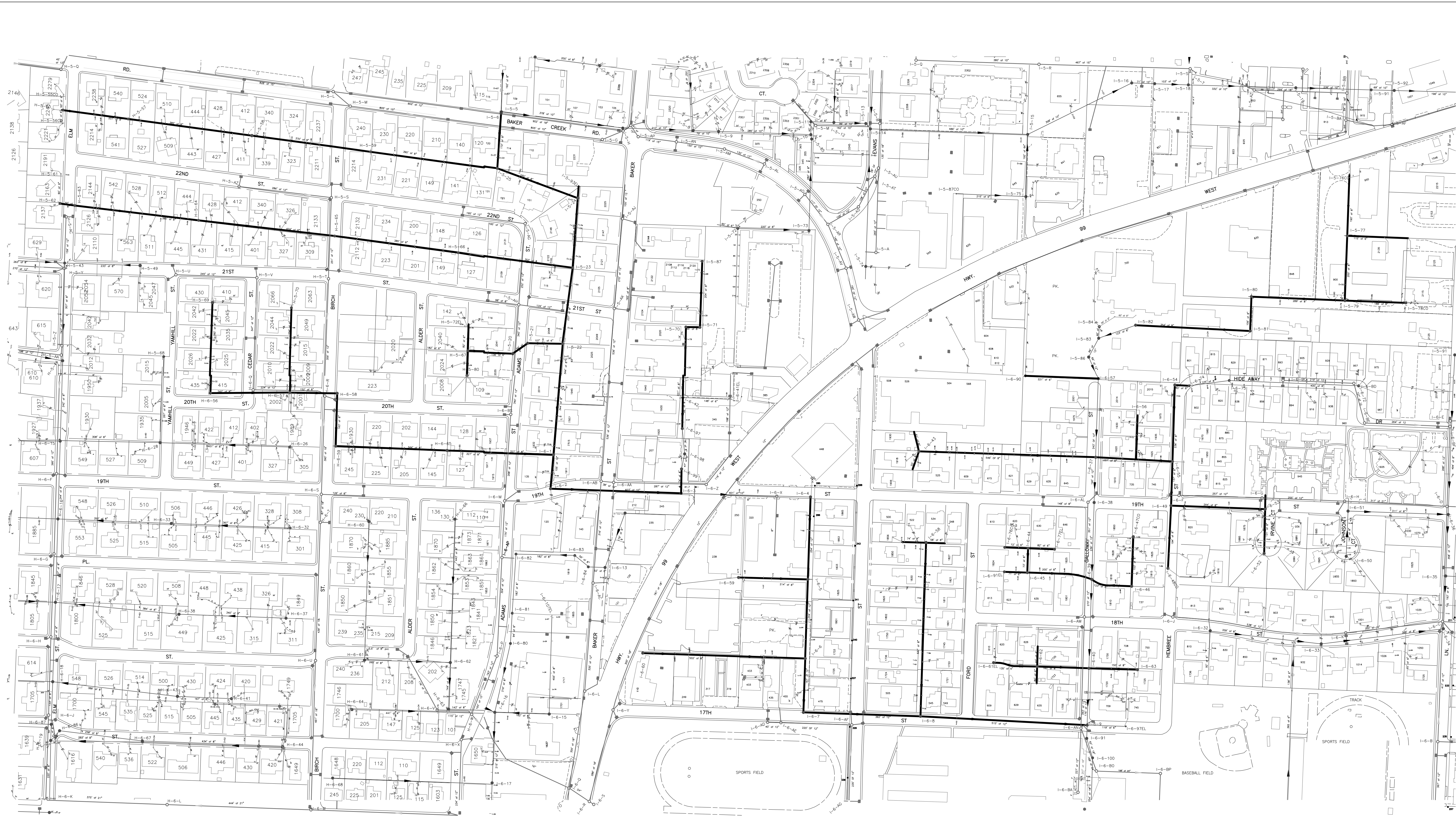
SEWER MAIN TO REHABILITATE

Approximate Quantity	
Diameter	Length (ft)
6	2045
8	11404
10	933
12	581
18	1011
Total	15974

SCALE:
 Drawn: RM
 Checked:
 Date: October 27, 2016
 Project No.
 SHEET 3 of 5

CITY OF McMinnville, OREGON
 ENGINEERING DEPARTMENT
 VARIOUS SANITARY SEWER REHABILITATION PROJECTS
 NE HIGH SCHOOL SANITARY SEWER
 REHABILITATION PROJECT



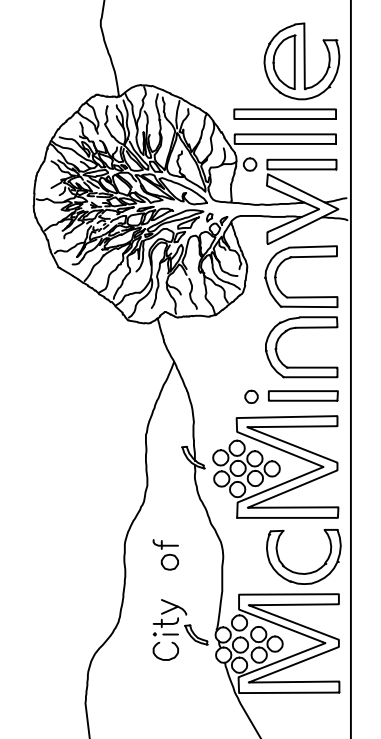


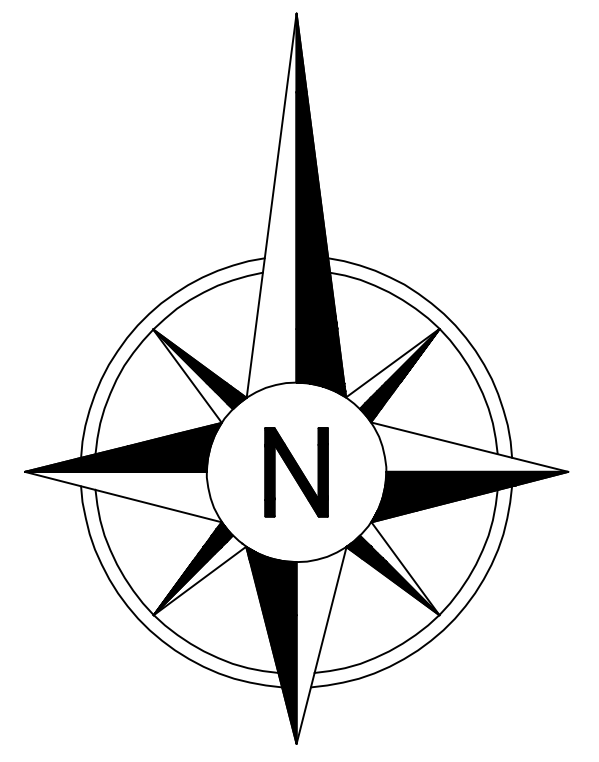
Approximate Quantity	
Diameter	Length (ft)
6	1787
8	12266
10	508
12	1542
Total	16103

— SEWER MAIN TO REHABILITATE

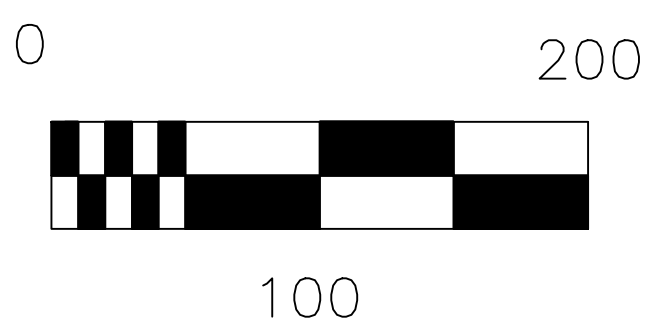
SCALE: _____
 Drawn: RM
 Checked: _____
 Date: October 27, 2016
 Project No. _____
 SHEET 4 of 5

CITY OF McMINNVILLE, OREGON
 ENGINEERING DEPARTMENT
 VARIOUS SANITARY SEWER REHABILITATION PROJECTS
 NW HIGH SCHOOL SANITARY SEWER
 REHABILITATION PROJECT

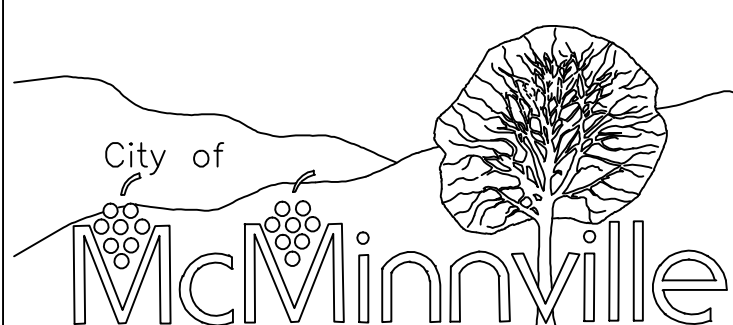




Approximate Quantity	
Diameter	Length (ft)
8	4568
10	261
Total	4829



— SEWER MAIN TO REHABILITATE



CITY OF McMINNVILLE, OREGON
 ENGINEERING DEPARTMENT
 VARIOUS SANITARY SEWER REHABILITATION PROJECTS
 CHANDLERS ADDITION SANITARY SEWER
 REHABILITATION PROJECT

SCALE:
Drawn: RM
Checked:
Date: October 27, 2016
Project No.
SHEET 5 OF 5



City Council- Regular

Meeting Date: 02/14/2017

Subject: Resolution No. 2017-13

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Resolution No. 2017-13: A Resolution approving an Employment Agreement with Jeffrey Towery.

BACKGROUND:

Former City Manager Martha Meeker announced her resignation effective October 3, 2016. Candace Haines has been serving as Interim City Manager as the City Council conducted a nationwide search with the help of The Prothman Company.

The Council followed a thorough recruitment process. On November 22nd, 2016 a public hearing was held to hear comments on the hiring standards, criteria and policy directives set forth in Exhibit 1 of Resolution No. 2016-86. Later that evening, the Council passed Resolution No. 2016-86 confirming procedures for the hiring of a City Manager.

Multiple interviews were conducted with three panels made up of city employees, community partners, and city council. A final interview was conducted in executive session.

The Council selected Jeffrey Towery as City Manager of the City of McMinnville as they have determined him to be the best candidate to fill this position.

Attachments

Resolution No. 2017-13

Exhibit A - Employment Agreement

RESOLUTION NO. 2017-13

A Resolution approving an Employment Agreement with Jeffrey Towery.

RECITALS:

The Charter of the City provides in Chapter III, Form of Government, Section 11, the City Manager be appointed by a majority of the Council.

On November 22nd, 2016 Council held a Public Hearing to hear comments on the hiring standards, criteria and policy directives set forth in Exhibit 1 of Resolution No. 2016-86.

On November 22nd, 2016 the Council passed Resolution No. 2016-86 confirming procedures for the hiring of a City Manager.

The City conducted an extensive, nationwide search using the service of The Prothman Company.

The Council conducted multiple interviews of candidates, selected finalists and held a public reception to receive input from the community and employees. The Council conducted a final interview in executive session.

After deliberation, the Council has selected Jeffrey Towery as City Manager of the City of McMinnville, who the Council determined to be the best candidate to fill this position.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That the City Council appoints Jeffrey Towery as City Manager for the City of McMinnville, Oregon, effective February 14, 2017, subject to the terms and conditions of the Employment Agreement attached hereto as Exhibit 'A'.
2. The Mayor is hereby authorized and directed to execute the Employment Agreement with Jeffrey Towery.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of February, 2017 by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February, 2017.

MAYOR

Approved as to Form:



CITY ATTORNEY

EMPLOYMENT AGREEMENT

This Employment Agreement is entered into this ____ day of _____, 2017, by and between the City of McMinnville, Oregon, an Oregon municipal corporation (hereinafter referred to as "City") and Jeffrey Towery (hereinafter referred to as "City Manager").

The City and the City Manager wish to enter into a written Agreement creating a professional employment relationship. In consideration of the covenants set out in this Agreement and for the consideration specified in this Agreement, the City and the City Manager agree as follows:

SECTION I. EMPLOYMENT AND DUTIES.

- A. The City agrees to employ the City Manager and the City Manager agrees to accept City employment.
- B. The City Council expects the City Manager to adhere to the highest professional standards. His actions will always comply with those standards. He agrees to follow the Code of Ethics and Guidelines of the International City/County Management Association and the ethics rules, regulations, and laws of the State of Oregon.
- C. The City Manager shall have general supervision of the administrative affairs of the city and general control over all nonelective officers and employees of the city excepting those of the Water and Light Department, the Municipal Judge, and the City Attorney, and shall perform such other duties as may be prescribed by the council.
- D. The City Council meets annually to establish and review the City's goals and objectives. Decisions and actions generated as a result of the goal setting sessions supplement the annual budgetary process and serve as a guide in the formulation of the budget. The City Manager will be responsible for pursuing the goals and objectives of the City Council and for providing quarterly reports to the City Council regarding the progress toward achieving the Council's goals and objectives.
- E. The City Manager job description is attached to this Agreement and incorporated by this reference.
- F. It is recognized that the City Manager must devote time outside of normal office hours on business for the City. To that end, the City Manager will be allowed to establish an appropriate work schedule.

SECTION II. TERM.

This Agreement will be effective as of the ____ day of _____, 2017, and will continue until terminated.

- A. Nothing in this Agreement will prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of the City Manager at any time, subject only to the provisions set forth in this Agreement.
- B. Nothing in this Agreement will prevent, limit, or otherwise interfere with the right of the City Manager to resign at any time, subject only to the provisions set forth in this Agreement.
- C. The City Manager agrees to remain in the exclusive employ of the City during the term of this Agreement.

SECTION III. TERMINATION AND SEVERANCE

- A. Termination without Cause by the City. This Agreement may be terminated at any time by a majority of the City Council for any reason whatsoever. If the City Manager is, at the time of termination, willing and able to continue performing the duties of City Manager, and if he executes and does not revoke a full release of claims in a form satisfactory to the City, the City will provide the City Manager with six months of severance pay for termination without cause. The severance pay will be subject to lawful withholding or deductions.
- B. Termination without Cause by the City Manager. This Agreement may be terminated by the City Manager for any reason whatsoever, upon ninety (90) calendar days written notice to the City. No severance will be paid in the case of a voluntary resignation.
- C. Termination for Cause. In the event of a for-cause termination, this Agreement shall not be deemed to waive statutory or constitutional rights or remedies otherwise available to the City Manager. The City Manager's employment with the City may be terminated immediately in the sole discretion of a majority of the City Council members upon the occurrence of any of the following events:
 - 1. The City Manager fails, refuses, or is unable to comply with the written policies, standards, and regulations of the City that are in existence at the time, or fails, refuses, or is unable to comply with any then-current state or federal laws;
 - 2. Dishonesty in any form;
 - 3. The City Council, after a thorough investigation, has reasonable cause to believe the City Manager has committed fraud, misappropriated City funds, goods, or services for the City Manager's own benefit, or other acts of misconduct that cause injury to the City or affect the City Manager's ability to perform his job; or
 - 4. The City Manager fails to perform his duties as City Manager faithfully and fully.

No severance will be paid in the case of a termination for cause.

- D. If the City reduces the salary or other financial benefits of the City Manager in a greater percentage than an applicable across the board reduction for other non-represented full time employees of the City, or if the City Manager resigns at the request of the City Council, then the City Manager may deem this Agreement to be involuntarily terminated without cause and he will be entitled to severance pay consistent with subsection A of this section.

SECTION IV. RESIDENCY.

The City Manager will reside within the City limits during the term of this Agreement.

SECTION V. PERFORMANCE EVALUATION.

A facilitated performance evaluation will be conducted after six months and after twelve months of employment. Subsequent facilitated evaluations will be conducted annually.

SECTION VI. SALARY, BENEFITS, AND MOVING EXPENSES.

- A. Salary. Starting with the first day of employment and continuing throughout the term of this Agreement, the City will pay the City Manager an annual salary of \$150,000. The salary will be paid to the City Manager at the same time as all City employees are paid. This salary may be adjusted from time to time, at the discretion of the City Council. The City Manager will receive the same cost of living adjustments that the non-represented full time employees receive.
- B. Vacation. The City Manager will be credited with forty (40) hours of vacation as of his first day of employment and will subsequently accrue vacation at the rate of an eight year employee: 10.00 hours per month. This rate will be increased as specified in the Employee Handbook in the same manner as used for other non-represented full time employees. All vacation hours will be accessible immediately. In the event employment with the City is terminated, either voluntarily or otherwise, the City Manager will be paid an amount equal to the value of the City Manager's accrued vacation hours. If the City Manager's employment is terminated within one year of the first day of the City Manager's employment by the City, the forty hours in the vacation bank will not be paid out to the City Manger or, if hours have been used, the City will offset those hours against the City Manager's final paycheck.
- C. Sick Leave. The City Manager will be credited with forty (40) hours of sick leave as of his first day of employment and will subsequently accrue sick leave at the rate of 8 hours per month throughout the term of this Agreement. In the event employment with the City is terminated, either voluntarily or otherwise, the City Manager will have unused sick leave applied toward PERS benefits, as allowed by state law.
- D. Management Leave. The City Manager will be credited with forty (40) hours of management leave as of his first day of employment. Management leave is provided to FLSA exempt City employees on an annual basis. It is granted each July 1. It is compensable only in the form of leave and is non-cumulative.

- E. Car Allowance. The City shall compensate the City Manager \$500 per month for the use of the City Manager's private automobile. Travel beyond seventy-five (75) miles of the city limits will be reimbursed at normal City rates.
- F. Moving Expenses. In order to help defray the costs of relocation, the City will reimburse the City Manager for reasonable moving expenses and temporary living expenses in an amount up to, but not to exceed, \$15,000, upon presentation of receipts. In the event that the City Manager resigns their position or is terminated for cause within three years of his start date, the City Manager will repay all reimbursed funds on a prorated basis based on time of service, and City Manager agrees that such amount may be withheld from his final paycheck.
- G. Except as otherwise provided in this Agreement and the Employee Handbook, the City Manager will receive the same benefits as other employees of the City.

SECTION VII. RETIREMENT, DEFERRED COMPENSATION, AND INSURANCE.

- A. Retirement. The City agrees to contribute into the Public Employees' Retirement System (PERS), on the City Manager's behalf, a percentage amount equal to the percentage given other non-represented full-time employees, and as consistent with state law.
- B. The City Manager will be eligible to participate in the City's deferred compensation program. The City will match all City Manager contributions to the deferred compensation program up to 5% of the City Manager's annual salary.
- C. Health Insurance. At the City Manager's option, the City agrees to provide coverage and make required premium payments for comprehensive medical, dental, and vision plans for the City Manager. The City Manager will pay the same percentage of his coverage premium as do all non-represented full time City employees.
- D. Life Insurance. The City will provide, and make the premium payments for, the same long term disability and/or life insurance coverage for the City Manager as for all non-represented full time City employees.

SECTION VIII. PROFESSIONAL DEVELOPMENT, COMMUNITY INVOLVEMENT, AND EXPENSE.

- A. The City will pay for the City Manager's membership in the Oregon City/County Management Association (OCCMA) and the International City/County Management Association (ICMA). The City will pay for the City Manager to attend the OCCMA conferences. The City will pay for the City Manager's attendance at ICMA conferences and other related conferences insofar as budgeted funds allow.
- B. The City will pay the City Manager's dues to civic service groups, such as Rotary, Kiwanis, and the Lions.

- C. The City recognizes that certain expenses will be incurred by the City Manager on behalf of the City and agrees to reimburse or pay these expenses upon receipt of appropriate confirmation.

SECTION IX. BONDING.

Pursuant to the City Charter, the City Manager will “give a bond in such amount and with such surety as may be approved by the council.” The City has provided for this Charter requirement through CityCounty Insurance Services’ excess crime coverage. This insurance meets statutory bonding requirements.

SECTION X. INDEMNIFICATION.

The City agrees that it will defend, hold harmless, and indemnify the City Manager from all demands, claims, suits, actions, errors, or other omissions in legal proceedings brought against the City Manager in his individual capacity, in his official capacity, or in his official capacity as agent or employee of the City, provided the incident arose while the City Manager was acting within the scope of his employment and within the scope of this Agreement. If, in the good faith opinion of the City Manager, a conflict exists regarding the defense of any such claim between the legal position of the City and the City Manager, the City Manager may engage counsel, in which event, the City shall indemnify the City Manager for the cost of legal counsel.

SECTION XI. CONFIDENTIALITY.

- A. The City Manager recognizes that, through his employment with the City, he will have access to confidential information that needs to be protected from improper disclosure. The City Manager agrees that he will not directly or indirectly use any confidential information except as necessary to perform the duties of the City Manager, and will not directly or indirectly divulge such information to anyone outside the City organization without the City’s prior written consent, unless required by court order or, if in the opinion of the City Attorney, by state law.
- B. The confidentiality provisions of this Agreement will remain in full force and effect for a period of two years after the termination of this Agreement.

SECTION XII. GENERAL PROVISIONS.

- A. Amendment. Nothing shall restrict the ability of the City and the City Manager to amend the terms of this Agreement. Amendments will be valid only if they are made in writing and are signed by both the City and City Manager.
- B. Severability. If any provision of this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be deemed severable and shall remain in full force and effect.
- C. Choice of Law / Venue. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Oregon without reference to principles of conflict of laws. In case of a lawsuit arising from this Agreement, for

enforcement and/or damages for breach or violation, the parties agree that the venue shall be in Yamhill County Circuit Court, to the exclusion of all other courts in any other venue. The prevailing party in a lawsuit will be entitled to reasonable attorney's fees to be fixed by the trial court. If an appeal is taken from the decision of the trial court, the fees will include any additional sums fixed by the appellate court as reasonable attorney's fees in the appellate court, together with prevailing party costs and disbursements incurred therein.

- D. This Agreement was the result of negotiation by the parties and thus the parties agree that the rule of construction requiring that the Agreement will be construed against the drafter will not apply to the interpretation of this Agreement. Both parties acknowledge that they have read and understand the Agreement, enter into it voluntarily, and have had opportunity to have it reviewed by counsel of their choice.
- E. The failure of either party to enforce any provision of this Agreement will not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.
- F. Merger. This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

Mayor Scott Hill

Jeffrey Towery

Date

Date

APPROVED AS TO FORM:

City Attorney



City Council- Regular

Meeting Date: 02/14/2017

Subject: Resolution No. 2017-14

From: Melissa Grace, City Recorder / Legal
Assistant

AGENDA ITEM:

Resolution No. 2017-14: A Resolution terminating the Interim City Manager Employment Agreement with Candace Haines.

BACKGROUND:

Please refer to attached Resolution and Exhibit.

Attachments

Resolution No. 2017-14

Exhibit A

RESOLUTION NO. 2017-14

A Resolution amending the Interim City Manager Employment Agreement.

RECITALS:

On October 3, 2016, the City Council voted to appoint Candace Haines as Interim City Manager, and Ms. Haines began serving as the Interim City Manager on October 3, 2016, pursuant to the terms of an Interim City Manager Employment Agreement.

On February 14, 2017, the City Council approved an offer of employment for Jeffrey Towery to serve as the City Manager, beginning February 15, 2017.

To facilitate the orderly transition of Mr. Towery into his new role as City Manager, the City and Interim City Manager desire to amend the terms of the Interim City Manager Employment Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMinnville, OREGON as follows:

1. The Employment Agreement between the City and Candace Haines, dated October 25, 2016, is amended as provided in the attached Exhibit A.
2. The Mayor is authorized to execute the amended Employment Agreement.
3. This Resolution will take effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of February, 2017 by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February, 2017.

MAYOR

Approved as to form:



CITY ATTORNEY

Exhibit A

AMENDMENT #1 TO EMPLOYMENT AGREEMENT

The Employment Agreement dated October 25, 2016, by and between the City of McMinnville, Oregon, an Oregon municipal corporation (hereinafter referred to as "City") and Candace Haines is hereby amended as follows:

1. Effective February 15, 2017, the Ms. Haines' position with the City will transition to the role of Interim Deputy City Manager, and in that capacity she will serve under the direction of the City Manager.
2. In the absence of the City Manager, the Interim Deputy City Manager will assume all duties of the City Manager.
3. The Employment Agreement will terminate by mutual agreement on February 17, 2017, and both parties waive any rights to written notice of such termination.
4. All other terms of the Employment Agreement that are not inconsistent with this Amendment shall remain in effect.

Mayor Scott Hill

Candace Haines

Date

Date

APPROVED AS TO FORM:



City Attorney