



City Council Meeting Agenda

Tuesday, May 25, 2021

5:30 p.m. – Level 10 Meeting

7:00 p.m. – Regular Council Meeting

EXECUTIVE SESSION – to immediately follow the Regular City Council Meeting (CLOSED TO THE PUBLIC)

REVISED 05/20/2021

*Welcome! The public is strongly encouraged to participate remotely but there is limited seating at Civic Hall for those who are not able to participate remotely. However, if you are not feeling well, please stay home and take care of yourself. In accordance with Governor Kate Brown's **new face covering mandate**, **all who wish to attend public meetings must wear a face mask or some kind of face covering is required while in the building and you must maintain six feet apart from others.***

You can live broadcasts the City Council Meeting on cable channels Xfinity 11 and 331,
Frontier 29 or webstream here:

www.mcm11.org/live

Level 10 Meeting:

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/95620778198?pwd=eUZKUkNWNDM3cWthQS83Q29nNXVGUT09>

Zoom ID: 956-2077-8198

Zoom Password: 718469

Or you can call in and listen via zoom: 1-253- 215- 8782

ID: 956-2077-8198

CITY COUNCIL REGULAR MEETING:

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/94610042699?pwd=bGhCRm13UjJlMk02RzFSTDNreUpIQT09>

Zoom ID: 94610042699

Zoom Password: 344808

Or you can call in and listen via zoom: 1-253- 215- 8782

ID: 94610042699

5:30 PM – LEVEL 10 MEETING – VIA ZOOM & COUNCIL CHAMBERS

1. CALL TO ORDER
2. REVIEW CITY COUNCIL LEVEL 10 MONTHLY TEAM MEETING AGENDA
3. ADJOURNMENT

7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM & COUNCIL CHAMBERS

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. 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: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. The Mayor may limit comments to 3*

minutes per person for a total of 30 minutes. The Mayor will read comments emailed to City Recorded and then any citizen participating via Zoom.

4. PRESENTATION

- a. Visit McMinnville Annual Presentation

5. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
- b. Department Head Reports
- c. February and March 2021 Cash and Investment Report (in packet)

6. CONSENT AGENDA

- a. Consider the Minutes of the April 22, 2020 City Council Work Session Meeting.

7. RESOLUTION

- a. Consider **Resolution No. 2021-23**: A Resolution Appointing Members to the Affordable Housing Committee.
- b. Consider **Resolution No. 2021-28**: A Resolution Appointing Members to the Diversity, Equity, and Inclusion Advisory Committee.
- c. Consider **Resolution No. 2021-29**: A Resolution approving a lease amendment with the McMinnville Airport Condominium Hangars Owners Association for hangar F at the airport.
- d. Consider **Resolution No. 2021-30**: A Resolution approving a lease amendment with the McMinnville Aircraft Storage Condominium for hangar H at the airport.
- e. Consider **Resolution No. 2021-31**: A Resolution approving a lease amendment with B&G Hangar LLC for the 4040 Cirrus hangar at the airport.
- f. Consider **Resolution No. 2021-32**: A Resolution approving entering into a contract with Merina & Company LLP.
- g. Consider **Resolution No. 2021-34**: A Resolution Amending the Planning Fee Schedule for Land Use Compatibility Statements for Marijuana Dispensaries, Producers and Wholesalers and Change in Business Name.
- h. Consider **Resolution No. 2021-35**: A Resolution approving a Building Fee Schedule and repealing all previous resolutions adopting building fee schedules on the effective date of this fee schedule.

8. ORDINANCE

- a. Consider first reading with a possible second reading of **Ordinance No. 5103**: An Ordinance Amending Section 2.35.030 of the McMinnville Municipal Code Specific to Membership: Number of Members, Appointments, and Ex Officio Members.

9. ADJOURNMENT

EXECUTIVE SESSION – IMMEDIATELY FOLLOW THE CITY COUNCIL REGULAR MEETING - VIA ZOOM (NOT OPEN TO THE PUBLIC) (Added 5/20/2021)

1. CALL TO ORDER

2. **Executive Session pursuant to ORS 192.660(2)(h)**: To conduct with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

3. ADJOURNMENT

McMinnville City Council Level 10

Date: 5/25/2021

Time: 5:30-7pm

Attendees:

Meeting Chair:

Meeting Purpose:

- (1) Complete the “Why” exercise which will inform the creation of the purpose statement in the Vision Traction Organizer
- (2) Successfully complete an IDS session including solutions and action items for the following identified 911 IDS topic: *Chris, a current City Councilor, raised a concern about an aspect of the City functioning to a third party in a way that potentially reduced the trust within the team and did not empower the whole of the organization to address the concern in a proactive way.*

Suggested preparation for this meeting:

- (1) Thinking Time exercise: Identifying our Why
 - (a) Required materials: pen, notebook, timer
 - (b) Set your timer for 5 min
 - (c) In your notebook write your answer to this question: What is the higher purpose of the McMinnville City Council and why do I, personally, invest my life energy into this work?
 - (d) Try to write continuously for the whole 5 minutes with as many thoughts as you have in relation to this question
 - (e) Once the timer is done, read your response and circle the most impactful insights for you
 - (f) Prepare to offer a brief one sentence synopsis of what you think your “why” is for the McMinnville City Council and your role on the City Council
- (2) Review the meeting agenda
- (3) Complete any action items from the previous meeting and be prepared to report on the status of completion of the action item during the meeting.
- (4) Prepare for the 911 IDS: *Chris, a current City Councilor, raised a concern about an aspect of the City functioning to a third party in a way that potentially reduced the trust within the team and did not empower the whole of the organization to address the concern in a proactive way.*
 - (a) Thinking time exercise 2:

- (i) With pen, paper and a timer, set the timer for 5 min.
- (ii) Answer the question: What are the root issues that became apparent in this experience? You can ask yourself follow up questions like “Why is this an issue?” to gain deeper insight.

(5) Review City Council Agreement

Agenda:

Opening: Identifying our Why (15 min)

Scorecards: (0 min)

Rocks: (0 min)

To be added in future meetings

Last Meetings Action Items: (5 Min)

- (1) Internal City Council Focus on Strategic Plan
 - (a) (Claudia) Share spreadsheet of what the staff has done to focus their work around the strategic plan.
 - (b) (Wendy) Complete the Vision Traction Organizer process to break down the focus for the City Council around the strategic plan priority and institutionalize the focus on the Vision Traction Organizer
 - (c) (Jeff) Create a strategic planning lens- tool that we can in a concise way whether it falls in line with the strategic plan
 - (2) Scorecard
 - (3) Communication with Citizens:
 - (a) (Jeff) Proposed mechanism for regular bite sized updates on strategic plan process.
 - (b) (Kylie) Dashboard on our website to show accomplishments to monitor progress
 - (c) (Scott Burke) Form a group to evaluate the implementation of the dashboard- Kylie, Mayor and Susan
 - (d) (Jeff/Scott) Put MacTown 2032 on the web page to make it easily searchable
-

New Actions:

Identify/Discuss/Solve Issues: 70 Min

Issues List IDS

IDS 911 (EOS Advisory Team) Chris, a current City Councilor, raised a concern about an aspect of the City functioning to a third party in a way that potentially reduced the trust within the team and did not empower the whole of the organization to address the concern in a proactive way.

Meeting Recap: 5 min

- Meeting Recap
- Cascading messages
- Meeting rating

Criteria:

1. Did the meeting start and end on time.
2. Did you follow the L10 meeting agenda.
3. Is everyone on the same page.
4. Did 80% of the to-do's get done.
5. Did you solve the most important issues.

Anything below an 8 ask "What could we do to make the meeting a 8 or higher for you next time?"



CITY COUNCIL GROUP AGREEMENT

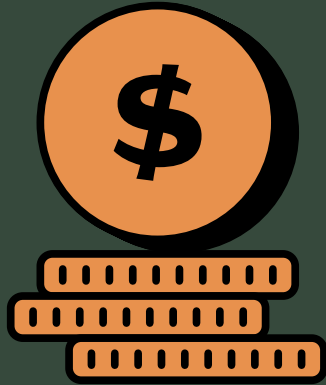
1. I will individually support the collective decision-making of the Council. If I disagree with the decision made by the council, I will exercise my convictions without personalizing the issue and without eroding the collective reputation of the council. Once the decision is made, I will respect that decision.
2. I will respect other members of the Council, even if we disagree philosophically, by articulating my view, listening openly to their perspectives and rationale, sharing my position and intended actions with the Council in a timely manner
3. I will present my rationale for my points of view and when asked for a rationale, I will act positively and offer my data for my conclusion.
4. If I am asked to respond or give my rationale to an issue and I am unready, I will say so, but will provide an approximate time when I will be.
5. I will say what I mean with no underlying messages in a positive manner.
6. I will not personalize issues or decisions.
7. If I have a concern or issue with another Council member or Mayor, I will go to that person first and in a positive, private, and timely manner, and share that concern. I will present my feelings and how those feelings affect me.
8. I will focus on the present and the future and use the past only as data for the present and the future.
9. If I am approached by someone, I will be open and positive and do my best to respond to his/her concerns.
10. I will not blame others for situations that I have opportunity to resolve.
11. I will recognize that the Council's role is to set policy and not to be administrators.
12. I will give other Council members and the Mayor advance notice through the City Manager of significant matters to be introduced at Council meetings so as to preclude stressful surprises at Council meetings. "Advance" means at least time to review the data.
13. I will engage in a robust dialogue with the community in a constructive and inclusive manner.
14. I will follow the intention and the law concerning doing Council business outside of Council meetings.

Visit McMinnville

Fiscal Year 2022 City Council Presentation



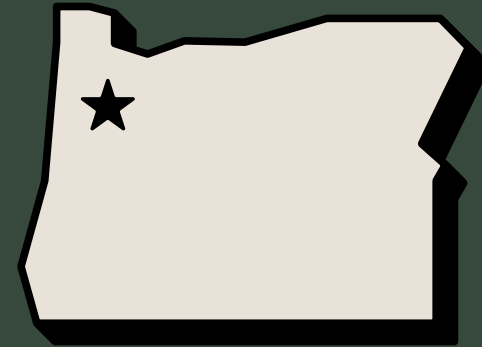
Visitor Economy Is A Powerful State Economic Driver



**\$12.8B Industry
In Oregon**

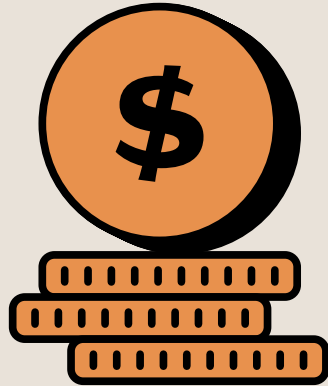


**117,500
Direct Jobs**

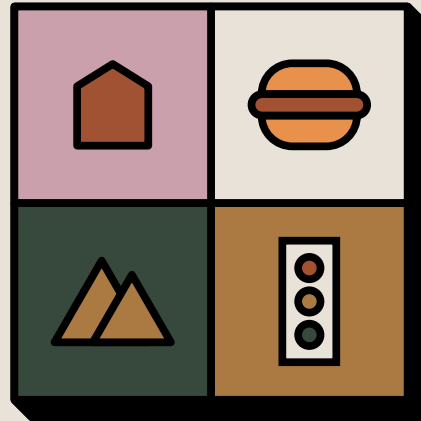


**\$592M State/Local
Tax Revenue**

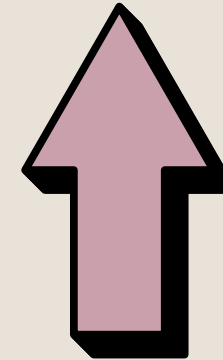
Visitor Economy Impact On Yamhill County



**\$138.8M Direct
Visitor Spending**



1,856 Direct Jobs
(lodging, food service,
recreation, entertainment &
transportation)

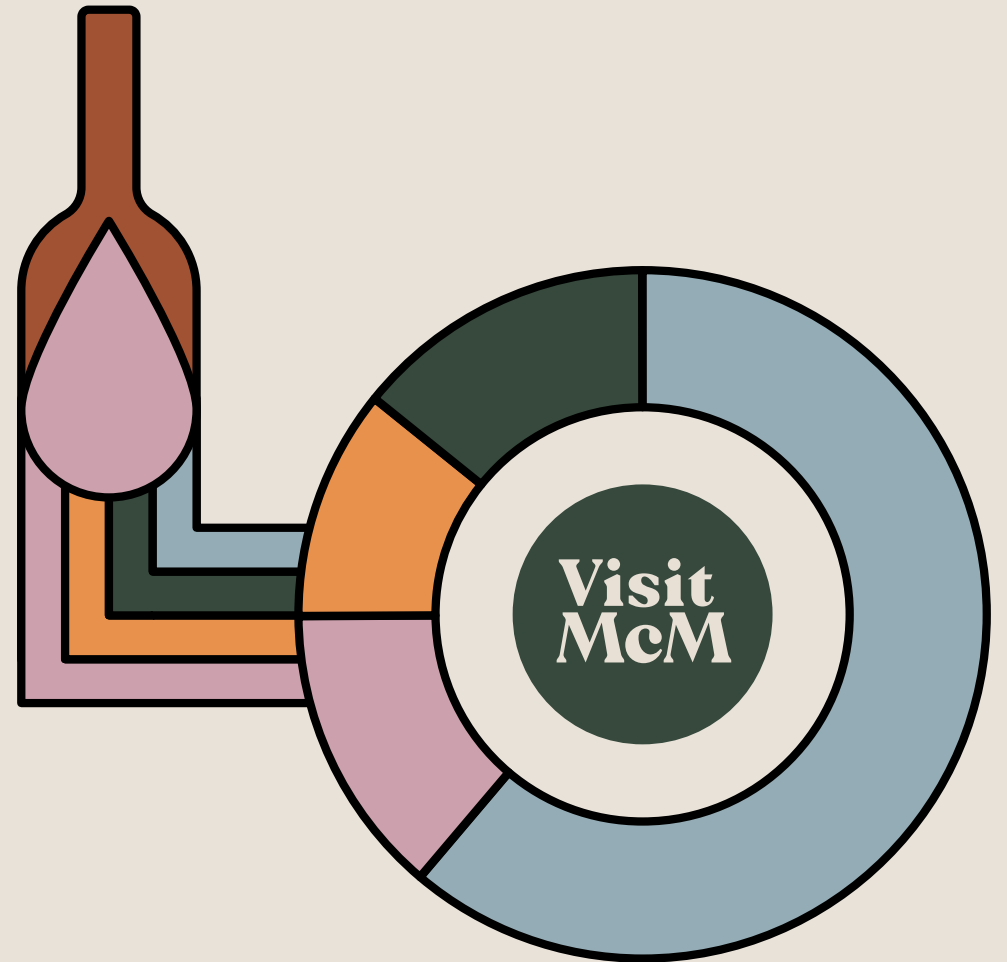


**Growth Compared
To Other Regions**

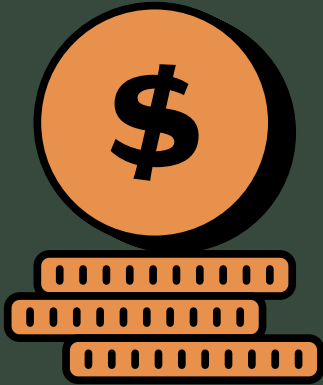
McMinnville is a desirable destination.

Visitor spending has far outpaced the region in the last 5 years:

- McMinnville (79.3% growth)
- Yamhill County (17.8% growth)
- Willamette Valley (14.1% growth)
- Oregon (18.4% growth)



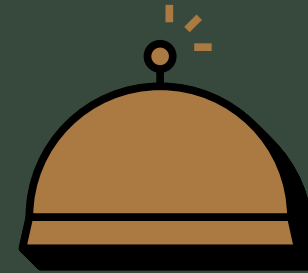
Visitor Economy Impact On McMinnville



**\$38.9M Direct
Visitor Spending**



430 Direct Jobs



**Leisure & Hospitality
Jobs Account For 8% Of
All Employment**

FY2021 Rearview

COVID Safety-Centric Marketing & Communications

Destination Development

Wayfinding & Social Distancing Sidewalk Art

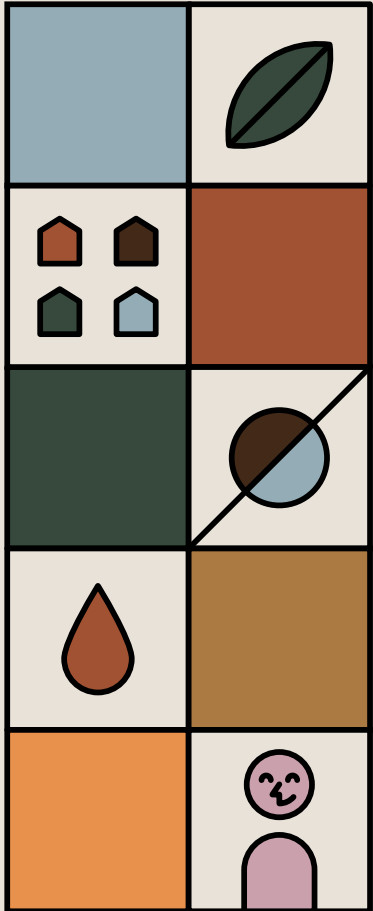
Downtown Kiosks & Lighting

MDA Partnership: \$48,000 Grant Supporting
Dine Out(Side) & Ongoing Community Events

Foundations Mural Project



FY2021 Current Projects



Targeted Marketing & PR Push

**Hospitality Training & Long-Term Workforce
Support Planning**

Foundations Mural Program

Bicycle Repair Stations & MHS Bike Racks

Data Investment

Local Business Support & Recruitment

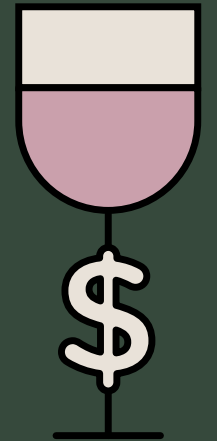
Visitor Economy Impact Education Tour



FY2022

Goals & Objectives

- **Attract Visitors Safely and Quickly to Spend Money with Local Businesses**
- **Highlight McMinnville as a Top Destination of Choice for Post-COVID Travel for Oregonians and Seattleites**
- **Support Local Business and Seek Out New Business Investment**
- **Diversify Destination Beyond Food and Craft Beverage**
- **Amplify Connectivity of Core Tourism Attractions and Districts**
- **Leverage Visitor Economy to Support Broader MACTOWN 2032 Economic Development Plan**
- **Continue to Develop Content Inclusive of Diverse Communities**



FY2022 TLT Comparison & Projection

Quarterly Breakdown

Aug 19 \$261,357
Aug 20 \$129,904 (49% of 19) *incl. back-owed TLT ~\$40k*
Aug 21 \$182,949 (70% of 19)

Nov 19 \$338,576
Nov 20 \$210,366 (62% of 19)
Nov 21 \$270,860 (80% of 19)

Feb 20 \$196,394
Feb 21 \$122,950 (62% of 19)
Feb 22 \$147,295 (75% of 20)

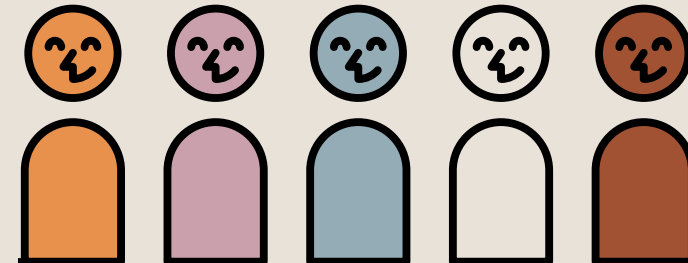
May 19 \$215,000
May 20 \$63,716
May 21 \$131,627 **estimated (60% of May 19)*
May 22 \$215,000 (same as May 19)

Fiscal Year Breakdown

FY20 \$860,043

FY21 \$593,000 **estimated (68% of FY20)*

FY22 \$816,104 (94% of FY20)



FY2022 High Level Budget

Estimated Revenue	\$816,104
G&A	\$95,884
Marketing & PR	\$573,607
Development	\$146,613
<i>Estimated Expenses</i>	<i>\$816,104</i>



**Fully Funded Reserves of \$120,000*



**Visit
McMinnville**

CITY OF MCMINNVILLE - CASH AND INVESTMENT BY FUND
February 2021

FUND #	FUND NAME	GENERAL OPERATING		TOTAL
		CASH IN BANK	INVESTMENT	
01	General	\$1,844,620.05	\$8,179,538.39	\$10,024,158.44
05	Special Assessment	\$516.32	\$136,162.82	\$136,679.14
07	Transient Lodging Tax	\$556.18	(\$6,000.00)	(\$5,443.82)
10	Telecommunications	\$26.11	\$9,030.00	\$9,056.11
15	Emergency Communications	\$536.83	\$36,094.81	\$36,631.64
20	Street (State Tax)	\$557.84	\$1,568,360.09	\$1,568,917.93
25	Airport Maintenance	\$20.42	\$503,749.03	\$503,769.45
45	Transportation	\$385.40	\$1,822,682.50	\$1,823,067.90
50	Park Development	\$322.96	\$1,616,441.49	\$1,616,764.45
58	Urban Renewal	\$717.99	\$204,082.31	\$204,800.30
59	Urban Renewal Debt Service	\$681.44	\$358,873.83	\$359,555.27
60	Debt Service	\$165.93	\$1,054,323.63	\$1,054,489.56
70	Building	\$256.47	\$1,445,521.39	\$1,445,777.86
75	Wastewater Services	\$147.18	\$2,426,515.30	\$2,426,662.48
77	Wastewater Capital	\$820.40	\$36,085,103.65	\$36,085,924.05
80	Information Systems & Services	\$134.93	\$226,310.83	\$226,445.76
85	Insurance Reserve	\$630.30	\$1,016,290.54	\$1,016,920.84
CITY TOTALS		1,851,096.75	56,683,080.61	58,534,177.36

MATURITY			INTEREST	
DATE	INSTITUTION	TYPE OF INVESTMENT	RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.20%	\$ 1,851,096.75
N/A	Key Bank of Oregon	Money Market Savings Account	0.75%	\$ 9,535,803.72
N/A	State of Oregon	Local Government Investment Pool (LGIP)	0.75%	\$ 45,548,534.88
N/A	State of Oregon	Transportation Bond (LGIP)	0.75%	\$ 561,350.22
N/A	State of Oregon	Urban Renewal Loan Proceeds (LGIP)	0.75%	\$ 254,241.15
N/A	MassMutual Financial Group	Group Annuity	3.00%	\$ 783,150.64
				<u>\$ 58,534,177.36</u>
				\$ -

CITY OF MCMINNVILLE - CASH AND INVESTMENT BY FUND
March 2021

FUND #	FUND NAME	GENERAL OPERATING		TOTAL
		CASH IN BANK	INVESTMENT	
01	General	\$2,575,646.95	\$6,490,932.54	\$9,066,579.49
05	Special Assessment	\$989.50	\$135,162.82	\$136,152.32
07	Transient Lodging Tax	\$913.16	(\$9,000.00)	(\$8,086.84)
10	Telecommunications	\$919.78	\$1,030.00	\$1,949.78
15	Emergency Communications	\$792.36	\$39,094.81	\$39,887.17
20	Street (State Tax)	\$912.75	\$1,568,945.23	\$1,569,857.98
25	Airport Maintenance	\$617.17	\$502,749.03	\$503,366.20
45	Transportation	\$422.03	\$1,821,968.56	\$1,822,390.59
50	Park Development	\$532.57	\$1,619,441.49	\$1,619,974.06
58	Urban Renewal	\$717.99	\$204,211.87	\$204,929.86
59	Urban Renewal Debt Service	\$460.07	\$358,097.46	\$358,557.53
60	Debt Service	\$587.18	\$1,129,423.93	\$1,130,011.11
70	Building	\$887.79	\$1,471,521.39	\$1,472,409.18
75	Wastewater Services	\$380.55	\$2,491,224.45	\$2,491,605.00
77	Wastewater Capital	\$321.36	\$36,603,103.65	\$36,603,425.01
80	Information Systems & Services	\$15.13	\$254,310.83	\$254,325.96
85	Insurance Reserve	\$792.71	\$955,290.54	\$956,083.25
CITY TOTALS		2,585,909.05	55,637,508.60	58,223,417.65

MATURITY	INSTITUTION	TYPE OF INVESTMENT	INTEREST	CASH VALUE
DATE			RATE	
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.20%	\$ 2,585,909.05
N/A	Key Bank of Oregon	Money Market Savings Account	0.60%	\$ 9,535,884.71
N/A	State of Oregon	Local Government Investment Pool (LGIP)	0.60%	\$ 44,501,927.54
N/A	State of Oregon	Transportation Bond (LGIP)	0.60%	\$ 561,636.28
N/A	State of Oregon	Urban Renewal Loan Proceeds (LGIP)	0.60%	\$ 254,370.71
N/A	MassMutual Financial Group	Group Annuity	3.00%	\$ 783,689.36
				<u>\$ 58,223,417.65</u>
				\$ -

CITY OF McMinnville
MINUTES OF CITY COUNCIL WORK SESSION
Held via Zoom Video Conference and at the Kent L. Taylor Civic Hall on Gormley Plaza
McMinnville, Oregon

Wednesday, April 22, 2020 at 5:30 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Claudia Cisneros

Councilors:	<u>Present</u>	<u>Absent</u>
	Adam Garvin	Zack Geary
	Remy Drabkin	
	Kellie Menke, Council President	
	Wendy Stassens	
	Sal Peralta	

Also present were City Manager Jeff Towery, City Recorder Claudia Cisneros, Planning Director Heather Richards, Information Systems Analyst Megan Simmons, Building Official Stuart Ramsing, Code Compliance Officer Nic Miles, Fire Chief Rich Leipfert, Code Compliance Officer Claudia Martinez, Fire Marshall Deborah McDermott, and member of the News Media –and Jerry Eichten, McMinnville Community Media.

1. CALL TO ORDER: Mayor Hill called the virtual meeting meeting to order at 5:35 p.m.
2. PRESENTATION & DISCUSSION: Amendments to Chapter 15 of the McMinnville Municipal Code, Buildings and Construction

Planning Director Richards gave a presentation on the proposed code amendments to Chapter 15 of the McMinnville Municipal Code. They would not be looking at new code language, but rather policies, programs, and concepts. Based on City Council direction staff would come back with proposed language as part of an ordinance amending the code. This was a near term action in MAC Town 2032 Strategic Plan under the Community Safety and Resiliency goal and the strategy to “proactively plan for and responsively maintain a safe and resilient community.” The Building Official, Fire Marshall, and Code Compliance team had been meeting over the past several months to discuss the proposed policy and program changes that would be presented tonight. This chapter was last updated in 1978. They proposed maintaining the same subject matter, building and construction, but tying it into the new code enforcement process outlined in Chapter 2.50 of the code—notification, compliance, enforcement (citation and abatement), cost recovery, and appeals. Staff would start with the proposed amendments to the existing code and then they would introduce a couple new programs.

Building Official Ramsing said the building code addressed construction, reconstruction, alteration, and repair of occupied buildings and the equipment within. They were adopted by the State, uniform across Oregon, administered locally, and local changes were not allowed. The uniform

State law was adopted in 1974 and gave broad authority over unsafe and unauthorized occupancy. It applied to all structures and construction. However, that changed in 2019. The clarified scope of the statute was limited to occupied buildings with no compliance options and no right of entry. Local regulations needed to fill the gap. Some of the local options were: require permits, grading, demolition, fire safety during construction, protection of adjacent property, encroachments into public way, retaining walls, cell, radio, and other towers, flag poles, signs, transitional housing accommodation, and Property Maintenance Code. The appeal options were: state building code issues appealed to State Building Codes Division and local regulations appealed to City Manager (current process).

Council President Menke asked if any of these were addressed in the old state code. Planning Director Richards said the issue was they all were addressed in the old state code, and now they were not. If they wanted to address them, it would have to be through the local code. Based on Council's direction, staff would bring back amendments to this chapter.

Councilor Peralta asked if the League of Oregon Cities or Association of Planners had come up with proposals to address the Attorney General's opinion legislatively in the upcoming session. He thought it might be premature to make changes to the code if there was an option to be part of a broader solution. He also asked what it would cost to make these adjustments to the code.

Planning Director Richards said the Attorney General's opinion had been underway for a while and she had not heard about a legislative fix for it. There would not be any hard dollars to put together the code amendments. It would all be done in-house with staff time and resources. It was more think tank work for staff and it could be put into their work program.

Mayor Hill thought the chapter was overdue for reviewing and amending and these were items that they wanted to have in the code.

Planning Director Richards agreed there was value to explore the items locally and decide what worked best for McMinnville.

Councilor Stassens asked if there would be an impact to enforcement. Planning Director Richards said this would become part of the Code Enforcement Program. The code gave them certainty and without that certainty they had to figure out solutions without a distinctive path. She thought Code Enforcement had the capacity to add these items.

Councilor Stassens asked what was missing in permits that needed to be added back in. Building Official Ramsing said there was nothing in the code that required someone to get a permit.

Councilor Peralta agreed there were items that made sense to have local authority over, but there were some that were broader issues. He thought they should keep a narrow scope of items and be part of the larger effort to resolve some of the issues that had been created by the Attorney General's opinion.

Building Official Ramsing said he had not heard that the State Building Division would be sponsoring any legislative action. It might happen, but currently there was no leadership at the state to get it remedied. During the interim they needed to put these codes in place or things would go unregulated. If in the future they were clarified legislatively, the state code would preempt local code.

Councilor Peralta asked what the timeline was for staff to work through the code. Building Official Ramsing thought two months for the items with standards that already existed. The others would need additional work and would take about six months.

Councilor Peralta suggested sharing the work with other jurisdictions, such as Newberg.

Councilor Drabkin thought they should give staff direction to work on these items and at the same time to reach out to other municipalities of similar size.

Planning Director Richards thought they should leave it to the Building Official for the best resources to reach out to for best practices and collaboration. They typically collaborated with other cities when putting codes together.

Councilor Garvin asked how the sign requirements would fit with the existing sign ordinance. Planning Director Richards said the development code looked at size and type of sign that was allowed. The building code looked at how signs were attached to a building or engineered into the ground so that it was safe.

Councilor Garvin asked if they planned to regulate all flagpoles or only ones above 30 feet. Building Official Ramsing said it would be for flagpoles more than 30 feet. The retaining walls would be those retaining more than four feet of earth behind it.

There was consensus for staff to move forward with the local option items.

Fire Marshall McDermott discussed the McMinnville Fire Code which was last updated in 1978-80. It referenced the Uniform Fire Code that was no longer available and contained fire zones for construction within the City which were no longer relevant. The current language contained outdated appeals and penalty processes, placed requirements that were more stringent than the current code allowed, and there were specific sections on smoke detectors, sprinklers, and alarms which were all found in the current building and fire codes. The proposed language would adopt the Oregon Fire Code and appendices, establish local authority to enforce the Fire Code, and provide for a local appeals process through the code. It would also establish the ability for the Fire Department to assess violation fees. Currently a misdemeanor was enforced through the Municipal Court. The proposed change would be to collect fees through the code process for the collection of Civil Penalties. The violations would be set by Council in a resolution but would mirror the Code Violation Civil Penalty Schedule in the code. The other proposed amendments would be: to include fees for inspections outside normal business hours, retain the current inspection model where one fire inspection and one re-inspection were done at no cost and subsequent inspections would have fees, and to add the ability to charge for Operational and Construction Permits as allowed by the Oregon Fire Code. She would also like to include restricted uses during fire season. The City would follow ODF restrictions and regulations during fire season including that open flame fire pits were prohibited during high fire index (red flag). She would also like the ability to issue permits to conduct restrictive activity as long as specific fire prevention measures were in place.

Councilor Peralta asked about leaf burning. Fire Marshall McDermott said it would be considered open burning or backyard burning which was allowed at certain times per year.

Councilor Peralta wanted to make sure the current policies on leaf removal were in alignment with the City's climate goals and policies.

Councilor Stassens said they had gotten feedback about conflicts between the building and fire codes and it would be good to have them aligned.

There was consensus for staff to move forward with amending the Fire Code as proposed.

Code Compliance Officer Miles discussed house moving regulations. The current House Moving code had not been updated since 1980. The code currently lived in Chapter 15, Buildings and Construction. They had received collaborative feedback from the Engineering Department, Building Department, Police Department, and McMinnville Water & Light. The current code required a \$1,000 refundable deposit to cover damages to trees, sidewalks, streets, overhead utility lines, etc. Once the deposit was made, they had to give a 24 hour notice to electric and telephone companies. The Street Commission designated the routes of the house move. The house move must use rollers and planks to protect streets. Proposed updates were: requiring proof of general liability insurance and auto liability insurance from the applicant, the donor site had to have any city liens or charges paid before the move, and the building permit must be obtained to site the building in its new location on a permanent foundation. There were options for approval of the moving route. Option 1 was the applicant identified the route and submitted it for review. Option 2 was the applicant was provided with an approved route. For either scenario the route would be reviewed by the Engineering, Building, and Police Departments, as well as McMinnville Water & Light, ODOT, and the railroad if applicable. Some Council considerations were: should they charge permit fees to recover costs associated with route review and should they require a refundable deposit for damages in addition to insurance.

Councilor Peralta thought the Planning Department should provide the route and that there should be cost recovery and a refundable deposit.

There was consensus for staff to move forward with the proposed changes.

Code Compliance Officer Miles suggested adopting new code for safe and habitable structures. This would give staff extra resources to work with in regard to exterior property maintenance, unsafe structures, and unauthorized occupants. Currently there was no local code for proactive abatement of dangerous structures. The Building Code addressed new construction, remodels, and alterations. The Fire Code mainly addressed life safety issues after incidents occurred. The nuisance code allowed them to address the symptoms of unsafe structures, such as rodents entering through a hole in the wall, but not the problem at its core, the hole in the wall. He gave examples of what he was talking about including broken windows/glazing, unsecured doors, unsealed surfaces, and structural deficiencies. The proposed solution was the adoption of the International Property Maintenance Code (IPMC). This was a nationally recognized and adopted housing and property maintenance code. It was managed by the International Code Council and adopted locally by more than 600 jurisdictions across the country. It could always be improved upon with a new edition every three years. The IPMC established minimum requirements for the maintenance of existing buildings through model code regulations that contained clear and specific property maintenance and property improvement provisions. The IPMC addressed unauthorized occupants through:

602.2 Residential occupancies.

- Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68 degrees Fahrenheit. Cooking appliances shall not be used nor shall

portable unvented fuel-burning space heaters be used as a means to provide the required heating.

505.3 Supply.

- The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressure adequate to enable the fixtures to function properly, safely and free from defects or leaks.

The IPMC would be administrated by Code Compliance staff, following current Chapter 2 Notice and Abatement process. Adoption of the IPCM would not require any new code writing by staff. Staff would get certification as Property Maintenance and Housing Inspectors (cost neutral, funds reallocated from cancelled state conference). The Building Official would provide technical guidance as necessary (paid through the General Fund).

There was discussion regarding examples in the City where this code was needed to address issues.

Code Compliance Officer Miles stated they would be able to work with property owners and draw up a timeline for items to be addressed and if there was an immediate issue, it could be expedited quickly.

There was consensus for staff to proceed as proposed.

Code Compliance Officer Martinez discussed a proposed rental inspection program. This would be a new program that would operate out of Code Compliance to ensure that basic minimum standards of maintenance were being achieved on the interior of residential rentals in McMinnville. Many other cities offered similar programs and Code Compliance reviewed their programs and was bringing a best practices recommendation for consideration. The purpose of the program was to address the issue of substandard rental properties, promote greater compliance with health and safety standards, and preserve the quality of McMinnville neighborhoods and available housing. The program would achieve compliance of health, safety and welfare code violations in/on residential rental properties that were a threat to the occupant's safety and a negative impact on the surrounding neighborhoods. It would establish a minimum standard of habitability for residential rentals in McMinnville. If a tenant had a problem, they needed to work with the landlord first to resolve it and they must have proof that this effort had occurred. If the tenant could not resolve the issue, they could call Code Compliance who would conduct an inspection and enforce compliance with the landlord to the minimum standards. They would establish minimum habitability standards for all residential rental properties through the IPMC. The standards covered ten areas: heating, plumbing, security, electrical, appliances, smoke detection, structural integrity, weatherproofing, carbon monoxide alarms, and rats. They would establish a residential rental ownership database. The owners or the owner's agent would need to register their rental dwelling unit with the City. They would initially provide one year to do so. Registration would include the owner/manager contact info which would be helpful to other departments such as Fire and Police in case of an emergency and the property was vacant or the tenant could not be located. The Code Compliance and Community Relations Department would administer the program by creating a tracking system of rentals and conducting inspections only on a complaint basis. The database would be internally managed and the code compliance process would follow the same current process outlined for nuisances in terms of notification, compliance, and enforcement. Landlords would not pay to be on

the rental registry and would initially have a year to register with the City. Failure to register would be in violation of the rental code and would be assessed a civil penalty. Violation of this code would be a Class 6 Code Violation (\$100 per unregistered dwelling unit). This revenue could help to fund the database management. She gave a comparison of other cities and their respective fees:

- Beaverton - \$75 per unit for the first 40 units plus \$1.25 for each additional unit
- Corvallis - \$15 per unit, \$1 increase in odd-calendar years
- Eugene - \$10 per unit per year
- Gresham - \$55 for the first two units plus a sliding scale of \$20 to \$45 on additional units
- Medford - \$40 for the first unit plus \$1 for each additional unit
- Portland – fees were currently being determined
- Salem - \$44.50 for the first three units plus a sliding scale on additional units

Since this would be on a complaint basis only, current Code Compliance staffing had capacity with new efficiency systems to absorb the anticipated workload. There would be no new staffing impact. Although many cities charged an annual permit fee to fund the administration of the program, staff was recommending that no fee be charged for the first three years to establish the program and then re-evaluate the value of the program and costs to administer the program. The rental inspection program would provide a process that ensured a renter notified the owner of concerns before making a formal complaint with the City. The program would be on a complaint basis. The program would help tenants and property owners communicate to resolve issues without using the City's enforcement process or legal action through the court system. A formal complaint could be filed with the City only after the tenant provided the owner or property manager written notification and allowed them 10 days to remedy the problem. It gave Code Compliance officers the ability to abate necessary repairs to the rental units if owners/owners agents failed to remedy the problem. Tenants, especially low income renters, senior citizens, college students, and non-English speaking renters, did not have the luxury of time or knowledge to make use of legal remedies or to go up against a professional landlord. They were unaware of their rights under the Landlord Tenant law or other available resources and services. The program would provide a local option to address habitability concerns by adopting the 2018 IPMC. It would help preserve the quality of McMinnville neighborhoods and available housing and assure that such housing did not become a nuisance or blight to the neighborhood.

Council President Menke asked how they would get this information out to renters. Code Compliance Officer Martinez said there would be a press release and it would be on social media.

Mayor Hill asked if the number of rentals was about 40%. Planning Director Richards said it was a little bit more than 40%.

Mayor Hill asked about the estimated cost to implement the program. Planning Director Richards was not sure as it was a program the City never had before. That was why staff suggested moving forward without a fee for three years so they could evaluate the costs associated with the program. The biggest lift would be setting up the database and chasing down those who did not participate. They had set up a similar program for vacation rentals. It would be complaint driven just as nuisances were processed and they would work with landlords to get them into compliance. She did not anticipate that there would be a lot of complaints.

Councilor Peralta expressed concern about setting up and maintaining a long term database. He questioned the need for the database. He thought they could establish conditions for what constituted a rental and the units that fell under that category would be subject to the ordinance. Planning Director Richards said the database was for the contact information for the responsible party so they could make sure to get the notice to the correct person.

Code Compliance Officer Martinez thought the database would be important if they needed to do something for a health and safety emergency so the City could fix it immediately and send an invoice to the owner.

Councilor Peralta would like staff to look into the cost of the program with the database and without it. He thought they would need to hire another staff person to maintain the database long term.

Planning Director Richards said staff would do more work on this program and bring it back to a future Work Session. They had no intention of the program costing more money to bring online. There was no recommendation for hiring another FTE.

Councilor Drabkin thought they should move forward with the program as it gave added protections to their most vulnerable populations.

Council President Menke thought the database was one of the most important features of the program.

Councilor Peralta thought the database would be a bigger lift than they were anticipating and they should take steps now to implement the policy ahead of being able to do the database. He was only asking for a comparison.

Councilor Drabkin thought it was a tool needed to execute the program.

Planning Director Richards said they could put the program into place in the code to provide the service and use the property owner notification process to get compliance. Then they could give themselves two years to put the database into place.

Councilor Stassens asked how they would communicate this program to the property management community. She thought they should be involved early in this process. Code Compliance Officer Martinez thought they could send out a letter to all of the local management companies as well as to private landlords.

Planning Director Richards said for getting information to the tenants, they would do a direct communication as well as broad communication through social media outlets.

Councilor Peralta suggested making it a requirement of a landlord to supply the information when the tenant signed the lease agreement. Planning Director Richards would look into it.

Code Enforcement Officer Martinez said the Housing Authority sent out newsletters to their clients and this information could be included in one of their newsletters.

Council President Menke suggested going through local insurance companies as well.

Councilor Garvin was also concerned about the cost of the database. He thought the program should be added to the code, but instead of managing a large database they should log data as they received complaints.

There was consensus for staff to move forward with putting the program into code but to bring back more information about the cost and necessity of the database.

3. ADJOURNMENT: Mayor Hill adjourned the Work Session at 7:26 p.m.

Claudia Cisneros, City Recorder

DRAFT



City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311
www.mcminnvilleoregon.gov

STAFF REPORT

DATE: May 25, 2021
TO: Mayor and City Councilors
FROM: Tom Schauer, Senior Planner
SUBJECT: Resolution 2021-23, Appointments to the Affordable Housing Committee
STRATEGIC PRIORITY & GOAL:



ENGAGEMENT & INCLUSION

Create a culture of acceptance & mutual respect that acknowledges differences & strives for equity.

OBJECTIVE/S: Grow City's employees and Boards and Commissions to reflect our community

Report in Brief:

This is consideration of Resolution No. 2021-23, appointing volunteers to the Affordable Housing Committee.

Background:

The City of McMinnville has many boards, committees and commissions that support the City's work on a volunteer basis. The City has solicited applications to fill current vacancies for voting members on the Affordable Housing Committee. There are four vacancies, and four applications were submitted. The terms on the Affordable Housing Committee are staggered three-year terms. These appointments would serve the remaining balance of the three-year terms for these vacancies.

Discussion:

The Chair and Vice Chair of the Affordable Housing Committee have reviewed the applications and recommend their appointment to the current vacancies.

Attachments:

1. Resolution 2021-23
2. Redacted applications

Fiscal Impact:

There is no anticipated fiscal impact to the City of McMinnville with this decision.

Recommendation:

"I MOVE TO APPROVE RESOLUTION NO. 2021-23 APPOINTING THE FOLLOWING PEOPLE TO THE AFFORDABLE HOUSING COMMITTEE:

- Katie Curry, to serve the balance of the 3-year term that expires on December 31, 2021.
- Steve Iversen, to serve the balance of the 3-year term that expires on December 31, 2021.
- Vickie Ybarguen, to serve the balance of the 3-year term that expires on December 31, 2022.
- Howie Harkema, to serve the balance of the 3-year term that expires on December 31, 2022.

RESOLUTION NO. 2021-23

A Resolution Appointing Members to the Affordable Housing Committee.

RECITALS:

The City of McMinnville has several Boards, Committees, Commissions, and Task Forces made up of volunteers; and

The City Council is responsible for making appointments and re-appointments.

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

- 1. The City Council appoints the following volunteers to the Affordable Housing Committee (3-year staggered terms):

Katie Curry, new appointment to vacancy, remainder of term ending 12/31/2021
 Steve Iversen, new appointment to vacancy, remainder of term ending 12/31/2021
 Vickie Ybarguen, new appointment to vacancy, remainder of term ending 12/31/2022
 Howie Harkema, new appointment to vacancy, remainder of term ending 12/31/2022

- 2. This Resolution and these appointments will take effect immediately.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 25th day of May, 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 25th day of May, 2021.

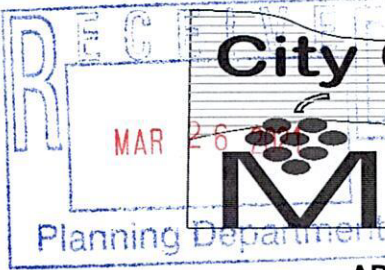
MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder



City Of

McMinnville



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Katie Curry

Home Phone: -

Address: [Redacted]

Cell Phone: [Redacted]

McMinnville

Work Phone: [Redacted]

Email: [Redacted]

Board, Commission or Committee for which you are an applicant:

- Advisory Board, Airport Commission, Board of Appeals, Budget Committee, Citizens' Advisory Committee, Historic Landmark Committee, Landscape Review Committee, McMinnville Affordable Housing Task Force, McMinnville Urban Renewal Advisory Committee (MURAC), Planning Commission

Ward in which you reside (if applicable):

How many years have you lived in McMinnville? Recently moved here

Educational and occupational background: Executive Director at McMinnville Area Habitat for Humanity (as of 3/29/21). Linfield College - BA in Mass Communications. Marketing Director for an association Management company working with small non profit organizations.

Why are you interested in serving? I have a passion for helping others and working with volunteers. During the past year, I've done lots of research on diversity, equity, & inclusion (DEI) and the impact they having on housing. As Mac Habitat's new Director, I believe my service on the task force will benefit my organization and the City.

Date 3-25-21

Signed [Redacted]

Please return to City Hall, 230 NE Second Street, McMinnville, OR 97128



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Steve Iversen

Home Phone: _____

Address: _____

Cell Phone: _____

McMinnville, OR 97128

Work Phone: _____

Email: _____

Board, Commission or Committee for which you are an applicant:

- | | |
|---|---|
| <input type="checkbox"/> Advisory Board | <input type="checkbox"/> Landscape Review Committee |
| <input type="checkbox"/> Airport Commission | <input checked="" type="checkbox"/> McMinnville Affordable Housing Task Force |
| <input type="checkbox"/> Board of Appeals | <input type="checkbox"/> McMinnville Urban Renewal Advisory Committee (MURAC) |
| <input type="checkbox"/> Budget Committee | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Citizens' Advisory Committee | |
| <input type="checkbox"/> Historic Landmark Committee | |

Ward in which you reside (if applicable): Ward 1

How many years have you lived in McMinnville? 10 years

Educational and occupational background: PhD experimental nuclear physics
30 years as scientist & science manager at DOE contractor for the Nevada National Security Site;
research & development in systems for radiation, chemical and optical sensors
for use in programs supporting stockpile stewardship, environmental remediation and
national security.

Why are you interested in serving? I am a member of Friends of Yamhill County and have
been an active volunteer at the local Habitat for Humanity, primarily on home construction. I'm also
on the board of Zero Waste McMinnville. The issues of growth and affordable housing are
important in the activities of all these organizations. I also have a personal interest in these issues,
and the related issue of homelessness, and wish to both become better informed on what my
community has done and become involved in planning for the future.

Date March 23, 2021

Signed _____

Please return to City Hall, 230 NE Second Street, McMinnville, OR 97128



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Vickie Ybarguen

Home Phone: [REDACTED]

Address: [REDACTED]

Cell Phone: [REDACTED]

McMinnville, OR 97128

Work Phone: [REDACTED]

Email: [REDACTED]

Board, Commission or Committee for which you are an applicant:

- | | |
|---|---|
| <input type="checkbox"/> Advisory Board | <input type="checkbox"/> Landscape Review Committee |
| <input type="checkbox"/> Airport Commission | <input checked="" type="checkbox"/> McMinnville Affordable Housing Task Force |
| <input type="checkbox"/> Board of Appeals | <input type="checkbox"/> McMinnville Urban Renewal Advisory Committee (MURAC) |
| <input type="checkbox"/> Budget Committee | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Citizens' Advisory Committee | |
| <input type="checkbox"/> Historic Landmark Committee | |

Ward in which you reside (if applicable): _____

How many years have you lived in McMinnville? 43

Educational and occupational background: I have lived in McMinnville most of my life, and graduated from Linfield with a B.S. in Accounting. I have worked at the Housing Authority of Yamhill County (HAYC) for almost 14 years, working in both I.T. and Finance, before my current position as Executive Director.

Why are you interested in serving? While working at HAYC, I have gained a great passion for affordable housing. I have been attending the Affordable Housing Task Force meetings for several years, to learn from others and provide insight from the perspective of the Housing Authority. My experience and ongoing work with affordable housing adds to the discussion of the challenges and potential solutions to affordable housing in McMinnville. I look forward to the opportunity to serve McMinnville as a member of the Affordable Housing Committee.

Date 3/5/21

Signed [REDACTED]

Please return to City Hall, 230 NE Second Street, McMinnville, OR 97128



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Howie Harkema Home Phone: _____
Address: _____ Cell Phone: _____
McMinnville, OR 97128-3010 Work Phone: _____
Email: _____

Board, Commission or Committee for which you are an applicant:

- | | |
|---|---|
| <input type="checkbox"/> Advisory Board | <input type="checkbox"/> Landscape Review Committee |
| <input type="checkbox"/> Airport Commission | <input checked="" type="checkbox"/> McMinnville Affordable Housing Task Force |
| <input type="checkbox"/> Board of Appeals | <input type="checkbox"/> McMinnville Urban Renewal Advisory Committee (MURAC) |
| <input type="checkbox"/> Budget Committee | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Citizens' Advisory Committee | |
| <input type="checkbox"/> Historic Landmark Committee | |

Ward in which you reside (if applicable): _____

How many years have you lived in McMinnville? 14 yrs
Educational and occupational background: BA art and Music, Marketing.

Why are you interested in serving? 14 year involvement in homelessness in Yamhill County.

Date 3-3-2021 Signed _____

Please return to City Hall, 230 NE Second Street, McMinnville, OR 97128

My Personal Involvement in Community

December 30, 2007 thru April 29, 2015 Operations Manager

The Soup Kitchen at St. Barnabas – 7.33 years

2007 / 2018 Co-Writer and Committee Member for Yamhill County End Homelessness Ten Year Plan

2008 / 2018 Cofounder of Love in Action with Joyce Wolcott

– 170+ Service Providers / Ministries working together to assist each other in a various ways: fundraising, offering suggestions and to fill in the missing gaps

2008 / 2009 Pre-C-WISH sheltering program titled Homeless Overflow - 2 churches

2010 / 2016 C-WISH Community - Winter Inclement Shelter Help

6 churches - sheltering those whom are homeless from the winter elements, when the temperature dips to 32° F and below
2091 sheltering's over the 8 year span

2013 / 2021 Vice President, Board of Directors of McMinnville Free Clinic

– A medical free clinic housed at First Baptist Church

First and Third Saturdays from 9:00 a.m. – 1:00 p.m.

For all residents of Yamhill County with no or limited insurance coverage 2677 patient visits

2015 / 2018 Piecing Community Together Co-Founder - 30 events - 2693 Served

2013 / 2021 Speaking Frankly: And How We Doin'? – A local YC Interview TV program

Bringing an awareness to community on local issues

2015 / 2021 President of Encompass Yamhill Valley and COMPASS ONE Advocacy Center

2020 / 2021 Executive Director of Champion Team Peer-To-Peer Mental Health Drop-In Center

2020 / 2021 Representative of the Tri-County Fair Housing Council for Yamhill County CAG

2020 / 2021 Citizen member of the Affordable Housing Task Force for McMinnville

2008 / 2018 Steering Committee member of Community Connect Yearly event for McMinnville

2018 / 2021 Housing Solutions member for Yamhill County

STAFF REPORT

DATE: May 18, 2021
TO: Mayor and City Councilors
FROM: Kylie Bayer, Human Resources Manager
SUBJECT: Resolution No. 2021-28 Diversity, Equity & Inclusion Advisory Committee
Appointment and Term Lengths

STRATEGIC PRIORITY & GOAL:



ENGAGEMENT & INCLUSION

Create a culture of acceptance & mutual respect that acknowledges differences & strives for equity.

OBJECTIVE/S: Grow City's employees and Boards and Commissions to reflect our community

Report in Brief:

This is the consideration of Resolution No. 2021-28, appointing volunteers to serve on the Diversity, Equity & Inclusion Advisory Committee and assigning term lengths.

Background:

On October 6, 2020, the City Council approved Ordinance No. 5097 establishing a Diversity, Equity & Inclusion Advisory Committee (DEIAC).

The DEIAC is responsible for the following:

- 1) Advising the Council on policy decisions related to diversity, equity, and inclusion;
- 2) Making recommendations to the Council on public engagement strategies and methods by which McMinnville residents can better participate in the decision-making process;
- 3) Advising the City on culturally responsive service delivery, programming, and communication strategies;
- 4) Updating and overseeing progress on the City's Diversity, Equity and Inclusion Plan;
- 5) Overseeing progress on applicable goals and objectives in the 2019 Mac-Town 2032 Strategic Plan; and
- 6) Identifying local leaders and building leadership capacity in McMinnville's communities of color.

The City Council approved Resolution No. 2021-03 at the February 9, 2021 City Council Meeting, appointing members to the committee. The Resolution did not establish the initial staggered term length for each member.

Discussion:

Following approval of Resolution No. 2021-03, committee member, Alisha Overstreet, resigned her position with the committee. The first alternate, Emilio Delgado, declined the open position due to scheduling difficulties. The second alternate, Sarah Schwartz, accepted the position.

DIVERSITY, EQUITY & INCLUSION ADVISORY COMMITTEE

Maged Abo-Hebeish	Efrain Arredondo	Christine Bader	Tiffany Henness
Tony Lai	Larry Miller	Sarah Schwartz	
Youth Rep. Cecilia Flores			

To ensure continuity on the Diversity, Equity & Inclusion Advisory Committee, the committee recommends member term lengths begin on a staggered basis, as follows:

Maged Abo-Hebish	Expires: December 31, 2022
Efrain Arredondo	Expires: December 31, 2024
Christine Bader	Expires: December 31, 2024
Remy Drabkin	Expires: December 31, 2023
Cecilia Flores	Expires: December 31, 2023
Tiffany Henness	Expires: December 31, 2024
Tony Lai	Expires: December 31, 2024
Larry Miller	Expires: December 31, 2023
Sarah Schwartz	Expires: December 31, 2022

Attachments:

Resolution No. 2021-28

Fiscal Impact:

There is no anticipated fiscal impact to the City of McMinnville with this decision.

Recommendation:

It is recommended that the Council move to approve Resolution No. 2021-28 appointing Sarah Schwartz to the Diversity, Equity & Inclusion Advisory Committee and assigning the recommended term lengths for each committee member.

RESOLUTION NO. 2021 - 28

A Resolution Appointing Members to the Diversity, Equity, and Inclusion Advisory Committee.

RECITALS:

On October 6, 2020 the City Council approved Ordinance No. 5097, an Ordinance Adopting a New McMinnville Municipal Code Chapter 2.35, Establishing a Diversity, Equity, and Inclusion Advisory Committee (DEIAC); and

On February 9, 2021 the City Council approved Resolution No. 2021-03 appointing seven committee members, one youth liaison, and one Council liaison to the DEIAC; and

On April 8, 2021 the DEIAC voted to recommend the appointment of Sarah Schwartz to the DEIAC; and

On May 13, 2021 the DEIAC voted to recommend staggered initial term lengths as outlined below.

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

1. The City Council appoints the following new volunteer to the Diversity, Equity, and Inclusion Advisory Committee and initial member term lengths as detailed below.

DIVERSITY, EQUITY, AND INCLUSION ADVISORY COMMITTEE (4-year terms, staggering to begin with)

Sarah Schwartz	New Appointment, expires December 31, 2022
Maged Abo-Hebeish	Existing Member, expires December 31, 2022
Efrain Arredondo	Existing Member, expires December 31, 2024
Christine Bader	Existing Member, expires December 31, 2024
Remy Drabkin	Existing Member, expires December 31, 2023
Tiffany Henness	Existing Member, expires December 31, 2024
Tony Lai	Existing Member, expires December 31, 2024
Larry Miller	Existing Member, expires December 31, 2023
Cecilia Flores	Existing Member, expires December 31, 2023

2. This Resolution and these appointments will take effect immediately upon adoption.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 25th day of May, 2021 by the following votes:

Ayes: _____

Nays: _____

Abstain: _____

Approved this 25th day of May, 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder



STAFF REPORT

DATE: May 5, 2021
TO: Jeff Towery, City Manager
FROM: Mike Bisset, Community Development Director
SUBJECT: Hangar F Lease Amendment

Report in Brief:

This action is the consideration of a resolution approving a lease amendment with the McMinnville Airport Condominium Hangars Owners Association (McMinnville Airport Condos) for hangar F at the airport.

Discussion:

The initial lease with McMinnville Airport Condos was entered into in 1993, and is set to expire on August 31, 2028 (see attached 1993 lease document). Per section 21 of the original lease, at the end of the lease period the City had the option of taking ownership of the hangars, or requiring that the lessee remove the hangars and return the lease area to the airport.

In 2017, the City developed a new lease document with different lease renewal terms. The new lease terms allow for additional renewal terms of five (5) years each throughout the useful lifetime of the hangar. The lease will end at the end of the useful lifetime of the hangar. At that time, the hangar is to be removed by the lessee, and the lease area is returned to the airport.

Upon adoption of the new lease renewal terms, the Airport Commission and City Council indicated that the City would work with existing tenants to amend their lease(s) to include the new renewal terms. The attached lease amendment modifies the existing lease to include the new renewal terms.

The Airport Commission considered the lease amendment at their meeting on May 4, 2021. The Commission unanimously recommended that the City Council approve the lease agreement.

Attachments:

1. Proposed Resolution No. 2021-29
2. Proposed Lease Amendment - 2021
3. Hangar F Lease - 1993

Fiscal Impact:

The lease revenue is included in the Airport Fund budget, and is used to fund airport operations.

Recommendation:

The Airport Commission recommends that the City Council adopt the attached resolution approving lease amendment with the McMinnville Airport Condominium Hangars Owners Association for hangar F at the airport.

RESOLUTION NO. 2021 - 29

A Resolution approving a lease amendment with the McMinnville Airport Condominium Hangars Owners Association for hangar F at the airport.

RECITALS:

In 1993, the City entered into a lease with the McMinnville Airport Condominium Hangars Owners Association for hangar F at the airport, and the lease is set to expire on August 31, 2028.

The lease amendment will allow for additional renewal terms of five (5) years each throughout the useful lifetime of the hangar. The lease will end at the end of the useful lifetime of the hangar. At that time, the hangar is to be removed by the lessee, and the lease area is returned to the airport.

The Airport Commission considered the proposed lease at the May 4, 2021 Commission meeting, and unanimously recommended that the City Council approve the lease.

The public interest will be best served by entering into the lease for the generation of revenue.

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

1. That the Second Amendment to Lease with the McMinnville Airport Condominium Hangars Owners Association for hangar F at the airport, attached hereto as Exhibit 1, is hereby approved.
2. That the City Manager is authorized and directed to execute the Second Amendment to Lease.
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 meeting held the 25th day of May 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 25th day of May 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBIT:

1. Second Amendment to Lease with the McMinnville Airport Condominium Hangars Owners Association for hangar F at the airport

After recording, return to:
City of McMinnville
Attn: Legal Department
230 NE Second Street
McMinnville, OR 97128

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease is entered into on this ___ day of _____, 20__ by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as “Lessor”), and **McMinnville Airport Condominium Hangars Owners Association** (“Lessee”).

RECITALS:

In 1993, Lessor entered into a Lease with Lessee to lease from Lessor certain premises located at the McMinnville Municipal Airport (“Lease”). That Lease is recorded with the Yamhill County Recorder’s Office as document no. _____.

The parties desire to amend the Lease to include the provisions provided herein.

NOW, THEREFORE, Lessor and Lessee agree as follows:

1. **Option to Renew.** The Lease is hereby amended to add Paragraphs 43 and 44, relating to Lessee’s option to renew the Lease, as follows:

“43. Option to Renew. Lessee shall have the right, subject to City approval and subject to Lessee meeting the conditions contained herein prior to the expiration of the Initial Term, to renew this Lease for additional renewal terms of five (5) years each (“Renewal Term”), throughout the useful lifetime of the hangar as determined by the provisions set forth in this Paragraph. Not less than ninety (90) days prior to the expiration of the Initial Term, and each Renewal Term approved under the conditions outlined herein, City shall give Lessee written notice of the pending expiration of the then current Lease term and of the inspection requirements outlined in Paragraph 43.1 of this Lease (“Renewal/Inspection Notice”). Provided Lessee meets all conditions of renewal as outlined herein and is not in default of any Lease provision, Lessee’s desire to exercise such right of renewal shall be considered automatic. If Lessee does not desire to exercise the right of renewal, Lessee shall notify the City in writing within thirty (30) days of the date of City’s Renewal/Inspection Notice, of the intent not to renew the Lease. Such notice of intent not to renew the Lease must contain an outline of Lessee’s plans for removal of the hangar at the end of the existing term in accordance with Paragraph 44 of this Lease.

43.1 Renewal Term Inspection Requirements. Within thirty (30) days of the date of the City’s Renewal/Inspection Notice, Lessee, at Lessee’s sole expense, shall hire

an independently licensed professional engineer, architect or building contractor to conduct an assessment and inspection of the hangar based on the criteria set forth herein. Lessee shall cause such inspection and assessment to be completed, and a written report of all findings from the inspection (“Inspection/Assessment Report”) to be filed with the City within sixty (60) days of the date of the City’s Renewal/Inspection Notice to Lessee. Failure of the Lessee to order such inspection and assessment or to provide the City with the Inspection/Assessment Report as required, shall be considered a violation of the Lease, and shall be grounds for denial of the Renewal Term.

43.2 Inspection/Assessment Report. The Inspection/Assessment Report to be provided to the City shall include, but not be limited to:

43.2.1 A detailed list of any maintenance deficiencies found in the interior and on the exterior of the hangar;

43.2.2 A statement verifying Lessee’s compliance with current City of McMinnville Municipal Code Airport Property Regulations and the McMinnville Municipal Airport’s adopted Minimum Standards for Commercial Aeronautical Activities, including the limits on storage of hazardous materials and appropriate usage of the Property; and

43.2.3 A structural assessment as to the remaining useful life of the hangar and recommendations for improvements which would increase the useful life expectancy of the hangar.

43.3 Deficiencies Satisfied. Lessee shall satisfy all deficiencies identified in the Inspection/Assessment Report within thirty (30) days of the date of such report. If deficiencies require more than thirty (30) days to correct, Lessee may make a written request to the City Manager for an extension of the standard correction time. The City Manager shall not unreasonably deny the extension. Failure of Lessee to correct each reported deficiency will result in ownership of the hangar reverting to the City.

43.4 Appeal of Deficiencies. If Lessee objects to a deficiency identified in the Inspection/Assessment Report, Lessee may file a written appeal with the City Manager. Such appeal must be submitted to the City Manager within ten (10) days of the date of the Inspection/Assessment Report.

43.5 Approval of Renewal Term. Upon Lessee’s completion of all conditions precedent to the commencement of the Renewal Term, including, but not limited to, the satisfactory correction of all deficiencies identified in the Inspection/Assessment Report, the City shall approve the extension of the Lease for one five-year Renewal Term, or for less than a five-year Renewal Term if the Inspection/Assessment Report reflects the conclusions outlined in the following Paragraph 43.6.

43.6 Final Renewal Term; Removal of Hangar. In the event the Inspection/Assessment Report results in a finding that the anticipated remaining useful life of the hangar is five (5) years or less, the pending Renewal Term shall be deemed to be the last Renewal Term available under this Lease (the “Final Renewal Term”). In such event, Lessee shall agree, as a condition to approval of the Final Renewal Term, to remove the hangar, at Lessee’s expense, at the end of the Final Renewal Term. If the Lessee does not agree to remove the hangar at the end of the Final Renewal Term, the City shall deny the request to renew and Lessee must remove the hangar and surrender the Property to the City within thirty (30) days of the expiration or termination of the Renewal Term then in effect. If Lessee fails to remove the hangar as required, the City shall consider the hangar a nuisance to be abated in accordance with McMinnville Municipal Code, and after notice to Lessee, may abate the nuisance and charge the Lessee the cost of abatement, plus a penalty as provided in the aforementioned Code.

43.7 Compliance with Airport Policy. Notwithstanding any other provision of this Lease, any part of this Paragraph 43 shall be amended as necessary to comply with any Airport policy adopted by the McMinnville City Council following recommendation of the City’s Airport Commission, or its successor, provided that, no such amendment shall shorten a renewal term in effect on the date of policy adoption, or require Lessee to expend additional moneys on hangar improvements during the Renewal Term in effect on the date of policy adoption.

44. Return Of Property At The End Of The Lease. Upon the expiration or termination of this Lease, Lessee shall remove the hangar at Lessee’s sole expense, and surrender the property to the City within thirty (30) days of the date of expiration or termination of the Lease. If Lessee fails to remove the hangar, the City shall consider the hangar a nuisance to be abated in accordance with McMinnville Municipal Code, and after notice to Lessee, may abate the nuisance and charge the Lessee the cost of abatement, plus a penalty as provided in the aforementioned Code.”

2. **Compliance.** The Lease is hereby amended to add Paragraph 45, relating to Lessee’s compliance with federal, state, and local laws and regulations, as follows:

“45. Compliance with Laws and Regulations. Lessee agrees to observe and obey during the term of this lease all laws, ordinances, rules, and regulations promulgated and/or enforced by Lessor or by other proper authority having jurisdiction over the conduct of operations at the airport, and to do all things necessary to stay or become in compliance with the same. Lessee further specifically agrees to comply with all requirements of the Federal Aviation Administration (FAA), including but not limited to, those requirements originating out of the City of McMinnville’s relationship with the FAA, or which find their origin in relation to grants or other contractual arrangements between the City of McMinnville and the FAA.

Lessee understands and agrees that the right of ingress and egress to runways, taxiways, and aprons, now and hereinafter designed by Lessor shall be subject to all Airport Rules and Regulations, Minimum Standards, laws, regulations, grant obligations, policies

and ordinances now or hereinafter adopted, and that the use of said runways, taxiways and aprons shall be in common with others and that the same shall not be obstructed by Lessee or closed to the right of use or travel by others. Lessor shall provide notice to Lessee prior to any amendments to said documents, the most current versions of which may be obtained from the Airport Manager.

Lessor reserves the right to amend this lease to conform with any changes in Municipal, State or Federal laws, rules, regulations and ordinances. If at any time it is discovered that the provisions of this lease violate or are in any way inconsistent with current or later enacted Municipal, State or Federal laws, rules, regulations, ordinances, FAA policies, orders, advisory circular documents, grant obligations/assurances, or with any obligation the City of McMinnville may have with respect to the FAA, Lessor shall have the right to amend this lease as necessary to make this lease agreement consistent therewith.”

3. **Construction.** The Lease is hereby amended to add Paragraph 46, relating to construction at the McMinnville Municipal Airport, as follows:

“**46. Construction Activities.** Tenant’s use of the Premises and/or Airport may be disrupted by certain expansion, improvement, construction, development, remodeling, and/or other activities on or at the Airport, including, without limitation, runway maintenance and repairs. Landlord will not be in default under this Lease (and Tenant will not be entitled to any abatement of Rent and/or other concessions) if Tenant is disrupted (temporarily or otherwise) in the use of the Premises and/or Airport due to the aforementioned activities.”

4. All of the other terms and conditions of the Lease shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Lease shall apply to this First Amendment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment to Lease effective as of the date first above written.

LESSOR:

ACCEPTED on behalf of the public and Lessor by the City of McMinnville, Oregon:

Jeff Towery, City Manager

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 20__,
by Jeff Towery, as City Manager of the City of McMinnville.

Notary Public – State of Oregon

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney

LESSEE:

McMinnville Airport Condominium Hangars Owners Association

By: _____

Print Name: _____

As Its: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by John C. Lautenbach who personally appeared before me, was identified by satisfactory evidence, and acknowledged that he executed the instrument as the authorized agent of McMinnville Airport Condominium Hangars Owners Association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Notary Public – State of Oregon

AMENDMENT

This amendment modifies the lease entered into September 3, 1993 between the City of McMinnville as Landlord and Fliteline Systems as Tenant. Pursuant to Section 5 of this lease, Fliteline Systems has assigned the lease to the McMinnville Airport Condominium Hangars Owners Association.

Section 20 of the lease specifies the manner in which insurance proceeds will be applied to the premises in case of destruction by "fire, earthquake, or other casualty." Insurance against destruction caused by war, nuclear war, and terrorism caused by domestic parties is not obtainable in the current insurance market. By this amendment, the City waives any requirement on the part of the McMinnville Airport Condominium Hangars Owners Association to carry insurance against destruction caused by war, nuclear war, and terrorism caused by domestic parties.

All other terms and conditions of the lease remain in full force and effect.



Don Schut
City of McMinnville

9/28/04

Date



Jeanne Fawcett
McMinnville Airport Condominium
Hangars Owners Association

9/26/04

Date

BUDG E

Palmer

Record at request of:

Michael J. Farrell
Martin, Bischoff, Templeton, Langslet & Hoffman
3100 First Interstate Tower
Portland, OR 97201

LEASE

The parties hereto are the CITY OF MCMINNVILLE, a municipal corporation of the State of Oregon, Landlord, and FLITELINE SYSTEMS, a General Partnership, by partners COLE D. SMITH and BEN D. MAGNUSON, Tenant. Under the terms and conditions of this Lease, "Tenant" shall also mean any condominium owners' association composed of condominium unit owners using and occupying the real property herein pursuant to the terms and conditions of a condominium declaration and bylaws approved by the Landlord.

FOR AND IN CONSIDERATION of the mutual covenants hereinafter contained, the parties agree as follows:

1. **Lease and Description.** Upon the terms and conditions hereinafter set forth, the Landlord does hereby lease to Tenant and the Tenant does hereby lease from Landlord those certain premises situated in the City of McMinnville, County of Yamhill, State of Oregon, being a part of the McMinnville Municipal Airport, and being described as follows:

See legal description attached hereto as Exhibit A.

hereinafter called "premises." The Tenant shall construct improvements on the premises, which improvements shall remain the property of the Tenant, its successors and assigns, during the term of this Lease.

2. **Business Purpose.** The premises are to be used for the construction and use of aircraft hangar buildings and facilities, which shall be organized, sold and owned as leasehold condominium aircraft hangar units. The sale and ownership of condominium units shall be subject to and pursuant to this Lease, and shall not in any way be interpreted as creating or vesting a fee ownership interest in the Tenant or any unit owners in the premises. For the purpose of this Lease, the right to sell and own condominium units shall not be limited by any provisions of this Lease pertaining to subletting, assignment, or renting of the real property, as the parties contemplate ongoing lease status between Landlord and Tenant, as condominium declarant, succeeded by a condominium owners' association.

The aircraft hangar buildings and leasehold condominium units therein are to be used for aeronautical purposes and specifically for the purpose of parking and storing aircraft, non-commercial construction of small aircraft, and for maintenance and other routine activities associated with aircraft ownership. The owners and occupants of units shall not engage in

any other use of the premises without prior written consent from Landlord. Unit owners may park their automobile within their unit while using their aircraft.

3. **Term.** The term of this Lease shall be for thirty-five (35) years, commencing September 1, 1993, and ending at midnight on August 31, 2028.

4. **Rent.** The rent for said premises for the first year of this Lease, commencing upon execution hereof, shall be at the annual rate of \$.15 per square foot, with the entire lease consisting of 13,340 square feet. Such rent shall be paid to Landlord annually on the 31st day of August, and shall be mailed or delivered by hand to Landlord's Clerk at City Hall, 230 E. 2nd, McMinnville, Oregon 97128.

a. **Future Rental Periods.** Commencing on September 1, 1994, and once every year thereafter, the annual rental sum shall be adjusted based upon the CPI-W for Portland, Oregon, for the period July 1 through June 30 preceding such determination; PROVIDED, that the rent for said rental period shall not be more than ten percent (10%) higher than the rent fixed for the prior calendar year.

b. **Late Charges.** The annual rent shall be due and owing as of the first day of each lease-year, commencing August 31, 1993. In the event rent is not timely paid, Landlord may assess, and the Tenant shall pay upon any installment of rent or portion thereof not paid within ten (10) days after such rent installment is due and payable, a late charge penalty for each month or fraction thereof during which the rent or a portion thereof is not paid, equal to five percent (5%) of the amount of such rent or portion thereof (plus accrued late charge penalties, if any) due and payable, or, if the rent due and owing is not paid within 10 days after becoming so due and owing, Landlord, at Landlord's election, may terminate this Lease in its entirety. The amount of the late charge penalty shall be added to the amount due each month, and the total thereof shall be subject to a late charge for each succeeding month or fraction thereof in the amount of five percent (5%) of the total.

5. **Assignment of Lease; Release of Lessee.** The Lessee/Tenant, FLITELINE SYSTEMS, shall be succeeded as Lessee/Tenant by a condominium association composed of leasehold condominium unit owners at the time set out in the declaration and bylaws of condominium ownership and by the Oregon Condominium Act. Only the condominium association, and not the individual units owners, shall succeed FLITELINE SYSTEMS as lessee/tenant. The Landlord, with the intention of discharging the business and personal liability of the Lessee/Tenant FLITELINE SYSTEMS, and the individual partners thereof, their heirs, executors, and administrators, shall release Lessee/Tenant FLITELINE SYSTEMS from all liability with respect to the rent reserved by and the covenants, conditions, and stipulations contained in this Lease, and all actions, proceedings, claims, and demands with respect to any breach, whether present or future, of any such covenants, conditions, and stipulations. Said release shall occur automatically upon the assignment to the condominium owners' association.

6. **Building Construction on Premises.** Any building construction proposed on the premises shall be approved by the Landlord. Any buildings so constructed shall be done strictly in accordance with full plans and specifications, including drawings and elevations showing the appearance and color of the finished building, to be filed with the

Landlord prior to commencing construction. The building(s) shall be placed upon the lot at the location shown on the plot plan submitted to the Landlord or its designated official, which must be first approved by the Landlord's City Manager. Any excess soil from this construction shall be removed from the site by the Tenant to a location determined by the Landlord's designated official. All buildings shall be used for the business purpose(s) set forth in paragraph 2 of this Lease.

a. Unless construction of the building to be located upon Parcel "A," as set forth in Exhibit A to this Lease, is commenced within one hundred eighty (180) days of the date this Lease is executed and the initial building completed within one hundred eighty (180) days after commencement of construction, the Landlord shall have the right upon giving sixty (60) days' written notice to the Tenant to terminate this Lease. In the event of such termination, the Landlord may retain all rents therefor received by it, and all rights of the Tenant shall absolutely terminate. In the event any rent is owing by the Tenant at the effective date of termination pursuant to said notice, the Tenant shall pay said rent within ten (10) days of said effective date. It shall be the responsibility of the Tenant to secure at Tenant's sole expense all permits and approvals required for the use of the premises and construction of any building thereon.

7. **Clearing and Grading Premises.** The Tenant shall perform at the Tenant's own expense any clearing or grading of the premises required. Grading and clearing shall be done to such standards and on such grades as the Landlord may require. The Tenant shall secure any grading permit that may be required prior to commencement of any grading.

8. **Repairs.** The premises have been inspected and are accepted in their present condition, and Tenant will at all times keep the premises neat, clean and in a sanitary condition, and will replace any glass of all broken windows and doors of the building as may become cracked or broken, and except for reasonable wear and tear and damage by fire or other unavoidable casualty, will at all times present said premises in as good repair as they now are or may hereafter be put to. All repairs shall be at Tenant's sole cost and expense.

9. **Utilities.** The landlord shall provide initial power and water services hook up to the premises at Landlord's expense. The Tenant hereby covenants and agrees to pay all monthly or other regular charges for heat, light, and water, and for all other public utilities which shall be used in or charged against the leased premises during the full terms of this Lease. Tenant is responsible for providing temporary utilities to the site for a period of 180 days from the date a building permit is issued for construction of the hangars. Landlord agrees to cooperate in the acquisition of temporary hookups. Landlord agrees to provide service after the expiration of the 180-day period.

10. **Taxes.** The tenant hereby covenants and agrees to pay all property and other taxes that are assessed against the premises during the full term of this Lease. Taxes shall be paid not later than November 15 of each tax year commencing with the first tax statement received by Tenant.

11. **No Occupancy of Building(s) Prior to Issuance of Certificate of Occupancy.** The Tenant shall not occupy or use any building hereafter erected on the premises until a certificate of occupancy thereof shall have been issued.

12. **Care of Premises.** The Landlord shall not be called upon to make any improvements or repairs of any kind upon said premises and said premises shall at all times be kept and used in accordance with the laws of the State of Oregon and ordinance of the City of McMinnville, and in accordance with all directions, rules, and regulations of the health officer, fire marshall, building official, or other proper officer of any pertinent and authorized public authority, at the sole cost of expense of the Tenant. The Tenant will commit or permit no waste, damage, or injury to the premises and, at Tenant's own cost and expense, will keep all drainage pipes free and open and will protect water, heating and other pipes so that they will not freeze or become clogged, and will repair all leaks, and will also repair all damage caused by leaks or by reason of the Tenant's failure to protect and keep free, open and unfrozen any of the pipes and plumbing on said premises.

13. **Use.** The Tenant shall conduct and carry on in said premises only the business for which said premises are leased, and shall not use the premises for illegal purposes.

14. **Liens and Insolvency.** Tenant shall keep the leased premises and the property in which the leased premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. If the Tenant becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee, or other liquidating officer is appointed for the business of the Tenant, the Landlord may cancel this Lease at the Landlord's option.

15. **Assignment and Subletting; Sale of Condominium Units.**

a. **Assignment.** This Lease may be assigned by the Tenant in whole only and not in part, and only with the prior written consent of the Landlord.

In the event of an assignment, such assignment may only be made to an assignee for a use of the premises as set forth in paragraph 2 of this Lease.

Subject to the provisions of paragraph 5 herein, the assignee must be shown to the Landlord to be of such financial standing and responsibility at the time of such assignment as to give reasonable assurance to the Landlord of prompt payment of all rents and other amounts to be paid under this Lease, and of full compliance with all other terms, covenants, conditions, and provisions of the Lease. No such assignment may be made or be of any force or effect if at the time of such assignment the Tenant is in default in any of the terms, covenants, conditions, and provisions of the Lease, including default in the payment of rent; PROVIDED, HOWEVER, the assignee may cure the default(s) prior to taking possession of the premises. No such assignment for any purpose shall be of any force or effect unless the Landlord first shall have consented, in writing, to said assignment and has received a true copy of the proposed assignment. The Landlord may refuse to consent to such assignment for any purpose hereinabove set forth. Such assignment shall include the then unexpired balance of the term of this Lease.

The requirements of this subsection shall not apply to the sale and ownership of leasehold aircraft hangar condominium units, nor to the assignment to the condominium owners' association as set forth in paragraph 5.

b. **Subleases.** The Tenant may sublet the whole or any portion of any buildings on the premises, but not the real property (other than that part of the real property which is beneath the buildings), to a subtenant or subtenants; provided: (1) the Landlord has given its consent in writing prior to the sublease being effective; and (2) the Landlord has received a true copy of the proposed sublease.

The requirements of this subsection shall not apply to the sale and ownership of leasehold hangar condominium units or the assignment to the condominium owners' association set forth in paragraph 5 and shall not limit the ability of the Tenant to structure the sale of units and assignment of this Lease as described herein.

c. **Rentals.** The Tenant may rent hangar space for the purposes described in paragraph 2 of this Lease on a month-to-month basis to subtenants of the condominium unit owners, provided: (1) the Tenant submits and receives Landlord approval of the proposed rental space; (2) the Tenant enters into hangar rental agreements only upon forms pre-approved by the Landlord; (3) the Tenant keeps the Landlord informed of the name, address, telephone number and aircraft registration number of all current hangar subtenants; (4) the Tenant charges monthly hangar rental fees no less than the rates now or in the future charged by the Landlord for comparable hangars; (5) the Landlord reserves the right to object for cause to any specific hangar rental subtenant and reserves the right to require the Tenant to terminate the hangar rental agreement of such objectionable subtenant within sixty (60) days of notice of objection.

The requirements of this subsection shall not apply to the sale and ownership of leasehold aircraft hangar condominium units, nor the assignment to the condominium owners' association set forth in paragraph 5.

d. **Sale of Condominium Units.** The parties anticipate that the aircraft hangars will be organized, sold, and owned as leasehold condominium units, as defined in paragraph 2 herein. The leasehold condominium shall be occupied by units, defined to mean a physical portion of the condominium designated for separate ownership. The boundaries of a unit are the interior surfaces of its perimeter walls, floors, and ceilings as defined in the Oregon Condominium Act. The unit includes both the portion of the building so described, the air space so encompassed, the interior partitions, and other fixtures and improvements within the boundary of the unit. "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium. "Separate ownership" also includes ownership of a leasehold condominium under a form of ownership expiring with the expiration of the Lease.

Unit Owners shall use and occupy the units. "Unit owner" is defined to mean a Declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

The Tenant may market and sell leasehold condominium units to purchasers who will own said units subject to this Lease. The Tenant shall keep the Landlord apprised, on an annual basis, of a list of names and addresses of all condominium owners, although the failure to provide such a list shall not constitute a breach or default in any terms and conditions of this Lease.

e. **Default.** If all or any part of the leased premises are sublet or occupied by anybody other than the Tenant or members of a condominium association or condominium unit owners, the Landlord may, after default by the Tenant, collect rent from any and all subtenants or occupants, and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of any agreement, term, covenant, or condition hereof, nor the acceptance by the Landlord of any subtenant or occupant as tenant.

16. **Access.** The Tenant will allow the Landlord or the Landlord's agents free access at all reasonable times and upon at least twenty-four (24) hours' notice to said premises during normal business hours for the purpose of inspection. Nothing herein shall be construed in any way as limiting the authority of the Landlord's building official under existing law.

17. **Liability Insurance.** Tenant shall at all times carry and maintain liability insurance in a company or companies rated in the current edition of Best's General Ratings as at least A (Excellent), and Financial Size Category of not less than Class X, or in such other company or companies not so rated which may be acceptable to Landlord, insuring Tenant against all claims for damages for personal injury, including death, and against all claims for damage and destruction of property, which may arise by the acts or negligence of the Tenant, its agents, employees, or servants, or by any means of transportation whatsoever, including owned, non-owned, and hired automobiles, to the extent required by the Oregon Tort Claims Act, as now in existence or as amended hereafter. Landlord shall be named in all such policies as an additional insured, and a duplicate true certified copy of the original of such insurance policy or policies shall be furnished to Landlord. Each such policy shall provide that the policy may not be cancelled without the company first giving Landlord at least thirty (30) days' written notice.

18. **Accidents – Indemnity.** All personal property on said leased premises shall be at the risk of the Tenant. Landlord shall not be liable for any damage, either to person or property, sustained by the Tenant or others, caused by any defects now at said premises or hereafter occurring therein, or due to the condition of any buildings hereafter erected to any part or appurtenance thereof becoming out of repair, or caused by fire, or by the bursting or leaking of water, gas, sewer or steam pipes; or from any act or neglect of Landlord, its employees, its elected and appointed officials, tenants, or other occupants of said buildings, or any other persons, including the Landlord, or due to the happening of any accident from any cause in or about said buildings. Tenant covenants to protect, save, and indemnify Landlord, its elected and appointed officials and employees while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Tenant's employees or third parties on account of personal injuries, death, or damage to property arising out of the premises leased by the Tenant or in any way resulting from the willful or negligent acts or omissions of the Tenant and/or its agents, employees or representatives.

19. **Fire Insurance.** The Tenant shall at all times and during construction carry at its own expense fire insurance, hazard insurance, and vandalism and malicious mischief fire insurance on all buildings existing or hereafter constructed on the premises acceptable to the Landlord, which policy or policies shall name the Landlord as an additional insured, and to the extent of at least eighty percent (80%) of value. The original policy, a duplicate certified true copy, or such other evidence of insurance as the Landlord shall have agreed in writing to accept, shall be on deposit with the Landlord's Clerk at all times during the term hereof. Each such policy shall provide that the policy may not be cancelled without the company first giving the Landlord at least thirty (30) days' prior written notice. No such policy shall contain a deductible clause greater than ONE THOUSAND DOLLARS (\$1,000) per claim. In the event of loss, the Tenant shall pay such deductible sum.

20. **Application of Fire Insurance Proceeds in Event of Loss.** If any building of the premises is totally destroyed by fire, earthquake, or other casualty during the term of this Lease, and if the Tenant desires to rebuild, the proceeds of insurance shall be used for the purpose of rebuilding such building. If the Tenant elects not to rebuild, the proceeds of any insurance shall be payable on a pro rata basis to the Landlord and Tenant based upon the total number of years in the term of this Lease and the number of years remaining. For example, if the Tenant has ten (10) years remaining on the thirty-five year lease term, the Tenant will receive 10/35 of the proceeds and the Landlord 30/35 of the proceeds. In the case of partial destruction, the proceeds shall be used for repairing the damage. The Tenant shall give notice of loss immediately and notice of intention to rebuild within sixty (60) days of loss. If the Tenant fails to give notice of intention to rebuild within the time specified, the Landlord shall then have the option to rebuild and shall give the Tenant notice in writing of such intention within one hundred twenty (120) days after receiving written notice of loss from the Tenant, subject to such policy conditions governing the replacement cost provisions therein. If either the Landlord or the Tenant elects to rebuild as above provided, such party shall prosecute the work of such rebuilding or repairing without delay. If both the Landlord and Tenant fail to give notice of intention to build as aforesaid within the times specified, both the Landlord and Tenant shall have the right to declare this Lease terminated by written notice served upon the other party by mail as provided in paragraph 22 herein. It is understood that if the Tenant sublets the premises and passes the expense of fire, earthquake, or other casualty insurance or of liability insurance on to the subtenant, then Tenant will require all insurance policies to name both the Landlord and Tenant (but as Landlord thereunder) as insured parties as required above, as their interests may appear.

Likewise, upon the formation of a condominium association, wherein the expense of fire, earthquake, or other casualty insurance, or of liability insurance is passed on to the association, representing the collective interests of unit owners, then the Tenant and/or the association shall make certain that all insurance policies name the Landlord, the association, and all individual unit owners as insured parties as required above, as their interests may appear.

Any sublease and condominium declaration shall reflect the provisions of this Lease as to the selection of the insurer and the amount and nature of coverage.

In the event of the loss or destruction of the building improvements where the Landlord and Tenant agree not to rebuild or repair, this Lease shall terminate, and rent for the premises shall abate. Any rents paid for a given rent term shall be prorated, with rent for the balance of such term refunded to the Tenant. If the Landlord and Tenant are unable to agree regarding the rebuilding of any improvements lost or destroyed and the disposition of insurance proceeds therefor, the parties shall submit the matter to an arbitration committee consisting of three persons, one selected by the Landlord, one selected by the Tenant, and the third appointed by the senior judge of the Circuit Court for Yamhill County. The parties may select any such alternative arbitrators, arbitration committee, or method as agreeable between the Landlord and Tenant. The decision of the majority of said arbitrators shall be binding upon the Landlord and Tenant, unless successfully modified by a court of law.

21. **Recovery of Leased Premises.** The Landlord is authorized to recover the leased premises from the Tenant in the event that the Airport Commission for the City of McMinnville determines the premises are required for another airport purpose. In the event such a determination is made and Landlord elects to recover the premises, Landlord shall compensate Tenant for the value of the remainder of this Lease and the improvements constructed on the premises. Landlord and Tenant agree to each retain an MAI appraiser to determine the value of the remainder of this Lease and the improvements on the premises. If those appraisers are unable to agree on the value, a third appraiser shall be appointed by the senior judge of the Circuit Court for Yamhill County and that appraiser's valuation shall be conclusive and binding upon both parties. The value of the improvements shall be pro-rated based upon the remaining length of this Lease.

22. **Tenant's Right of Cancellation.** In addition to any other remedies available to the Tenant, this agreement shall be subject to cancellation by the Tenant should any one or more of the following event occur:

a. **Abandonment of Airport.** The permanent abandonment of the airport as an operating airport by act or decision of the Landlord;

b. **Supervening Event.** The occurrence of any supervening event or act of God which precludes the Tenant, condominium unit owners, and any assigns of the Tenant and unit owners, from the use of the property for the purposes enumerated herein or from the use of airport facilities; however, neither tenant nor Landlord shall have any liability under this subparagraph for any supervening event or act of God under any theory on which recovery may be sought;

c. **Landlord Breach of Lease.** The breach by the Landlord of any of the covenants, terms, or conditions of this agreement to be kept, performed, and observed by the Landlord and the failure to remedy such breach within a period of sixty (60) days after written notice from the Tenant of the occurrence of the breach;

d. **Federal Government or Other Governmental Agency Control.** The assumption by the federal government or any other governmental agency of the control of the airport or any portion thereof which would preclude the Tenant from operating under the terms of this Lease or which would substantially restrict the Tenant from operating under the terms of this Lease. (Landlord shall have no liability for loss of use occasioned by act of the federal government or any other governmental agency.)

23. Ownership of Constructed Improvements After Termination of Lease. During the pendency of this Lease, all buildings and improvements on the property shall be owned entirely by the Tenant and its successors and assigns. Subject to the right of the Tenant's financing institution to assume the Tenant's rights and obligations herein in the event of the Tenant's default to said financing institution, upon termination of this Lease the building, alterations, additions, and improvements made by the Tenant to the property shall become the sole property of the Landlord, and the ownership of said improvements shall be vested in fee simple in the Landlord, subject to the recorded rights of any financing institution for the remaining lease and sublease terms. Upon termination of this Lease, the Landlord may elect to accept the premises or may, upon reasonable notice to the Tenant, require the premises to be surrendered in the same condition as existed at the time of execution of this Lease. Upon termination of this Lease, the premises shall be surrendered without notice in a neat and clean condition. All keys to all buildings on the premises shall be surrendered to the Landlord.

The Tenant may install in the leased premises such fixtures and equipment as the Tenant deems desirable at the Tenant's own expense. All such items shall remain the Tenant's property and may be removed by the Tenant at or before termination of this Lease, PROVIDED that the Tenant shall repair any damage to the premises caused by such removal.

24. Expansion Option. Tenant is hereby granted an option (the "Expansion Option") to lease an additional adjacent parcel of land, as described in the legal description attached hereto as Exhibit B and referred to herein as Parcel B. The Expansion Option for Parcel B shall be effective from the effective date of this Lease and all other terms of this Lease shall apply in the same manner as to Parcel A. To exercise the Expansion Option, Tenant must deliver notice to the Landlord in writing that it is irrevocably electing to exercise the Expansion Option within five (5) years from the date of this Lease. Said notice shall be deemed delivered when received by the Landlord. If the Tenant does not elect to exercise the Expansion Option in a timely manner, Tenant will be deemed to have waived all rights to exercise the Expansion Option. If Tenant elects to exercise the Expansion Option, Parcel B will become part of the premises on the date of Tenant's notification. Rent for Parcel B shall be added to the annual rent for the premises and shall be based upon the square footage rate in effect at the time of the exercise of the Expansion Option. Any abatement applicable to the premises shall be applicable to Parcel B for the same period as the abatement period the premises.

25. Notice. All notices and consents hereunder shall be given in writing, delivered in person, or mailed by certified mail, postage prepaid, to the receiving party at its address below, or to such other address as the receiving party may notify the sender beforehand referring to this Lease.

26. Governmental Fees. All fees due under applicable law to the City, County, or State on account of any inspection made on leased premises by any officer thereof shall be paid by the Tenant.

a. **Signs.** All signs and symbols placed in the windows or doors or elsewhere about the premises, or upon the exterior part of the buildings, shall be subject to the approval of the Landlord or Landlord's agents. In the event the Tenant places signs or symbols on the

exterior of said buildings or in the windows or doors or elsewhere where they are visible from the street that are not satisfactory to the Landlord or Landlord's agents, the Landlord or Landlord's agents may immediately demand the removal of such signs or symbols, and the refusal of the Tenant to comply with such demand within a period of twenty four (24) hours will constitute a breach of this Lease, and entitle the Landlord to immediately recover possession of said premises in the manner provided by law. Any signs so placed on the premises shall be so placed upon the understanding and agreement that the Tenant will remove the same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Tenant, then the Landlord may have the same removed at Tenant's expense. In installing any signs, the Tenant shall conform to all requirements of applicable laws and regulations and pay applicable fees.

27. **Default and Re-Entry.** Unless resulting from events enumerated in paragraphs 19, 20, or 22 herein, if any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if the Tenant shall violate or default in any of the covenants and agreements therein contained, then the Landlord may cancel this Lease upon giving 120 days' notice and re-entering said premises, but notwithstanding such re-entry by the Landlord, the liability of the Tenant for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and the Tenant covenants and agrees to make good to the Landlord any deficiency arising from a re-entry and re-letting of the premises at a lesser rental than herein agreed to.

28. **Costs and Attorneys' Fees.** If, by reason of any default on the part of either party, action is taken, whether or not a lawsuit is filed, to enforce any provision of this Lease or to recover for breach of any provision of this Lease, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs in such amount as is fixed by the court, and all costs and expenses incurred by reason of the breach or default by the other under this Lease.

29. **Breach of Lease by Tenant.** In the event of breach of any condition or term contained herein by Tenant, in addition to the terms of the agreement the Landlord shall have the right to terminate this Lease upon giving written notice by certified or registered mail to Tenant at the current address. Failure or neglect of Landlord to act upon the breach of one or more breaches of this Lease shall not constitute or be construed as a waiver of subsequent breach by Tenant of any kind whatsoever that is created by Tenant or by individual condominium owner.

30. **Nonwaiver of Breach.** The failure of either party to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such strict performance or of the exercise of such option, or any other covenants or agreements, but the same shall be and remain in full force and effect.

31. **Removal of Property.** In the event of any entry on or taking possession of the leased premises as aforesaid, the Landlord shall have the right, but not the obligation, to remove from the leased premises all personal property located therein or thereon and may store the same in any place selected by Landlord including, but not limited to, a public warehouse, at the expense and risk of the owners thereof. Unless otherwise provided by law,

Landlord shall have the right to sell such stored property, without notice to the Tenant after the property has been stored for a period of at least sixty (60) days, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, the balance, if any, to be paid to Tenant.

32. Heirs and Successors. Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors, and assigns of any or all of the parties hereto, including condominium unit owners. The Landlord acknowledges that a condominium owners' association shall succeed the Tenant/signatories to this Lease. The Landlord hereby agrees to such succession of interest and covenants that upon the formation of the condominium owners' association, the association shall be responsible and liable to perform all terms and conditions of this Lease, and that the Lease shall automatically inure to the benefit of said association.

33. Condominium Declaration. The Tenant agrees at its own expense to develop a condominium association agreements including, but not limited to Declaration of Condominium Unit Ownership for the Condominium Hangars and Bylaws for the Hangar Owners Association, under which condominium hangar units shall be sold and owned. Said agreements (Declaration and Bylaws) shall be subject to the review and approval of the Landlord and said Declaration shall be executed and acknowledged by the duly authorized representative of the Landlord. Approval of the Declaration shall not unreasonably be withheld.

34. Hold Over. Should the Tenant, with the written consent of Landlord, hold over after the expiration of the term of this Lease, Tenant agrees to pay Landlord the same rate of rental as set forth herein, unless a different rate is agreed upon, and to be bound by all of the terms, covenants, and conditions as herein specified, so far as possible.

35. Landlord's Ownership. Landlord warrants that it is the owner of the leased premises and that it has the right to lease said premises under the terms of this Lease. Landlord will defend Tenant's right to quiet enjoyment of the leased premises from disturbance by anyone claiming by, through, or under Landlord.

36. Nondiscrimination.

a. The Tenant, for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained, or otherwise operated on said property described in this Lease for a purpose for which a Department of Transportation permit is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Program of the Department of Transportation, and as said regulations may be amended.

b. The Tenant, for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from the participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; or (2) in the construction of any improvements in, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Program of the Department of Transportation, and as said regulations may be amended.

c. In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate this Lease and to re-enter and repossess said land and facilities thereon and hold the same as if said Lease had never been made or issued.

37. Hazardous Substances. The Tenant shall not permit hazardous substances, including any substances, materials, wastes, pollutants, oils, or regulated substances, or substances defined or designated as hazardous, toxic, radioactive, dangerous, or any other term in or under any environmental laws which may affect environmental or human health, to exist on the premises and shall, at Tenant's sole expense, undertake to comply with all rules, regulations, and policies of the State of Oregon and the United States Environmental Protection Agency. Tenant shall promptly notify the City Fire Department of the existence of any hazardous substances as required by state and federal regulations and shall comply with any requirements for hazardous waste disposal as may be imposed by applicable federal and state laws.

38. Motor Vehicle Parking on Premises. At any time when the Tenant is making use of aircraft, Tenant shall be permitted to park all motor vehicles within the aircraft hangar buildings. Such vehicles shall, at all times, park within the leased premises.

39. Parking Aircraft on Premises. The Tenant shall at no time park any aircraft or permit any aircraft to be parked on the exterior portion of the leased premises. The Tenant has the right to hangar aircraft on said leased premises and the right to charge hangar rental fees at rates no less than those rates now or in the future charged by the City of McMinnville for comparable hangars. Limitations on amounts of rent chargeable shall not restrict Tenant's right to market and sell leasehold condominium units in any dollar amount at the sole discretion of Tenant.

40. Independent Default Clause. A condominium unit owner may not be evicted due to a default by the board of directors of the association of unit owners so long as the unit owner has paid the pro rata share of the unit owner of the funds necessary to correct the default or because another unit owner has defaulted.

41. Venue. The venue of any suit, claim, demand, or proceeding which may be brought by either party under the terms of this Lease or growing out of the tenancy under this Lease shall be at the option of the Landlord in court(s) in Yamhill County, Oregon.

42. **Site Plan.** Where reference is made in this Lease to a plot plan or site plan, it is understood and agreed between the parties that such plan must include as a minimum those matters hereinafter set forth and shall be in the form of a scale drawing of the entire leased premises with all of those matters set forth to scale and legibly thereon:

- a. Location of all structures and sizes thereof, together with size and location of any future structures which the Tenant anticipates may be placed on the premises;
- b. Location of all roads, driveways, entrances, and exits;
- c. Location of all parking areas and description of method of delineating such areas by curbs or other methods;
- d. Location of all utilities and, in case of underground utilities, mention thereof;
- e. Interior and exterior drainage;
- f. Location and type of all fencing and gates;
- g. Site and exterior building lighting.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the 3rd day of September, 1993.

Landlord:

CITY OF MCMINNVILLE

By Edward J. Hornley
Mayor

ATTEST:

By Carole J. Bereduit
City Clerk

Tenant:

FLITELINE SYSTEMS, a General Partnership

By Ben D. Magnuson
Ben D. Magnuson, Partner

By Cole D. Smith
Cole D. Smith, Partner

STATE OF OREGON)
) ss.
County of Yamhill)

On this 3rd day of September, 1993, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Carole M. Benedict and Edward G. Gornley to me known to be the Mayor and City Clerk, respectively, of the CITY OF MC MINNVILLE, the municipal corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes herein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said municipal corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Antoinette M Bennett
Notary Public for the State of Oregon
My commission expires: 5-9-94

STATE OF WASHINGTON)
) ss.
County of SNOHOMISH)

I hereby certify and I know of and have satisfactory evidence that BEN D. MAGNUSON signed this instrument, on oath stated that he is authorized to do so, and acknowledged it as a partner of FLITELINE SYSTEMS, to be the free and voluntary act of such party for the uses and purposes therein mentioned.

F. K. Wood
Notary Public for the State of WASHINGTON
My commission expires: 12/1/93

STATE OF Wyoming)
) ss.
County of Washakie)

I hereby certify and I know of and have satisfactory evidence that COLE D. SMITH signed this instrument, on oath stated that he is authorized to do so, and acknowledged it as a partner of FLITELINE SYSTEMS, to be the free and voluntary act of such party for the uses and purposes therein mentioned.

Doris B. Anderson
Notary Public for the State of Wyoming
My commission expires: 8/31/94

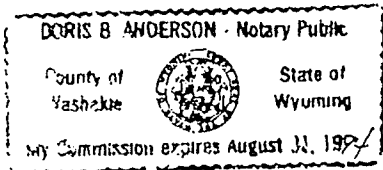


EXHIBIT A

MCMINNVILLE AIRPORT - LEASE DESCRIPTION

Parcels of land in the John White Donation Land Claim No. 82, Northeast 1/4 of Section 26, Township 4 South, Range 4 West, Willamette Meridian, Yamhill County, Oregon and more particularly described as follows:

LEASE PARCEL A:

Beginning at Point A, northwesterly of Runway 22, said Point bear South $69^{\circ}40'29''$ West 3,505.60 feet from a Brass Cap at the Northeast corner of the John White D.L.C. No. 82, said measurement taken by W&H Pacific; thence North $89^{\circ}46'28''$ West 58.00 feet; thence North $00^{\circ}13'32''$ East 230.00 feet; thence South $89^{\circ}46'28''$ East 58.00 feet; thence South $00^{\circ}13'32''$ West 230.00 feet to Point A and Beginning of this description and containing 13,340 square feet or 0.3062 Acres.

SAID PARCEL A being further located as being 175.00 feet North $89^{\circ}45'$ West, 347.71 feet South $00^{\circ}15'$ West from the iron pipe set in County Survey C.S.P-6058, Volume T, Page 388, Yamhill County Surveyor Records, which pipe marks the Southeast corner of that certain parcel conveyed to EVERGREEN HELICOPTERS, INC. by Film Volume 103, Page 1697, Deed Records of Yamhill County, Oregon; thence running parallel with, East of, and 70.0 feet from existing T-Hanger, constructed in 1975, North $00^{\circ}15'$ East, a distance of 230.00 feet; thence parallel with and 117.71 feet south of the South line of EVERGREEN HELICOPTERS, INC., South $89^{\circ}45'$ East, a distance of 58.00 feet; thence South $00^{\circ}15'$ West, a distance of 230.00 feet to Point A; thence North $89^{\circ}45'$ West, a distance of 58.00 feet.

LEASE PARCEL B: (OPTION)

Beginning at a point which is 65.00 feet South $89^{\circ}46'28''$ East of Point A of LEASE PARCEL A; thence North $00^{\circ}13'28''$ East parallel with and 65.00 feet from the East line of said PARCEL A 230.00 feet; thence South $89^{\circ}46'28''$ East 58.00 feet; thence South $00^{\circ}13'32''$ West 230.00 feet; thence North $89^{\circ}46'28''$ West 58.00 feet to the Beginning point of this description and containing 13,340 square feet or 0.3062 Acres.

SAID PARCEL B lies 65.00 feet East of PARCEL A and is parallel with PARCEL A.

EXHIBIT A

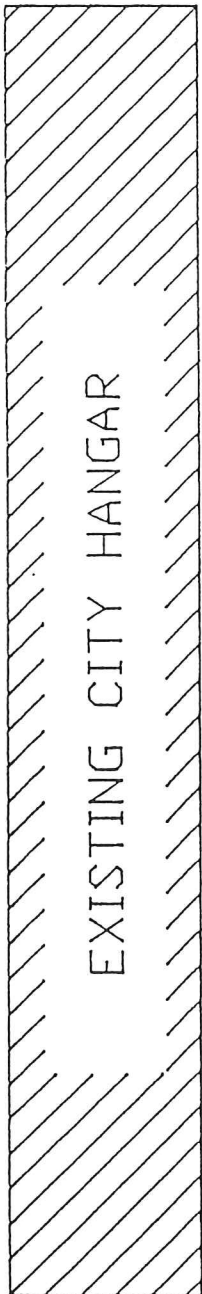
EXISTING EVERGREEN
HELICOPTERS, INC
HANGAR

Southeast corner
C.S. P.-6058

N 89° 45' W 175.00'

S 00° 15' W
117.71'

SCALE: 1"=100'



EXISTING CITY HANGAR

N 89° 45' W
58.00'

PARCEL A

N 00° 15' E

230.00'

S 00° 15' W

230.00'

58.00'

65.00'

S 89° 45' E

N 89° 46' 28" W
58.00'

PARCEL B

S 00° 13' 32" W

230.00'

230.00'

N 00° 13' 32" E

58.00'

S 89° 46' 28" E
EXHIBIT A - Page 64 of 95 2



STAFF REPORT

DATE: May 5, 2021
TO: Jeff Towery, City Manager
FROM: Mike Bisset, Community Development Director
SUBJECT: Hangar H Lease Amendment

Report in Brief:

This action is the consideration of a resolution approving a lease amendment with the McMinnville Aircraft Storage Condominium (McMinnville Aircraft Storage) for hangar H at the airport.

Discussion:

The initial lease with McMinnville Aircraft Storage was entered into in 2000, and is set to expire on May 31, 2035 (see attached 2000 lease document). Per section 21 of the original lease, at the end of the lease period the City had the option of taking ownership of the hangars, or requiring that the lessee remove the hangars and return the lease area to the airport.

In 2017, the City developed a new lease document with different lease renewal terms. The new lease terms allow for additional renewal terms of five (5) years each throughout the useful lifetime of the hangar. The lease will end at the end of the useful lifetime of the hangar. At that time, the hangar is to be removed by the lessee, and the lease area is returned to the airport.

Upon adoption of the new lease renewal terms, the Airport Commission and City Council indicated that the City would work with existing tenants to amend their lease(s) to include the new renewal terms. The attached lease amendment modifies the existing lease to include the new renewal terms.

The Airport Commission considered the lease amendment at their meeting on May 4, 2021. The Commission unanimously recommended that the City Council approve the lease agreement.

Attachments:

1. Proposed Resolution No. 2021-30.
2. Proposed Lease Amendment - 2021
3. Hangar H Lease - 2000

Fiscal Impact:

The lease revenue is included in the Airport Fund budget, and is used to fund airport operations.

Recommendation:

The Airport Commission recommends that the City Council adopt the attached resolution approving lease amendment with the McMinnville Aircraft Storage Condominium for hangar H at the airport.

RESOLUTION NO. 2021 - 30

A Resolution approving a lease amendment with the McMinnville Aircraft Storage Condominium for hangar H at the airport.

RECITALS:

In 2000, the City entered into a lease with the McMinnville Aircraft Storage Condominium for hangar H at the airport, and the lease is set to expire on May 31, 2035.

The lease amendment will allow for additional renewal terms of five (5) years each throughout the useful lifetime of the hangar. The lease will end at the end of the useful lifetime of the hangar. At that time, the hangar is to be removed by the lessee, and the lease area is returned to the airport.

The Airport Commission considered the proposed lease at the May 4, 2021 Commission meeting, and unanimously recommended that the City Council approve the lease.

The public interest will be best served by entering into the lease for the generation of revenue.

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

1. That the First Amendment to Lease with the McMinnville Aircraft Storage Condominium for hangar H at the airport, attached hereto as Exhibit 1, is hereby approved.
2. That the City Manager is authorized and directed to execute the First Amendment to Lease.
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 meeting held the 25th day of May 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 25th day of May 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBIT:

1. First Amendment to Lease with the McMinnville Aircraft Storage Condominium for hangar H at the airport

After recording, return to:
City of McMinnville
Attn: Legal Department
230 NE Second Street
McMinnville, OR 97128

FIRST AMENDMENT TO LEASE

This First Amendment to Lease is entered into on this ___ day of _____, 20__ by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as “Lessor”), and **McMinnville Aircraft Storage Condominium** (“Lessee”).

RECITALS:

In 2000, Lessor entered into a Lease with Lessee to lease from Lessor certain premises located at the McMinnville Municipal Airport (“Lease”). That Lease is recorded with the Yamhill County Recorder’s Office as document no. 200006633.

The parties desire to amend the Lease to include the provisions provided herein.

NOW, THEREFORE, Lessor and Lessee agree as follows:

1. **Option to Renew.** The Lease is hereby amended to add Paragraphs 42 and 43, relating to Lessee’s option to renew the Lease, as follows:

“42. Option to Renew. Lessee shall have the right, subject to City approval and subject to Lessee meeting the conditions contained herein prior to the expiration of the Initial Term, to renew this Lease for additional renewal terms of five (5) years each (“Renewal Term”), throughout the useful lifetime of the hangar as determined by the provisions set forth in this Paragraph. Not less than ninety (90) days prior to the expiration of the Initial Term, and each Renewal Term approved under the conditions outlined herein, City shall give Lessee written notice of the pending expiration of the then current Lease term and of the inspection requirements outlined in Paragraph 42.1 of this Lease (“Renewal/Inspection Notice”). Provided Lessee meets all conditions of renewal as outlined herein and is not in default of any Lease provision, Lessee’s desire to exercise such right of renewal shall be considered automatic. If Lessee does not desire to exercise the right of renewal, Lessee shall notify the City in writing within thirty (30) days of the date of City’s Renewal/Inspection Notice, of the intent not to renew the Lease. Such notice of intent not to renew the Lease must contain an outline of Lessee’s plans for removal of the hangar at the end of the existing term in accordance with Paragraph 43 of this Lease.

42.1 Renewal Term Inspection Requirements. Within thirty (30) days of the date of the City’s Renewal/Inspection Notice, Lessee, at Lessee’s sole expense, shall hire an independently licensed professional engineer, architect or building contractor to

conduct an assessment and inspection of the hangar based on the criteria set forth herein. Lessee shall cause such inspection and assessment to be completed, and a written report of all findings from the inspection (“Inspection/Assessment Report”) to be filed with the City within sixty (60) days of the date of the City’s Renewal/Inspection Notice to Lessee. Failure of the Lessee to order such inspection and assessment or to provide the City with the Inspection/Assessment Report as required, shall be considered a violation of the Lease, and shall be grounds for denial of the Renewal Term.

42.2 Inspection/Assessment Report. The Inspection/Assessment Report to be provided to the City shall include, but not be limited to:

42.2.1 A detailed list of any maintenance deficiencies found in the interior and on the exterior of the hangar;

42.2.2 A statement verifying Lessee’s compliance with current City of McMinnville Municipal Code Airport Property Regulations and the McMinnville Municipal Airport’s adopted Minimum Standards for Commercial Aeronautical Activities, including the limits on storage of hazardous materials and appropriate usage of the Property; and

42.2.3 A structural assessment as to the remaining useful life of the hangar and recommendations for improvements which would increase the useful life expectancy of the hangar.

42.3 Deficiencies Satisfied. Lessee shall satisfy all deficiencies identified in the Inspection/Assessment Report within thirty (30) days of the date of such report. If deficiencies require more than thirty (30) days to correct, Lessee may make a written request to the City Manager for an extension of the standard correction time. The City Manager shall not unreasonably deny the extension. Failure of Lessee to correct each reported deficiency will result in ownership of the hangar reverting to the City.

42.4 Appeal of Deficiencies. If Lessee objects to a deficiency identified in the Inspection/Assessment Report, Lessee may file a written appeal with the City Manager. Such appeal must be submitted to the City Manager within ten (10) days of the date of the Inspection/Assessment Report.

42.5 Approval of Renewal Term. Upon Lessee’s completion of all conditions precedent to the commencement of the Renewal Term, including, but not limited to, the satisfactory correction of all deficiencies identified in the Inspection/Assessment Report, the City shall approve the extension of the Lease for one five-year Renewal Term, or for less than a five-year Renewal Term if the Inspection/Assessment Report reflects the conclusions outlined in the following Paragraph 42.6.

42.6 Final Renewal Term; Removal of Hangar. In the event the Inspection/Assessment Report results in a finding that the anticipated remaining useful

life of the hangar is five (5) years or less, the pending Renewal Term shall be deemed to be the last Renewal Term available under this Lease (the “Final Renewal Term”). In such event, Lessee shall agree, as a condition to approval of the Final Renewal Term, to remove the hangar, at Lessee’s expense, at the end of the Final Renewal Term. If the Lessee does not agree to remove the hangar at the end of the Final Renewal Term, the City shall deny the request to renew and Lessee must remove the hangar and surrender the Property to the City within thirty (30) days of the expiration or termination of the Renewal Term then in effect. If Lessee fails to remove the hangar as required, the City shall consider the hangar a nuisance to be abated in accordance with McMinnville Municipal Code, and after notice to Lessee, may abate the nuisance and charge the Lessee the cost of abatement, plus a penalty as provided in the aforementioned Code.

42.7 Compliance with Airport Policy. Notwithstanding any other provision of this Lease, any part of this Paragraph 42 shall be amended as necessary to comply with any Airport policy adopted by the McMinnville City Council following recommendation of the City’s Airport Commission, or its successor, provided that, no such amendment shall shorten a renewal term in effect on the date of policy adoption, or require Lessee to expend additional moneys on hangar improvements during the Renewal Term in effect on the date of policy adoption.

43. Return Of Property At The End Of The Lease. Upon the expiration or termination of this Lease, Lessee shall remove the hangar at Lessee’s sole expense, and surrender the property to the City within thirty (30) days of the date of expiration or termination of the Lease. If Lessee fails to remove the hangar, the City shall consider the hangar a nuisance to be abated in accordance with McMinnville Municipal Code, and after notice to Lessee, may abate the nuisance and charge the Lessee the cost of abatement, plus a penalty as provided in the aforementioned Code.”

2. **Compliance.** The Lease is hereby amended to add Paragraph 44, relating to Lessee’s compliance with federal, state, and local laws and regulations, as follows:

“44. Compliance with Laws and Regulations. Lessee agrees to observe and obey during the term of this lease all laws, ordinances, rules, and regulations promulgated and/or enforced by Lessor or by other proper authority having jurisdiction over the conduct of operations at the airport, and to do all things necessary to stay or become in compliance with the same. Lessee further specifically agrees to comply with all requirements of the Federal Aviation Administration (FAA), including but not limited to, those requirements originating out of the City of McMinnville’s relationship with the FAA, or which find their origin in relation to grants or other contractual arrangements between the City of McMinnville and the FAA.

Lessee understands and agrees that the right of ingress and egress to runways, taxiways, and aprons, now and hereinafter designed by Lessor shall be subject to all Airport Rules and Regulations, Minimum Standards, laws, regulations, grant obligations, policies and ordinances now or hereinafter adopted, and that the use of said runways, taxiways and aprons shall be in common with others and that the same shall not be obstructed by Lessee

or closed to the right of use or travel by others. Lessor shall provide notice to Lessee prior to any amendments to said documents, the most current versions of which may be obtained from the Airport Manager.

Lessor reserves the right to amend this lease to conform with any changes in Municipal, State or Federal laws, rules, regulations and ordinances. If at any time it is discovered that the provisions of this lease violate or are in any way inconsistent with current or later enacted Municipal, State or Federal laws, rules, regulations, ordinances, FAA policies, orders, advisory circular documents, grant obligations/assurances, or with any obligation the City of McMinnville may have with respect to the FAA, Lessor shall have the right to amend this lease as necessary to make this lease agreement consistent therewith.”

3. **Construction.** The Lease is hereby amended to add Paragraph 45, relating to construction at the McMinnville Municipal Airport, as follows:

“**45. Construction Activities.** Tenant’s use of the Premises and/or Airport may be disrupted by certain expansion, improvement, construction, development, remodeling, and/or other activities on or at the Airport, including, without limitation, runway maintenance and repairs. Landlord will not be in default under this Lease (and Tenant will not be entitled to any abatement of Rent and/or other concessions) if Tenant is disrupted (temporarily or otherwise) in the use of the Premises and/or Airport due to the aforementioned activities.”

4. All of the other terms and conditions of the Lease shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Lease shall apply to this First Amendment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Lease effective as of the date first above written.

LESSOR:

ACCEPTED on behalf of the public and Lessor by the City of McMinnville, Oregon:

Jeff Towery, City Manager

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 20__,
by Jeff Towery, as City Manager of the City of McMinnville.

Notary Public – State of Oregon

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney

LESSEE:

McMinnville Aircraft Storage Condominium

By: _____

Print Name: _____

As Its: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by Alan Zanuzoski who personally appeared before me, was identified by satisfactory evidence, and acknowledged that he executed the instrument as the authorized agent of McMinnville Aircraft Storage Condominium, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Notary Public – State of Oregon

Bo H.



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The parties hereto are the CITY OF McMinnville, a municipal corporation of the State of Oregon, Landlord, and MICHAEL SHEETS CONSTRUCTION, INC., Tenant. Under the terms and conditions of this Lease, "Tenant" shall also mean any condominium owners' association composed of condominium unit owners using and occupying the real property herein pursuant to the terms and conditions of a condominium declaration and bylaws approved by the Landlord.

FOR AND IN CONSIDERATION of the mutual covenants hereinafter contained, the parties agree as follows:

1. **Lease and Description.** Upon the terms and conditions hereinafter set forth, the Landlord does hereby lease to Tenant and the Tenant does hereby lease from Landlord those certain premises situated in the City of McMinnville, County of Yamhill, State of Oregon, being a part of the McMinnville Municipal Airport, and being described as follows:

See legal description attached hereto as Exhibit A

herein called "premises." The Tenant shall construct improvements on the premises, which improvements shall remain the property of the Tenant, its successors and assigns, during the term of this Lease.

2. **Business Purpose.** The premises are to be used for the construction and use of aircraft hangar buildings and facilities, which shall be organized, sold and owned as leasehold condominium aircraft hangar units. The sale and ownership of condominium units shall be subject to and pursuant to this Lease, and shall not in any way be interpreted as creating or vesting a fee ownership interest in the Tenant or any unit owners in the premises. For the purpose of this Lease, the right to sell and own condominium units shall not be limited by any provisions of this Lease pertaining to subletting, assignment or renting of the real property, as the parties contemplate ongoing lease status between Landlord and Tenant, as condominium declarant, succeeded by a condominium owners' association.

The aircraft hangar buildings and leasehold condominium units therein are to be used for aeronautical purposes and specifically for the purpose of parking and storing aircraft, non-commercial construction of small aircraft, and for maintenance and other routine activities associated with aircraft ownership. The owners and occupants of units shall not engage in any other use of the premises without prior written consent from Landlord. Unit owners may park their automobile within their unit while using their aircraft.

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3. **Term.** The term of this Lease shall be for thirty-five (35) years, commencing June 1, 2000 and ending at midnight on May 31, 2035.

4. **Rent.** The rent for said premises for the first year of this Lease, commencing upon execution hereof, shall commence at the annual rate of \$0.178 per square foot, with the entire lease consisting of 14,100 square feet. Such rent shall be paid to Landlord annually, and shall be mailed or delivered by hand to Landlord's Clerk at City Hall, 230 NE Second Street, McMinnville, Oregon 97128, unless a different address is specified in writing by Landlord.

The basic per square foot ground lease figure (\$0.178) established at the commencement of this lease shall be reviewed every five years on the anniversary date, commencing 2005, and shall be adjusted following each review to reflect any increase in the then current market value of airport property being leased in the State of Oregon and Washington with emphasis upon the Willamette Valley. If the basic ground lease values are found to be greater than the fee then being charged, then the ground cost per square foot shall be so increased to the median value.

- a. **Future Rental periods.** Commencing on July 1, 2000, and once every year thereafter, the annual rental sum shall be adjusted based upon the CPI-W for Portland, Oregon, for the period July 1 to June 30 preceding such determination; PROVIDED, that the rent fixed for said rental period shall not be more than ten percent (10%) higher than the rent fixed for the prior calendar year. Landlord shall bill tenant on or about 1 September for the year's total amount. Rent will not be considered late if payment is received within 30 days of billing.
- b. **Late Charges.** The annual rent shall be due and owing as of the date of billing for the lease-year commencing June 1, 2000. In the event rent is not timely paid, Landlord may assess, and the Tenant shall pay upon any installment of rent or portion thereof not paid within ten (10) days after such rent installment is due and payable, a late charge penalty for each month or fraction thereof during which the rent or a portion thereof is not paid, equal to prime rate plus two percent (2%) of the amount of such rent or portion thereof (plus accrued late charge penalties, if any) due and payable, or, if the rent due and owing is not paid within 10 days after becoming so due and owing, Landlord, at Landlord's election, may terminate this Lease in its entirety. The amount of the late charge penalty shall be added to the amount due each month, and the total thereof shall be subject to a late charge for each succeeding month or fraction thereof in the amount of five percent (5%) of the total.

5. **Assignment of Lease; Release of Lessee.** The Tenant, MICHAEL SHEETS CONSTRUCTION, INC., shall be succeeded as Tenant by a condominium association composed of leasehold condominium unit owners at the time set out in the declaration and bylaws of condominium ownership and by the Oregon Condominium Act. Only the condominium association, and not the individual unit owners, shall succeed MICHAEL SHEETS CONSTRUCTION, INC. as tenant. The Landlord, with the intention of discharging the business and personal liability of the initial Tenant, MICHAEL SHEETS CONSTRUCTION, INC., and the individual partners thereof, their heirs, executors, and administrators, shall release Tenant, MICHAEL SHEETS CONSTRUCTION, INC., from all liability with respect to the rent reserved by and the covenants, conditions, and stipulations contained in this Lease, and all actions,

proceedings, claims and demands with respect to any breach, whether present or future, of any such covenants, conditions, and stipulations. Said release shall occur automatically upon the assignment to the condominium owners' association provided Tenant gives Landlord written notice of the assignment that contains the name and address of the condominium's business agent and the names and addresses of the owners at the time of transfer.

6. **Building Construction on Premises.** Any building construction proposed on the premises shall be approved by the Landlord. Any buildings so constructed shall be done strictly in accordance with full plans and specifications, including drawings and elevations showing the appearance and color of the finished building, to be filed with the Landlord prior to commencing construction. The building(s) shall be placed upon the lot at the location shown on the plot plan submitted to the Landlord or its designated official, which must be first approved by the Landlord's City Manager. Any excess soil from this construction shall be removed from the site by the Tenant to a location determined by the Landlord's designated official. All buildings shall be used for the business purpose(s) set forth in paragraph 2 of this Lease.

a. Unless construction of the building to be located upon Parcel "A," as set forth in Exhibit A to this Lease, is commenced within one hundred eighty (180) days of the date this Lease is executed and the initial building completed within one hundred eighty (180) days after commencement of construction, the Landlord shall have the right upon giving sixty (60) days' written notice to the Tenant to terminate this Lease. In the event of such termination, the Landlord may retain all rents therefor received by it, and all rights of the Tenant shall absolutely terminate. In the event any rent is owing by the Tenant at the effective date of termination pursuant to said notice, the Tenant shall pay said rent within ten (10) days of said effective date. It shall be the responsibility of the Tenant to secure at Tenant's sole expense all permits and approvals required for the use of the premises and construction of any building thereon.

7. **Clearing and Grading Premises.** The Tenant shall perform at the Tenant's own expense any clearing or grading of the premises required. Grading and clearing shall be done to such standards and on such grades as the Landlord may require. The Tenant shall secure any grading permit that may be required prior to commencement of any grading.

8. **Repairs.** The premises have been inspected and are accepted in their present condition, and Tenant will at all times keep the premises neat, clean and in a sanitary condition, and will replace any glass of all broken windows and doors of the building as may become cracked or broken, and except for reasonable wear and tear and damage by fire or other unavoidable casualty, will at all times present said premises in as good repair as they now are or may hereafter be put to. All repairs shall be at Tenant's sole cost and expense.

9. **Utilities.** The landlord shall provide initial power and water services hook-up to the premises at Landlord's expense. The Tenant hereby covenants and agrees to pay all monthly or other regular charges for heat, light and water, and for all other public utilities which shall be used in or charged against the leased premises during the full term of this Lease. Tenant is responsible for providing temporary utilities to the site for a period of 180 days from the date a building permit is issued for construction of the hangars. Landlord agrees to cooperate in the acquisition of temporary hookups. Landlord agrees to provide service after the expiration of the 180-day period. Tenant shall pay for and install drainage utilities as required for the site.

10. **Taxes.** The tenant hereby covenants and agrees to pay all property and other taxes that are assessed against the premises during the full term of this Lease. Taxes shall be paid not later than November 15 of each tax year commencing with the first tax statement received by Tenant.

11. **No Occupancy of Building(s) Prior to Issuance of Certificate of Occupancy.** The tenant shall not occupy or use any building hereafter erected on the premises until a certificate of occupancy thereof shall have been issued.

12. **Care of Premises.** The Landlord shall not be called upon to make any improvements or repairs of any kind upon said premises and said premises shall at all times be kept and used in accordance with the laws of the State of Oregon and ordinance of the City of McMinnville, and in accordance with all directions, rules and regulations of the health officer, fire marshal, building official, or other proper officer of any pertinent and authorized public authority, at the sole cost of expense of the Tenant. The Tenant will commit or permit no waste, damage, or injury to the premises and, at Tenant's own cost and expense, will keep all drainage pipes free and open and will protect water, heating, and other pipes so that they will not freeze or become clogged, and will repair all leaks, and will also repair all damage caused by leaks or by reason of the Tenant's failure to protect and keep free, open, and unfrozen any of the pipes and plumbing on said premises.

13. **Use.** The Tenant shall conduct and carry on in said premises only the business for which said premises are leased, and shall not use the premises for illegal purposes.

14. **Liens and Insolvency.** Tenant shall keep the leased premises and the property in which the leased premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant. If the Tenant becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee, or other liquidating officer is appointed for the business of the Tenant, the Landlord may cancel this Lease at the Landlord's option.

15. **Assignment and Subletting; Sale of Condominium Units.**

a. **Assignment.** This Lease may be assigned by the Tenant in whole only and not in part, and only with the prior written consent of the Landlord.

In the event of an assignment, such assignment may only be made to an assignee for a use of the premises as set forth in paragraph 2 of this Lease.

Subject to the provisions of paragraph 5 herein, the assignee must be shown to the Landlord to be of such financial standing and responsibility at the time of such assignment as to give reasonable assurance to the Landlord of prompt payment of all rents and other amounts to be paid under this Lease, and of full compliance with all other terms, covenants, conditions, and provisions of the Lease. No such assignment may be made or be of any force or effect if at the time of such assignment the Tenant is in default in any of the terms, covenants, conditions, and provisions of the Lease, including default in the payment of rent; PROVIDED, HOWEVER, the

assignee may cure the default(s) prior to taking possession of the premises. No such assignment for any purpose shall be of any force or effect unless the Landlord first shall have consented, in writing, to said assignment and has received a true copy of the proposed assignment. The Landlord may refuse to consent to such assignment for any purpose hereinabove set forth. Such assignment shall include the then unexpired balance of the term of this Lease.

The requirements of this subsection shall not apply to the sale and ownership of leasehold aircraft hangar condominium units, nor to the assignment to the condominium owners' association as set forth in paragraph 5.

b. **Subleases.** The Tenant may sublet the whole or any portion of any buildings on the premises, but not the real property (other than that part of the real property which is beneath the buildings), to a subtenant or subtenants; provided: (1) the Landlord has given its consent in writing prior to the sublease being effective and (2) the Landlord has received a true copy of the proposed sublease.

The requirements of this subsection shall not apply to the sale and ownership of leasehold hangar condominium units or the assignment to the condominium owners' association set forth in paragraph 5 and shall not limit the ability of the Tenant to structure the sale of units and assignment of this Lease as described herein.

c. **Rentals.** The Tenant may rent hangar space for the purposes described in paragraph 2 of this Lease on a month-to-month basis to subtenants of the condominium unit owners, provided: (1) the Tenant submits and receives Landlord approval of the proposed rental space; (2) the Tenant enters into hangar rental agreements only upon forms pre-approved by the Landlord; (3) the Tenant keeps the Landlord informed of the name, address, telephone number and aircraft registration number of all current hangar subtenants; (4) the Tenant charges monthly hangar rental fees no less than the rates now or in the future charged by the Landlord for comparable hangars; (5) the Landlord reserves the right to object for cause to any specific hangar rental subtenant and reserves the right to require the Tenant to terminate the hangar rental agreement of such objectionable subtenant within sixty (60) days of notice of objection.

The requirements of this subsection shall not apply to the sale and ownership of leasehold aircraft hangar condominium units, nor the assignment to the condominium owners' association set forth in paragraph 5.

d. **Sale of Condominium Units.** The parties anticipate that the aircraft hangars will be organized, sold and owned as leasehold condominium units, as defined in paragraph 2 herein. The leasehold condominium shall be occupied by units, defined to mean a physical portion of the condominium designated for separate ownership. The boundaries of a unit are the interior surfaces of its perimeter walls, floor, and ceilings as defined in the Oregon Condominium Act. The unit includes both the portion of the building so described, the air space so encompassed, the interior partitions, and other fixtures and improvements within the boundary of the unit. "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium. "Separate ownership" also includes ownership of a leasehold condominium under a form of ownership expiring with the expiration of the Lease.

Unit Owners shall use and occupy the units. "Unit owner" is defined to mean a Declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

The Tenant may market and sell leasehold condominium units to purchasers who will own said units subject to this Lease. The Tenant shall keep the Landlord apprised, on an annual basis, of a list of names and addresses of all condominium owners.

e. **Default.** If all or any part of the leased premises are sublet or occupied by anybody other than the Tenant or members of a condominium association or condominium unit owners, the Landlord may, after default by the Tenant, collect rent from any and all subtenants or occupants, and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of agreement, term, covenant, or condition hereof, nor the acceptance by the Landlord of any subtenant or occupant as tenant.

16. **Access.** The Tenant will allow the Landlord or the Landlord's agents free access at all reasonable times and upon at least twenty-four (24) hours' notice to said premises during normal business hours for the purpose of inspection. Nothing herein shall be construed in any way as limiting the authority of the Landlord's building official under existing law.

17. **Liability Insurance.** Tenant shall at all times carry and maintain liability insurance in a company or companies rated in the current edition of Best's General Ratings as at least A (Excellent), and Financial Size Category of not less than Class X, or in such other company or companies not so rated which may be acceptable to Landlord, insuring Tenant against all claims for damages for personal injury, including death, and against all claims for damage and destruction of property, which may arise by the acts or negligence of the Tenant, its agents, employees or servants, or by any means of transportation whatsoever, including owned, non-owned and hired automobiles, to the extent required by the Oregon Tort Claims Act, as now in existence or as amended hereafter. Landlord shall be named in all such policies as an additional insured, and duplicate true certified copy of the original of such insurance policy or policies shall be furnished to Landlord. Each such policy shall provide that the policy may not be canceled without the company first giving Landlord at least thirty (30) days' written notice.

18. **Accidents - Indemnity.** All personal property on said leased premises shall be at the risk of the Tenant. Landlord shall not be liable for any damage, either to person or property, sustained by the Tenant or others, caused by any defects now at said premises or hereafter occurring therein, or due to the condition of any buildings hereafter erected to any part or appurtenance thereof becoming out of repair, or caused by fire, or by the bursting or leaking of water, gas, sewer, or stream pipes, or from any act or neglect of Landlord, its employees, its elected and appointed officials, tenants or other occupants of said buildings, or any other persons, including the Landlord, or due to the happening of any accident from any cause in or about said buildings. Tenant covenants to protect, save, and indemnify Landlord, its elected and appointed officials, employees and agents while acting within the scope of their duties as such, harmless

from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Tenant's employees or third parties on account of personal injuries, death, or damage to property arising out of the premises leased by the Tenant or in any way resulting from the willful or negligent acts or omissions of the Tenant and/or its agents, employees, or representatives.

19. **Fire Insurance.** The Tenant shall at all times and during construction carry at its own expense fire insurance, hazard insurance, and vandalism and malicious mischief fire insurance on all buildings existing or hereafter constructed on the premises acceptable to the Landlord, which policy or policies shall name the Landlord as an additional insured, and to the extent of at least eighty percent (80%) of value. The original policy, a duplicate certified true copy, or such other evidence of insurance as the Landlord shall have agreed in writing to accept, shall be on deposit with the Landlord's Clerk at all times during the term hereof. Each such policy shall provide that the policy may not be canceled without the company first giving the Landlord at least thirty (30) days' prior written notice. No such policy shall contain a deductible clause greater than ONE THOUSAND DOLLARS (\$1,000) per claim. In the event of loss, the Tenant shall pay such deductible sum.

20. **Application of Fire Insurance Proceeds in Event of Loss.** If any building of the premises is totally destroyed by fire, earthquake or other casualty during the term of this Lease, and if the Tenant desires to rebuild, the proceeds of the insurance shall be used for the purpose of rebuilding such building. If the Tenant elects not to rebuild, the proceeds of any insurance shall be payable on a pro rata basis to the Landlord and Tenant based upon the total number of years in the term of this Lease and the number of years remaining. For example, if the Tenant has ten (10) years remaining on the thirty-five year lease term, the Tenant will receive 10/35 of the proceeds and the Landlord 25/35 of the proceeds. In the case of partial destruction, the proceeds shall be used for repairing the damage. The Tenant shall give notice of loss immediately and notice of intention to rebuild within sixty (60) days of loss. If the Tenant fails to give notice of intention to rebuild within the time specified, the Landlord shall then have the option to rebuild and shall give the Tenant notice in writing of such intention within one hundred twenty (120) days after receiving written notice of loss from the Tenant, subject to such policy conditions governing the replacement cost provisions therein. If either the Landlord or the Tenant elects to rebuild as above provided, such party shall prosecute the work of such rebuilding or repairing without delay. If both the Landlord and Tenant fail to give notice of intention to build as aforesaid within the times specified, both the Landlord and Tenant shall have the right to declare this Lease terminated by written notice served upon the other party by mail as provided in paragraph 22 herein. It is understood that if the Tenant sublets the premises and passes the expense of fire, earthquake or other casualty insurance or of liability insurance on to the subtenant, then Tenant will require all insurance policies to name both the Landlord and Tenant (but as Landlord thereunder) as insured parties as required above, as their interests may appear.

Likewise, upon the formation of condominium association, wherein the expense of fire, earthquake or other casualty insurance, or of liability insurance is passed on to the association, representing the collective interests of unit owners, then the Tenant and/or the association shall make certain that all insurance policies name the Landlord, the association and all individual unit owners as insured parties as required above, as their interests may appear.

Any sublease and condominium declaration shall reflect the provisions of this Lease as to the selection of the insurer and the amount and nature of coverage.

In the event of the loss or destruction of the building improvements where the Landlord and Tenant agree not to rebuild or repair, this Lease shall terminate, and rent for the premises shall abate. Any rents paid for a given rent term shall be prorated, with rent for the balance of such term refunded to the Tenant. If the Landlord and Tenant are unable to agree regarding the rebuilding of any improvements lost or destroyed and the disposition of insurance proceeds therefor, the parties shall submit the matter to an arbitration committee consisting of three persons, one selected by the Landlord, one selected by the Tenant, and the third appointed by the senior judge of the Circuit Court for Yamhill County. The parties may select any such alternative arbitrators, arbitration committee, or method as agreeable between the Landlord and Tenant. The decision of the majority of said arbitrators shall be binding upon the Landlord and Tenant, unless successfully modified by a court of law.

21. **Recovery of Leased Premises.** The Landlord is authorized to recover the leased premises from the Tenant in the event that the Airport Commission for the City of McMinnville determines the premises are required for another airport purpose. In the event such a determination is made, the Landlord elects to recover the premises, Landlord shall compensate Tenant for the value of the remainder of this Lease and the improvements constructed on the premises. Landlord and Tenant agree to each retain an MAI appraiser to determine the value of the remainder of this Lease and the improvements on the premises. If those appraisers are unable to agree on the value, a third appraiser shall be appointed by the senior judge of the Circuit Court for Yamhill County and that appraiser's valuation shall be conclusive and binding upon both parties. The value of the improvements shall be pro-rated based upon the remaining length of this Lease.

22. **Tenant's Right of Cancellation.** In addition to any other remedies available to the Tenant, this agreement shall be subject to cancellation by the Tenant should any one or more of the following events occur:

a. **Abandonment of Airport.** The permanent abandonment of the airport as an operating airport by act or decision of the Landlord;

b. **Supervening Event.** The occurrence of any supervening event or act of God which precludes the Tenant, condominium unit owner, and any assigns of the Tenant and unit owners, from the use of the property for the purposes enumerated herein or from the use of airport facilities; however, neither tenant nor Landlord shall have any liability under this subparagraph for any supervening event or act of God under any theory on which recovery may be sought;

c. **Landlord Breach of Lease.** The breach by the Landlord of any of the covenants, terms, or conditions of this agreement to be kept, performed, and observed by the Landlord and the failure to remedy such breach within a period of sixty (60) days after written notice from the Tenant of the occurrence of the breach;

d. **Federal Government or Other Governmental Agency Control.** The assumption by the federal government or any other governmental agency of the control of the airport or any portion thereof which would preclude the Tenant from operating under the terms of the Lease. (Landlord shall have no liability for loss of use occasioned by act of the federal government or any other government agency.)

23. **Ownership of Constructed Improvements After Termination of Lease.** During the pendency of this Lease, all buildings and improvements on the property shall be owned entirely by the Tenant and its successors and assigns. Subject to the right of the Tenant's financing institution to assume the Tenant's rights and obligations herein, in the event of the Tenant's default to said financing institution, upon termination of this Lease the building, alterations, additions, and improvements made by the Tenant to the property shall become the sole property of the Landlord, and the ownership of said improvements shall be vested in fee simple in the Landlord, subject to the recorded rights of any financing institution for the remaining lease and sublease terms. Upon termination of this Lease, the Landlord may elect to accept the premises or may, upon reasonable notice to the Tenant, require the premises to be surrendered in the same condition as existed at the time of execution of this Lease. Upon termination of this Lease, the premises shall be surrendered without notice in a neat and clean condition. All keys to all buildings on the premises shall be surrendered to the Landlord.

The Tenant may install in the leased premises such fixtures and equipment as the Tenant deems desirable at the Tenant's own expense. All such items shall remain the Tenant's property and may be removed by the Tenant at or before termination of this Lease, PROVIDED that the Tenant shall repair any damage to the premises caused by such removal.

24. **Notice.** All notices and consents hereunder shall be given in writing, delivered in person or mailed by certified mail, postage prepaid, to the receiving party at its address below, or to such other address as the receiving party may notify the sender beforehand referring to this Lease:

LANDLORD: CITY OF McMinnville
230 NE Second Street
McMinnville OR 97128

TENANT: MICHAEL SHEETS CONSTRUCTION, INC.
8515 SE Three Trees Lane
Amity OR 97101

25. **Governmental Fees.** All fees due under applicable law to the City, County, or State on account of any inspection made on leased premises by any officer thereof shall be paid by the Tenant.

a. **Signs.** All signs and symbols placed in the windows or doors or elsewhere about the premises, or upon the exterior part of the buildings, shall be subject to the approval of the Landlord or Landlord's agents. In the event the Tenant places signs or symbols on the exterior of said buildings or in the windows or on doors or elsewhere where they are visible from the street that are not satisfactory to the Landlord or Landlord's agents, the Landlord or

Landlord's agents may immediately demand the removal of such signs or symbols, and the refusal of the Tenant to comply with such demand within a period of twenty-four (24) hours will constitute a breach of this Lease, and entitle the Landlord to immediately recover possession of said premises in the manner provided by law. Any signs so placed on the premises shall be so placed upon the understanding and agreement that the Tenant will remove the same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Tenant, then the Landlord may have the same removed at Tenant's expense. In installing any signs, the Tenant shall conform to all requirements of applicable laws and regulations and pay applicable fees.

26. **Default and Re-Entry.** Unless resulting from events enumerated in paragraphs 19, 20, or 22 herein, if any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if the Tenant shall violate or default in any of the covenants and agreements therein contained, then the Landlord may cancel this Lease upon giving 120 days' notice and re-entering said premises, but notwithstanding such re-entry by the Landlord, the liability of the Tenant for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and the Tenant covenants and agrees to make good to the Landlord any deficiency arising from a re-entry and re-letting of the premises at a lesser rental than herein agreed to.

27. **Costs and Attorney's Fees.** If, by reason of any default on the part of either party, action is taken, whether or not a lawsuit is filed, to enforce any provision of this Lease or to recover for breach of any provision of this Lease, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs in such amount as is fixed by the court, and all costs and expenses incurred by reason of the breach or default by the other under this Lease.

28. **Breach of Lease by Tenant.** In the event of breach of any condition or term contained herein by Tenant, in addition to the terms of the agreement, the Landlord shall have the right to terminate this Lease upon giving written notice by certified or registered mail to Tenant at the current address. Failure or neglect of Landlord to act upon the breach of one or more breaches of this Lease shall not constitute or be construed as a waiver of subsequent breach by Tenant of any kind whatsoever that is created by Tenant or by individual condominium owner.

29. **Nonwaiver of Breach.** The failure of either party to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such strict performance or of the exercise of such option, or any other covenants or agreements, but the same shall be and remain in full force and effect.

30. **Removal of Property.** In the event of any entry on or taking possession of the leased premises as aforesaid, the Landlord shall have the right, but not the obligation, to remove from the leased premises all personal property located therein or thereon and may store the same in any place selected by Landlord including, but not limited to, a public warehouse, at the expense and risk of the owners thereof. Unless otherwise provided by law, Landlord shall have the right to sell such stored property, without notice to the Tenant after the property has been stored for a period of at least sixty (60) days, the proceeds of such sale to be applied first to the

cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof; the balance, if any, to be paid to Tenant.

31. **Heirs and Successors.** Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors, and assigns of any of all of the parties hereto, including condominium unit owners. The Landlord acknowledges that a condominium owner's association shall succeed the Tenant/signatories to this Lease. The Landlord hereby agrees to such succession of interest and covenants that upon the formation of the condominium owner's association, the association shall be responsible and liable to perform all terms and conditions of this Lease, and that the Lease shall automatically inure to the benefit of said association.

32. **Condominium Declaration.** The Tenant agrees, at its own expense, to develop condominium association agreements including, but not limited to, Declaration of Condominium Unit Ownership for the Condominium Hangars and Bylaws for the Hangar Owners Association, under which condominium hangar units shall be sold and owned. Said agreements (Declaration and Bylaws) shall be subject to the review and approval of the Landlord and said Declaration shall be executed and acknowledged by the duly authorized representative of the Landlord. Approval of the Declaration shall not unreasonably be withheld.

33. **Hold Over.** Should the Tenant, with the written consent of Landlord, hold over after the expiration of the term of this Lease, Tenant agrees to pay Landlord the same rate of rental as set forth herein, unless a different rate is agreed upon, and to be bound by all of the terms, covenants, and conditions as herein specified, so far as possible.

34. **Landlord's Ownership.** Landlord warrants that it is the owner of the leased premises and that it has the right to lease said premises under the terms of this Lease. Landlord will defend Tenant's right to quiet enjoyment of the leased premises from disturbance by anyone claiming by, through, or under Landlord.

35. **Nondiscrimination.**

a. The Tenant, for himself, his heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained, or otherwise operated on said property described in this Lease for a purpose for which a Department of Transportation permit is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Program of the Department of Transportation, and as said regulations may be amended.

b. The Tenant, for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant

running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from the participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; or (2) in the construction of any improvements in, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Program of the Department of Transportation, and as said regulations may be amended.

c. In the event of breach of any of the above nondiscrimination covenants, the Landlord shall have the right to terminate this Lease and to re-enter and repossess said land and facilities thereon and hold the same as if said Lease had never been made or issued.

36. **Hazardous Substances.** The Tenant shall not permit hazardous substances, including any substances, materials, wastes, pollutants, oils or regulated substances, or substances defined or designated as hazardous, toxic, radioactive, dangerous, or any other term in or under any environmental laws which may affect environmental or human health, to exist on the premises and shall, at Tenant's sole expense, undertake to comply with all rules, regulations, and policies of the State of Oregon and the United States Environmental Protection Agency. Tenant shall promptly notify the City Fire Department of the existence of any hazardous substances as required by state and federal regulations and shall comply with any requirements for hazardous waste disposal as may be imposed by applicable federal and state laws.

37. **Motor Vehicle Parking on Premises.** At any time when the Tenant is making use of aircraft, Tenant shall be permitted to park all motor vehicles within the aircraft hangar buildings. Such vehicles shall, at all times, park within the leased premises.

38. **Parking Aircraft on Premises.** The Tenant shall at no time park any aircraft or permit any aircraft to be parked on the exterior portion of the leased premises. The Tenant has the right to hangar aircraft on said leased premises and the right to charge hangar rental fees at rates no less than those rates now or in the future charged by the City of McMinnville for comparable hangars. Limitations on amounts of rent chargeable shall not restrict Tenant's right to market and sell leasehold condominium units in any dollar amount at the sole discretion of Tenant.

39. **Independent Default Clause.** A condominium unit owner may not be evicted due to a default by the board of directors of the association of unit owners so long as the unit owner has paid the pro rata share of the unit owner of the funds necessary to correct the default or because another unit owner has defaulted.

40. **Venue.** The venue of any suit, claim, demand, or proceeding which may be brought by either party under the terms of this Lease or growing out of the tenancy under this Lease shall be at the option of the Landlord in court(s) in Yamhill County, Oregon.

41. **Site Plan.** Where reference is made in this Lease to a plot plan or site plan, it is understood and agreed between the parties that such plan must include, at a minimum, those matters hereinafter set forth and shall be in the form of a scale drawing of the entire leased premises with all of those matters set forth to scale and legibly thereon:

- a. Location of all structures and sizes thereof, together with size and location of any future structures which the Tenant anticipates may be placed on the premises;
- b. Location of all roads, driveways, entrances, and exits;
- c. Location of all parking areas and description of method of delineating such areas by curbs or other methods;
- d. Location of all utilities and, in case of underground utilities, mention thereof;
- e. Interior and exterior drainage;
- f. Location and type of all fencing and gates;
- g. Site and exterior building lighting.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the 9th day of May, 2000.

Landlord:

CITY OF McMINNVILLE

By

Edward J. Hornley
Mayor

ATTEST:

By

Carole M. Beedat
City Clerk

Tenant:

MICHAEL SHEETS CONSTRUCTION, INC.

By

Michael Sheets pres.

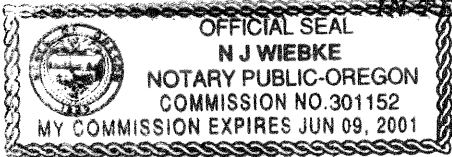
By _____

STATE OF OREGON,

County of Yamhill }
before me appeared Michael Sheets } ss.

On this 16th day of May 2001,

and both to me personally known, who being
duly sworn, did say that he, the said Michael Sheets
is the President, and he, the said
is the Secretary of Michael Sheets Construction, Inc
the within named Corporation, and that the seal affixed to said instrument is the corporate seal of said Corpora-
tion, and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board
of Directors, and and
acknowledge said instrument to be the free act and deed of said Corporation.



TESTIMONY WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year last above written.

[Handwritten Signature]

Notary Public for Oregon.

My Commission expires 6-9-01

CORPORATION ACKNOWLEDGMENT
Form No. 0-14
(Previous Form No. Form 24)

EXHIBIT A

McMINNVILLE AIRPORT - LEASE DESCRIPTION

LEASE PARCEL:

A tract of land in Section 26, Township 4 South, Range 4 West, Yamhill County Oregon, being more particularly described as follows:

Beginning at a point that bears North 89° 46' 28" West 184.32 feet from the northwest corner of McMinnville Airport Condominium Hangers; thence North 89° 46' 28" West 60.00 feet; thence South 00° 13' 32" West 235.00 feet; thence South 89° 46' 28" East 60.00 feet; thence North 00° 13' 32" East 235.00 feet to the point of beginning.

Map for:

Mike Sheets

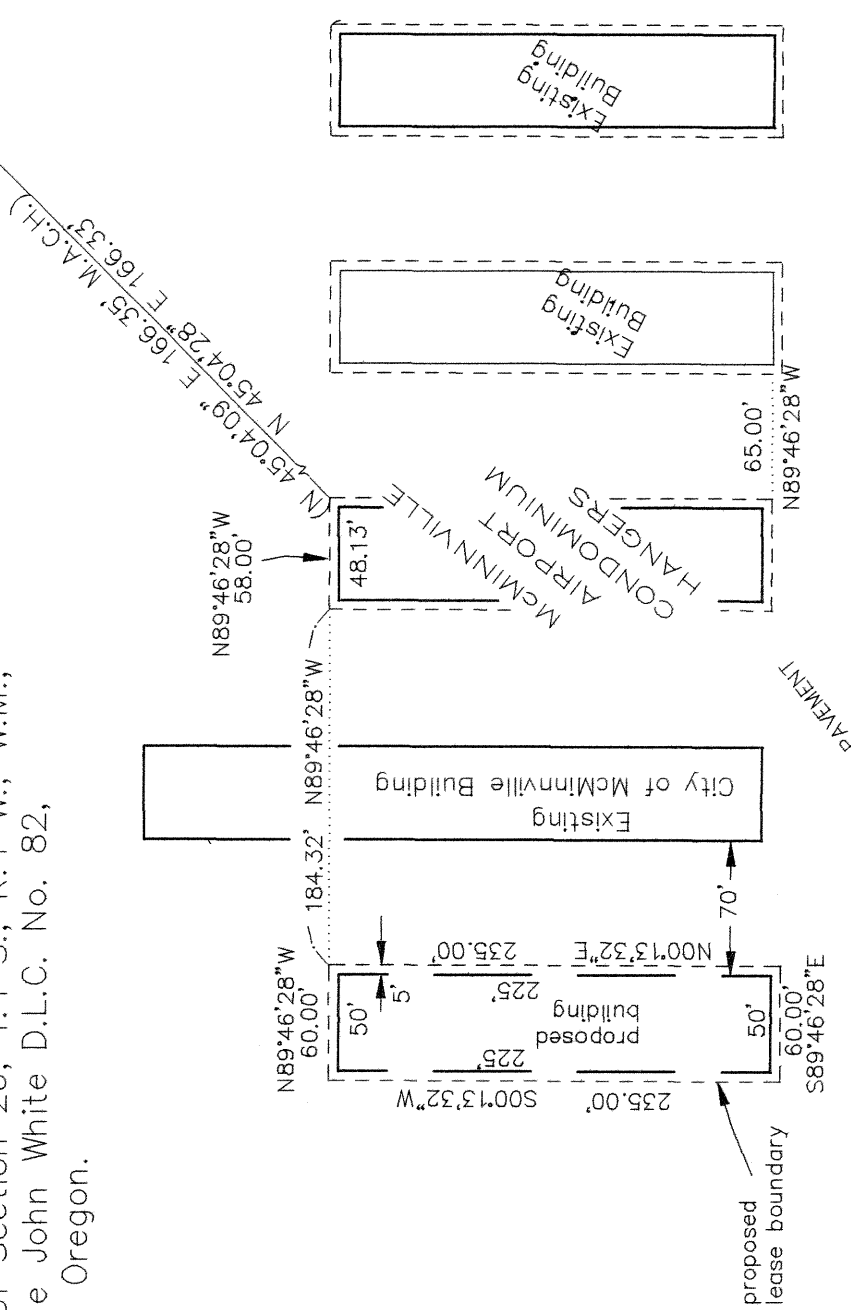
Location: The East 1/2 of Section 26, T.4 S., R.4 W., W.M.,
a portion of the John White D.L.C. No. 82,
Yamhill County, Oregon.

Tax Lot: 4426-100

Date: 10 April 2000

Scale: 1" = 100'

5/8" Iron Rod, up 0.5',
no id cap, per CSP-7346.
Held as the SE corner of
the "Evergreen Helicopters, Inc.",
tract as described by deed
recorded in Film Volume 103,
Page 1697, Yamhill County
Deed Records.



By : Matt Duncel & Assoc.
3765 Riverside Drive
McMinnville, Oregon 97128
Phone : 472-7904
Fax : 472-0367
E-Mail : duncel@spessart.com 3630



STAFF REPORT

DATE: May 5, 2021
TO: Jeff Towery, City Manager
FROM: Mike Bisset, Community Development Director
SUBJECT: 4040 Cirrus Hangar Lease Amendment

Report in Brief:

This action is the consideration of a resolution approving a lease amendment with B&G Hangar LLC for the 4040 Cirrus hangar at the airport.

Discussion:

The initial lease with B&G Hangar LLC was entered into in 2010, and is set to expire on May 31, 2045 (see attached 2010 lease document). Per section 22 of the original lease, at the end of the lease period the City had the option of taking ownership of the hangars, or requiring that the lessee remove the hangars and return the lease area to the airport.

In 2017, the City developed a new lease document with different lease renewal terms. The new lease terms allow for additional renewal terms of five (5) years each throughout the useful lifetime of the hangar. The lease will end at the end of the useful lifetime of the hangar. At that time, the hangar is to be removed by the lessee, and the lease area is returned to the airport.

Upon adoption of the new lease renewal terms, the Airport Commission and City Council indicated that the City would work with existing tenants to amend their lease(s) to include the new renewal terms. The attached lease amendment modifies the existing lease to include the new renewal terms.

The Airport Commission considered the lease amendment at their meeting on May 4, 2021. The Commission unanimously recommended that the City Council approve the lease agreement.

Attachments:

1. Proposed Resolution No. 2021-31
2. Proposed Lease Amendment - 2021
3. Hangar B&G Lease - 2010

Fiscal Impact:

The lease revenue is included in the Airport Fund budget, and is used to fund airport operations.

Recommendation:

The Airport Commission recommends that the City Council adopt the attached resolution approving a lease amendment with B&G Hangar LLC for the 4040 Cirrus hangar at the airport.

RESOLUTION NO. 2021 - 31

A Resolution approving a lease amendment with B&G Hangar LLC for the 4040 Cirrus hangar at the airport.

RECITALS:

In 2010, the City entered into a lease with B&G Hangar LLC for the 4040 Cirrus hangar at the airport, and the lease is set to expire on May 31, 2045.

The lease amendment will allow for additional renewal terms of five (5) years each throughout the useful lifetime of the hangar. The lease will end at the end of the useful lifetime of the hangar. At that time, the hangar is to be removed by the lessee, and the lease area is returned to the airport.

The Airport Commission considered the proposed lease at the May 4, 2021 Commission meeting, and unanimously recommended that the City Council approve the lease.

The public interest will be best served by entering into the lease for the generation of revenue.

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

1. That the Second Amendment to Ground Lease with B&G Hangar LLC for the 4040 Cirrus hangar at the airport, attached as Exhibit 1, is hereby approved.
2. That the City Manager is authorized and directed to execute the Second Amendment to Ground Lease.
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 meeting held the 25th day of May 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 25th day of May 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBIT:

1. Second Amendment to Ground Lease with B&G Hangar LLC for the 4040 Cirrus hangar at the airport

After recording, return to:
City of McMinnville
Attn: Legal Department
230 NE Second Street
McMinnville, OR 97128

SECOND AMENDMENT TO GROUND LEASE

This Second Amendment to Ground Lease is entered into on this ___ day of _____, 20__ by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as “Lessor”), and **B & G Hangar L.L.C.**, an Oregon limited liability company (“Lessee”).

RECITALS:

In 2010, Lessor entered into a Lease with Lessee to lease from Lessor certain premises located at the McMinnville Municipal Airport (“Lease”). That Lease is recorded with the Yamhill County Recorder’s Office as document no. 201012373.

Lessor and Lessee executed a First Amendment to Ground Lease on December 23, 2020 (“First Amendment”), which was recorded with the Yamhill County Recorder’s Office as document no. 2021-01465.

The parties desire to amend the Lease to include the provisions provided herein.

NOW, THEREFORE, Lessor and Lessee agree as follows:

1. **Option to Renew.** The Lease is hereby amended to add Paragraphs 41 and 42, relating to Lessee’s option to renew the Lease, as follows:

“41. Option to Renew. Lessee shall have the right, subject to City approval and subject to Lessee meeting the conditions contained herein prior to the expiration of the Initial Term, to renew this Lease for additional renewal terms of five (5) years each (“Renewal Term”), throughout the useful lifetime of the hangar as determined by the provisions set forth in this Paragraph. Not less than ninety (90) days prior to the expiration of the Initial Term, and each Renewal Term approved under the conditions outlined herein, City shall give Lessee written notice of the pending expiration of the then current Lease term and of the inspection requirements outlined in Paragraph 41.1 of this Lease (“Renewal/Inspection Notice”). Provided Lessee meets all conditions of renewal as outlined herein and is not in default of any Lease provision, Lessee’s desire to exercise such right of renewal shall be considered automatic. If Lessee does not desire to exercise the right of renewal, Lessee shall notify the City in writing within thirty (30) days of the date of City’s Renewal/Inspection Notice, of the intent not to renew the Lease. Such notice of intent not to renew the Lease must

contain an outline of Lessee's plans for removal of the hangar at the end of the existing term in accordance with Paragraph 44 of this Lease.

41.1 Renewal Term Inspection Requirements. Within thirty (30) days of the date of the City's Renewal/Inspection Notice, Lessee, at Lessee's sole expense, shall hire an independently licensed professional engineer, architect or building contractor to conduct an assessment and inspection of the hangar based on the criteria set forth herein. Lessee shall cause such inspection and assessment to be completed, and a written report of all findings from the inspection ("Inspection/Assessment Report") to be filed with the City within sixty (60) days of the date of the City's Renewal/Inspection Notice to Lessee. Failure of the Lessee to order such inspection and assessment or to provide the City with the Inspection/Assessment Report as required, shall be considered a violation of the Lease, and shall be grounds for denial of the Renewal Term.

41.2 Inspection/Assessment Report. The Inspection/Assessment Report to be provided to the City shall include, but not be limited to:

41.2.1 A detailed list of any maintenance deficiencies found in the interior and on the exterior of the hangar;

41.2.2 A statement verifying Lessee's compliance with current City of McMinnville Municipal Code Airport Property Regulations and the McMinnville Municipal Airport's adopted Minimum Standards for Commercial Aeronautical Activities, including the limits on storage of hazardous materials and appropriate usage of the Property; and

41.2.3 A structural assessment as to the remaining useful life of the hangar and recommendations for improvements which would increase the useful life expectancy of the hangar.

41.3 Deficiencies Satisfied. Lessee shall satisfy all deficiencies identified in the Inspection/Assessment Report within thirty (30) days of the date of such report. If deficiencies require more than thirty (30) days to correct, Lessee may make a written request to the City Manager for an extension of the standard correction time. The City Manager shall not unreasonably deny the extension. Failure of Lessee to correct each reported deficiency will result in ownership of the hangar reverting to the City.

41.4 Appeal of Deficiencies. If Lessee objects to a deficiency identified in the Inspection/Assessment Report, Lessee may file a written appeal with the City Manager. Such appeal must be submitted to the City Manager within ten (10) days of the date of the Inspection/Assessment Report.

41.5 Approval of Renewal Term. Upon Lessee's completion of all conditions precedent to the commencement of the Renewal Term, including, but not limited to, the satisfactory correction of all deficiencies identified in the Inspection/Assessment

Report, the City shall approve the extension of the Lease for one five-year Renewal Term, or for less than a five-year Renewal Term if the Inspection/Assessment Report reflects the conclusions outlined in the following Paragraph 41.6.

41.6 Final Renewal Term; Removal of Hangar. In the event the Inspection/Assessment Report results in a finding that the anticipated remaining useful life of the hangar is five (5) years or less, the pending Renewal Term shall be deemed to be the last Renewal Term available under this Lease (the “Final Renewal Term”). In such event, Lessee shall agree, as a condition to approval of the Final Renewal Term, to remove the hangar, at Lessee’s expense, at the end of the Final Renewal Term. If the Lessee does not agree to remove the hangar at the end of the Final Renewal Term, the City shall deny the request to renew and Lessee must remove the hangar and surrender the Property to the City within thirty (30) days of the expiration or termination of the Renewal Term then in effect. If Lessee fails to remove the hangar as required, the City shall consider the hangar a nuisance to be abated in accordance with McMinnville Municipal Code, and after notice to Lessee, may abate the nuisance and charge the Lessee the cost of abatement, plus a penalty as provided in the aforementioned Code.

41.7 Compliance with Airport Policy. Notwithstanding any other provision of this Lease, any part of this Paragraph 41 shall be amended as necessary to comply with any Airport policy adopted by the McMinnville City Council following recommendation of the City’s Airport Commission, or its successor, provided that, no such amendment shall shorten a renewal term in effect on the date of policy adoption, or require Lessee to expend additional moneys on hangar improvements during the Renewal Term in effect on the date of policy adoption.

42. Return Of Property At The End Of The Lease. Upon the expiration or termination of this Lease, Lessee shall remove the hangar at Lessee’s sole expense, and surrender the property to the City within thirty (30) days of the date of expiration or termination of the Lease. If Lessee fails to remove the hangar, the City shall consider the hangar a nuisance to be abated in accordance with McMinnville Municipal Code, and after notice to Lessee, may abate the nuisance and charge the Lessee the cost of abatement, plus a penalty as provided in the aforementioned Code.”

2. **Compliance.** The Lease is hereby amended to add Paragraph 43, relating to Lessee’s compliance with federal, state, and local laws and regulations, as follows:

“43. Compliance with Laws and Regulations. Lessee agrees to observe and obey during the term of this lease all laws, ordinances, rules, and regulations promulgated and/or enforced by Lessor or by other proper authority having jurisdiction over the conduct of operations at the airport, and to do all things necessary to stay or become in compliance with the same. Lessee further specifically agrees to comply with all requirements of the Federal Aviation Administration (FAA), including but not limited to, those requirements originating out of the City of McMinnville’s relationship with the FAA, or which find their origin in relation to grants or other contractual arrangements between the City of McMinnville and the FAA.

Lessee understands and agrees that the right of ingress and egress to runways, taxiways, and aprons, now and hereinafter designed by Lessor shall be subject to all Airport Rules and Regulations, Minimum Standards, laws, regulations, grant obligations, policies and ordinances now or hereinafter adopted, and that the use of said runways, taxiways and aprons shall be in common with others and that the same shall not be obstructed by Lessee or closed to the right of use or travel by others. Lessor shall provide notice to Lessee prior to any amendments to said documents, the most current versions of which may be obtained from the Airport Manager.

Lessor reserves the right to amend this lease to conform with any changes in Municipal, State or Federal laws, rules, regulations and ordinances. If at any time it is discovered that the provisions of this lease violate or are in any way inconsistent with current or later enacted Municipal, State or Federal laws, rules, regulations, ordinances, FAA policies, orders, advisory circular documents, grant obligations/assurances, or with any obligation the City of McMinnville may have with respect to the FAA, Lessor shall have the right to amend this lease as necessary to make this lease agreement consistent therewith.”

3. **Construction.** The Lease is hereby amended to add Paragraph 44, relating to construction at the McMinnville Municipal Airport, as follows:

“**44. Construction Activities.** Tenant’s use of the Premises and/or Airport may be disrupted by certain expansion, improvement, construction, development, remodeling, and/or other activities on or at the Airport, including, without limitation, runway maintenance and repairs. Landlord will not be in default under this Lease (and Tenant will not be entitled to any abatement of Rent and/or other concessions) if Tenant is disrupted (temporarily or otherwise) in the use of the Premises and/or Airport due to the aforementioned activities.”

4. All of the other terms and conditions of the Lease and the First Amendment shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Lease shall apply to this Second Amendment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment to Lease effective as of the date first above written.

LESSOR:

ACCEPTED on behalf of the public and Lessor by the City of McMinnville, Oregon:

Jeff Towery, City Manager

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 20__,
by Jeff Towery, as City Manager of the City of McMinnville.

Notary Public – State of Oregon

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney

LESSEE:

B & G Hangar L.L.C.

By: _____

Print Name: _____

As Its: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20__, by Graham Goad who personally appeared before me, was identified by satisfactory evidence, and acknowledged that he executed the instrument as the authorized agent of B & G Hangar L.L.C., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Notary Public – State of Oregon

AFTER RECORDING
RETURN TO:

GRAHAM ROAD

010 S.E CIRRUS AVE

McMinnville, OR 97128

OFFICIAL YAMHILL COUNTY RECORDS
REBEKAH STERN DOLL, COUNTY CLERK

201012373



\$106.00

00355598201000123730140149

09/07/2010 12:47:05 PM

DMR-LDMR Cnt=1 Stn=2 ANITA
\$70.00 \$10.00 \$11.00 \$15.00

GROUND LEASE AIRPORT HANGAR

The parties hereto are the CITY OF McMinnville, a municipal corporation of
the State of Oregon, Lessor, and B & G LLC, Lessee,

FOR AND IN CONSIDERATION of the mutual covenants hereinafter contained,
the parties agree as follows:

1. **Lease and Description.** Upon the terms and conditions hereinafter set forth, the Lessor does hereby lease to Lessee and the Lessee does hereby lease from Lessor those certain premises situated in the City of McMinnville, County of Yamhill, State of Oregon, being a part of the McMinnville Municipal Airport, and being described as set forth on Exhibit "A" attached hereto and made a part hereof and hereinafter called "premises". The Lessee shall construct improvements on the premises, which improvements shall remain the property of the Lessee, its successors and assigns, during the terms of this Lease.

2. **Business Purpose.** The premises are to be used solely for the use of aircraft hangar buildings and facilities. The Lessee intends to construct on the premises an aircraft hanger building which is to be used for aeronautical purposes and specifically for the purpose of parking and storing aircraft, commercial aircraft repair and maintenance, aircraft flight instruction and other routine activities associated with aircraft ownership. The owners and occupants of units shall not engage in any other use of the premises without prior written consent from Lessor. The Lessee shall conduct and carry on in said premises only the business for which said premises are leased, and shall not use the premises for illegal purposes. All uses and activities on the premises shall conform to the adopted "Minimum Standards for Commercial Aeronautical Activities.

3. **Term.** The term of this lease shall be for 35 years, and shall commence July 1, 2010, and end at midnight on May 31, 2045. All of the terms and conditions of this lease, other than the rental rate shall remain the same.

4. **Rent.** The rent for said premises for the first year of this Lease, commencing upon execution hereof, shall be computed at the rate of \$0.2245 per square foot, based upon the entire lease site consisting of 21,545 square feet, together with additional rental in the form of all property and other taxes which are assessed against the premises during the terms of this lease. The said taxes shall be paid to the Yamhill County Tax Collector at such time as they are billed

by the Yamhill County Tax Assessor each year commencing with the first tax statement received by Lessee. The rent for the period **July 1, 2010 to June 30, 2011**, is due upon execution of the lease. Thereafter, such rent shall be paid to Lessor annually in each succeeding year until this lease is terminated, and shall be mailed or delivered by hand to Lessor at City Hall, 230 NE Second Street, McMinnville, Oregon 97128, unless a different address is specified in writing by Lessor.

5. Future Rental Periods. Commencing on **July 1, 2011** and once every year thereafter, the annual rental sum shall be adjusted based upon the CPI-W for Portland, Oregon, for the period July 1 through June 30 preceding such determination; provided, that the rent for said rental period shall not be more than ten (10) percent higher than the rent fixed for the prior lease year. Lessor shall bill lessee on or about **September 1** for the year's total amount. Rent will not be considered late if paid within 30 days of billing.

- a) The basic per square foot ground lease **\$0.2245** established at the commencement of this lease shall be reviewed every five years on the anniversary date of this Lease, commencing 2015, and shall be adjusted following each review to reflect any increase in the then current market value of airport property being leased in the State of Oregon and Washington with emphasis upon the Willamette Valley. If the basic ground lease values are found to be greater than the fee then being charged, then the ground cost per square foot shall be so increased to the median value.
- b) **Late Charges.** The pro-rated rent shall be due and owing as of the first day of this lease-year, commencing **June 1, 2010 to June 30, 2011**. Thereafter the rent shall be billed annually as stated in Paragraphs 4 and 5. In the event rent is not timely paid, Lessor may assess, and the Lessee shall pay upon any installment of rent or portion thereof not paid within thirty (30) days after such rent installment is due and payable, a late charge penalty for each month or fraction thereof during which the rent or a portion thereof is not paid, equal to five (5) percent of the amount of such rent or portion thereof (plus accrued late charge penalties, if any) due and payable, or, if the rent due and owing is not paid within 30 days after becoming so due and owing, Lessor, at Lessor's election, may terminate this lease in its entirety. The amount of the late charge penalty shall be added to the amount due each month, and the total thereof shall be subject to a late charge for each succeeding month or fraction thereof in the amount of five (5) percent of the total rental due for said period.

6. Assignment of Lease; Release of Lessee. At such time as Lessee may convey said leasehold to a third party, Lessor shall release Lessee from all liability with respect to the rent reserved by and the covenants, conditions, and stipulations contained in this lease, and all actions, proceedings, claims and demands with respect to any future breach, whether present or future, or any such covenants, conditions, and stipulations, provided Lessee first submits to Lessor for its approval the prospective successor Lessee. Denial of the sale or lease shall not be unreasonably withheld by Lessor. See Paragraph 16.

7. Building Construction on Premises. Any building construction proposed on the premises shall be approved by the Lessor. Any buildings so constructed shall be done strictly in accordance with full plans and specifications, including drawings and elevations showing the appearance and color of the finished building, to be filed with the Lessor prior to commencing construction. The building(s) shall be placed upon the lot at the location shown on the plot plan submitted to the Lessor or its designated official, which location must be first approved by the Lessor's City Manager. Any excess soil from this construction shall be removed from the site by

the Lessee to a location determined by the Lessor's designated official. Area disturbed by construction shall be re-seeded to prevent erosion and be graded so that area can be mowed.

- a) **Construction Commencement.** Unless construction of the building to be located upon the premises is commenced within one hundred eighty (180) days of the date this lease is executed and the initial building completed within one hundred eighty (180) days after the commencement of construction, the Lessor shall have the right upon giving sixty (60) days' written notice to the Lessee to terminate this lease. In the event of such termination, the Lessor may retain all rents therefor received by it, and all rights of the Lessee shall absolutely terminate. In the event any rent is owing by the Lessee at the effective date of termination pursuant to said notice, the Lessee shall pay said rent within ten (10) days of said effective date. It shall be the responsibility of the Lessee to secure at Lessee's sole expense all permits and approval required for the use of the premises and construction of any building thereon.
- b) **Signs.** All signs and symbols placed in the windows or doors or elsewhere about the premises, or upon the exterior part of the buildings, shall be subject to the approval of the Lessor or Lessor's agents. In the event the Lessee places signs or symbols on the exterior of said buildings or in the windows or on doors or elsewhere where they are visible from the street that are not satisfactory to the Lessor or Lessor's agents, the Lessor or Lessor's agents may immediately demand the removal of such signs or symbols, and the refusal of the Lessee to comply with such demand within a period of twenty-four (24) hours will constitute a breach of this lease, and entitle the Lessor to immediately recover possession of said premises in the manner provided by law. Any signs so placed on the premises shall be so placed with the understanding and agreement that the Lessee will remove the same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Lessee, then the Lessor may have the same removed at Lessee's expense. In installing any signs, the Lessee shall conform to all requirements of applicable laws and regulations and pay any applicable fees.

8. Termination of this Land Lease. This lease shall be terminated if Lessee is unable to obtain the necessary building permits for the construction of said hangar. Failure of Lessee to pay permit fees or to complete construction because of a building code violation is not grounds for termination of the lease by Lessee.

9. Clearing and Grading Premises. The Lessee shall perform at the Lessee's own expense any clearing or grading of the premises required. Grading and clearing shall be done to such standards and on such grades as the Lessor may require. The Lessee shall secure any grading permits that may be required prior to commencement of any grading.

10. Repairs. The premises have been inspected and are accepted in their present condition and Lessee will at all times keep the premises neat, clean, and in a sanitary condition. Any buildings placed upon the leased premises by Lessee will be maintained in a neat and clean condition. Lessee will replace any glass of all broken windows and doors of the buildings as may become cracked or broken, and except for reasonable wear and tear and damage by fire or other unavoidable casualty, will at all times present said premises in as good repair as they were at the time of construction. All repairs shall be at Lessee's sole cost and expense.

11. Utilities. The Lessee hereby covenants and agrees to pay all monthly or other regular charges for heat, light and water, and for all other public utilities which shall be used in or charged against the leased premises during the full term of this lease. Lessee is responsible for

providing permanent utilities to the site that are in accordance with established city standards regarding size and materials subsequent to the date a building permit is issued for construction of any proposed buildings. Lessee shall pay for and install drainage utilities as required for the site. No occupancy shall occur until permanent utilities to the site have been installed in accordance with Lessor's requirements. Any temporary utilities required shall be at Lessee's expense.

12. Off Site Improvements: In the event that Lessee installs and pays for any off site improvements at the request of and prior written agreement of Lessor, including, but not being limited to a taxiway, the costs incurred by Lessee shall be a credit toward future rental payments under this lease.

13. No Occupancy of Building(s) Prior to Issuance of Certificate of Occupancy. The Lessee shall not occupy or use any building hereafter erected on the premises until a certificate of occupancy thereof shall have been issued.

14. Care of Premises. The Lessor shall not be called upon to make any improvements or repairs of any kind upon said premises and said premises shall at all times be kept and used in accordance with the laws of the State of Oregon and ordinances of the City of McMinnville, and in accordance with all directions, rules and regulations of the health officer, fire marshal, building official, or other proper officer of any pertinent and authorized public authority, at the sole cost and expense of the Lessee. The Lessee will neither commit nor permit any waste, damage, or injury to the premises and, at Lessee's own cost and expense, will keep all drainage pipes free and open and will protect water, heating, and other pipes so that they will not freeze or become clogged, and will repair all leaks, any damage caused by leaks or by reason of the Lessee's failure to protect and keep free, open, and unfrozen any of the pipes and plumbing on said premises.

15. Liens and Insolvency. Lessee shall keep the leased premises and the property on which the leased premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by Lessee. If the Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee, or other liquidating officer is appointed for the business of the Lessee, the Lessor may cancel this lease at the Lessor's option.

16. Assignment and Subletting.

- a) **Assignment.** This lease may be assigned by the Lessee in whole only and not in part, and only with the prior written consent of the Lessor.

In the event of an assignment, such assignment may only be made to an assignee for a use of the premises as set forth in Paragraph 2 of this lease.

Subject to the provisions of Paragraphs 5 and 6 herein, the assignee must be shown to the Lessor to be of such financial standing and responsibility at the time of such assignment as to give reasonable assurance to the Lessor of prompt payment of all rents and other amounts to be paid under this lease, and of full compliance with all other terms, covenants, conditions, and provisions of this lease. No such assignment may be made or be of any force or effect if at the time of such assignment the Lessee is in default in any of the terms, covenants, conditions, and provisions of the lease, including default in the payment of rent; provided, however, the assignee may cure the default(s) prior to taking possession of the premises. No such assignment for any purpose shall be of any force or effect unless the Lessor first shall have consented, in writing, to said assignment and has

received a true copy of the proposed assignment. The Lessor may refuse to consent to such assignment for any purpose herein above set forth. Such assignment shall include the then unexpired balance of the term of this lease.

- b) **Subleases.** The Lessee may sublet the whole or any portion of any buildings on the premises, but not the real property, to a sublessee; provided: (1) the Lessor has given its consent in writing prior to the sublease being effective and; (2) the Lessor has received a true copy of the proposed sublease.
- c) **Rentals.** The Lessee may rent hangar space for the purposes described in Paragraph 2 of this lease on a month-to-month basis to sublessee provided: (1) the Lessee submits and receives Lessor's approval of the proposed rental space; (2) the Lessee enters into hangar rental agreements only upon forms pre-approved by the Lessor; (3) the Lessee keeps the Lessor informed of the name, address, telephone number, and aircraft registration number of all current hangar sublessees; (4) the Lessee charges monthly hangar rental fees no less than the rates now or in the future charged by the Lessor for comparable hangars; (5) the Lessor reserves the right to object for cause to any specific hangar rental sublessee and reserves the right to require the Lessee to terminate the hangar rental agreement of such objectionable sublessee within sixty (60) days of notice of objection.
- d) **Default.** If all or any part of the leased premises are sublet or occupied by anybody other than the Lessee, the Lessor may, after default by the Lessee, collect rent from any and all sublessees or occupants, and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of any agreement, term, covenant, or condition hereof, nor the acceptance by the Lessor of any sublessee or occupant as a Lessee.

17. Access. The Lessee will allow the Lessor or the Lessor's agents free access at all reasonable times and upon at least twenty-four (24) hours notice to said premises during normal business hours for the purpose of inspection. Nothing herein shall be construed in any way as limiting the authority of the Lessor's building official under existing law.

18. Liability Insurance. Lessee shall at all times carry and maintain liability insurance in a company or companies rated AM Best A- (Excellent) or better, and Financial Size Category of not less than Class X, or in such other company or companies not so rated which may be acceptable to Lessor, insuring Lessee against all claims for damages for personal injury, including death, and against all claims for damage and destruction of property, which may arise by the acts or negligence of the Lessee, its agents, employees or servants, or by any means of transportation whatsoever, including owned, non-owned, and hired automobiles, up to at least the limits established by the Oregon Tort Claims Act, as now in existence or as amended hereafter. Lessor shall be named in all such policies as an additional insured, and a duplicate certified true copy of the original of such insurance policy or policies shall be furnished to Lessor. Each such policy shall provide that the policy may not be canceled without the company first giving Lessor at least thirty (30) days' written notice.

19. Accidents - Indemnity. All personal property on said leased premises shall be at the risk of the Lessee. Lessor shall not be liable for any damage, either to person or property, sustained by the Lessee or others, caused by any defects now at said premises or hereafter occurring therein, or due to the condition of any buildings hereafter erected to any part or appurtenance thereof becoming out of repair, or caused by fire, or by the bursting or leaking of water, gas, sewer, or steam pipes, or from any act or neglect of Lessee, its employees, sublessees,

or other occupants of said buildings, or any other persons, or due to the happening of any accident from any cause in or about said buildings. Lessee covenants to protect, save, and indemnify Lessor, its elected and appointed officials, and employees while acting within the scope of their duties as such, from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Lessee's employees or third parties on account of personal injuries, death, or damage to property arising out of the premises or in any way resulting from the willful or negligent acts or omissions of the Lessee and/or its agents, employees, or representatives.

20. Fire Insurance. The Lessee shall at all times and specifically during construction carry at its own expense fire insurance, hazard insurance, and vandalism and malicious mischief insurance on all buildings existing or hereafter constructed on the premises acceptable to the Lessor which policy or policies shall name Lessor as an additional insured as to the value of Lessor's interest as determined hereinafter, and to the extent of at least eighty percent (80%) of the value of the buildings. The original policy, a duplicate certified true copy, or such other evidence of insurance as the Lessor shall have agreed in writing to accept, shall be on deposit with the Lessor's Community Development Department at all times during the term hereof. Each such policy shall provide that the policy may not be canceled without the insurer first giving the Lessor at least thirty (30) days' prior written notice. No such policy shall contain a deductible clause greater than one thousand dollars (\$1,000) per claim. In the event of loss, the Lessee shall pay such deductible sum.

21. Application of Fire Insurance Proceeds in Event of Loss.

- a) **Total Destruction:** "Total destruction" or "Totally destroyed" means destruction to an extent exceeding fifty (50) percent of the sound value of the building. If any building constructed on the leased premises is totally destroyed by fire, earthquake, or other casualty during the term of this lease, and if the Lessee desires to rebuild, the proceeds of the insurance shall be used for the purpose of rebuilding such building. If the Lessee elects not to rebuild, the proceeds of any insurance shall be payable on a pro rata basis to the Lessor and Lessee in such proportions as to cause the unpaid portion of the lease payment for the unexpired portion of this lease to be paid in full to Lessor by the Lessee based upon the total number of years in the term of this lease and the number of years remaining.

If the Lessor and Lessee are unable to agree regarding the disposition of insurance proceeds therefor, the parties shall submit the matter to arbitration pursuant to the rules and regulations established by the Supplementary Trial Court Rules of the Circuit Court of The State of Oregon for the Twenty-fifth Judicial District. The parties may select any such alternative arbitrators, arbitration committee, or method as agreeable between the Lessor and Lessee. The decision of the majority of said arbitrators shall be binding upon the Lessor and Lessee, unless successfully modified by a court of law.

- b) **Partial Destruction:** "Partial Destruction" means destruction to an extent not to exceed fifty percent (50%) of the sound value of the building. In the case of partial destruction, the proceeds shall be used by Lessee for repairing the damage. The Lessee shall give to Lessor written notice of loss immediately and a notice of intention to rebuild within sixty (60) days of loss. If the Lessee fails to give notice of intention to rebuild within the time specified, the Lessor shall then have the option to rebuild and shall give the Lessee notice in writing of such intention either within one hundred twenty (120) days after receiving written notice of loss from the Lessee or within one hundred twenty (120) days after

Lessor should have received written notice of loss from the Lessee, subject to such policy conditions governing the replacement cost provisions therein. If either the Lessor or the Lessee elects to rebuild as above provided, such party shall prosecute the work of such rebuilding or repairing without delay. If both the Lessor and Lessee fail to give notice of intention to build as aforesaid within the times specified, both the Lessor and Lessee, or either of them, shall have the right to declare this lease terminated by written notice served upon the other party as provided in Paragraph 25 herein. It is understood that if the Lessee sublets the premises and passes the expense of fire, earthquake, or other casualty insurance or of liability insurance on to the sublessee, then Lessee will require all insurance policies required under the sublease to name both the Lessor and Lessee (but as Lessor thereunder) as an additional insured as required above, as their interests may appear. Any sublease shall reflect the provisions of this lease as to the selection of the insurer and the amount and nature of coverage.

22. Recovery of Leased Premises. The Lessor is authorized to recover the premises from the Lessee in the event that the Airport Commission for the City of McMinnville determines the premises are required for another airport purpose. In the event such a determination is made and the Lessor elects to recover the premises, Lessor shall compensate Lessee for the value of the remainder of this lease and the improvements constructed on the premises. Lessor and Lessee agree to each retain an MAI appraiser to determine the value of the remainder of this lease and the improvements on the premises. If those appraisers are unable to agree on a value, a third appraiser shall be appointed by the senior judge of the Circuit Court for Yamhill County and that appraiser's valuation shall be conclusive and binding upon both parties. The value of the improvements shall be pro-rated based upon the remaining unused portion of the term of this lease as that portion relates to the total term of this lease.

23. Lessee's Right of Cancellation. In addition to any other remedies available to the Lessee, this agreement shall be subject to cancellation by the Lessee should any one or more of the following occur:

- a) **Abandonment of Airport.** The permanent abandonment of the airport as an operating airport by act or decision of the Lessor;
- b) **Supervening Event.** The occurrence of any supervening event or act of God which precludes the Lessee, and any assigns of the Lessee, from the use of the property for the purposes stated herein or from the use of airport facilities. Neither Lessee nor Lessor shall have any liability under this subparagraph for any supervening event or act of God under any theory on which recovery may be sought;
- c) **Lessor Breach of Lease.** The breach by the Lessor of any of the covenants, terms, or conditions of this lease to be kept, performed, and observed: by the Lessor and the failure to remedy such breach within a period of sixty (60) days after written notice from the Lessee of the occurrence of the breach;
- d) **Federal Government or Other Governmental Agency Control.** The assumption by the federal government or any other governmental agency of the control of the airport or any portion thereof which would preclude the Lessee from operating under the terms of the lease. Neither Lessor nor Lessee shall have any liability for loss of use occasioned by act of the federal government or any other government agency.

24. Ownership of Constructed Improvements After Termination of Lease.

During the pendency of this lease, all buildings and improvements on the property shall be owned entirely by the Lessee and its successors and assigns. Subject to the right of the Lessee's financing institution to assume the Lessee's rights and obligations herein, in the event of the Lessee's default to said financing institution, upon termination of this Lease, the building alterations, additions, and improvements made by the Lessee to the property shall become the sole property of the Lessor, and the ownership of said improvements shall be vested in fee simple in the Lessor, subject to the recorded rights of any financing institution for the remaining lease and sublease terms. Upon termination of this Lease, the Lessor may elect to accept the premises or may, upon reasonable notice to the Lessee, require the premises to be surrendered in the same condition as existed at the time of execution of this Lease. Upon termination of this Lease, the premises shall be surrendered without notice in a neat and clean condition. All keys to all buildings on the premises shall be surrendered to the Lessor.

The Lessee may install in the leased premises such fixtures and equipment as the Lessee deems is desirable at the Lessee's own expense. All such items shall remain the Lessee's property and may be removed by the Lessee at or before termination of this Lease, PROVIDED that the Lessee shall repair any damage to the premises caused by such removal.

25. Notice. All notices and consents hereunder shall be given in writing, delivered in person or mailed by certified mail, postage prepaid, to the receiving party at its address below, or to such other address as the receiving party may notify the sender beforehand referring to this lease:

LESSOR: CITY OF McMinnville
230 NE 2nd Street
McMinnville OR 97128

LESSEE: B & G LLC
Robert Harris
Graham Goad

26. Governmental Fees. All fees due under applicable law to the City, County, or State on account of any inspection made on leased premises by any officer thereof shall be paid by the Lessee.

27. Default and Re-Entry. Unless resulting from events enumerated in Paragraphs 19, 20, or 22 herein, if any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if the Lessee shall violate or default in any of the covenants and agreements herein contained, then the Lessor may cancel this lease upon giving 120 days' notice and re-entering said premises, but notwithstanding such re-entry by the Lessor, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this lease, and the Lessee covenants and agrees to make good to the Lessor any deficiency arising from a re-entry and re-letting of the premises at a lesser rental than herein agreed to.

28. Costs and Attorney's Fee. The prevailing party shall be entitled to recover reasonable attorney's fees and costs in such amount as are fixed by the trial or appellate court, and

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all costs and expenses incurred by reason of the breach or default by the other under this lease, whether or not an action is filed.

29. Breach of Lease by Lessee.

Each of the following shall be deemed a default or breach of this lease:

- a) Nonpayment of the whole or any portion of the rents herein reserved, or any other sum or sums of money due to Lessor from Lessee under the provisions hereof as and when due;
- b) Nonperformance by Lessee of any other covenant or condition herein contained on the part of Lessee to be kept and performed;
- c) Abandonment of the premises by Lessee; or
- d) The adjudication of Lessee as bankrupt, the making by Lessee of a general assignment for the benefit of creditors, the taking by Lessee of the benefit of any insolvency act or law, or the appointment of a receiver or trustee in bankruptcy.

Within thirty (30) days after written notice from Lessor to Lessee demanding performance, Lessor may declare a forfeiture of this lease and re-enter upon the premises and remove all persons and property therefrom, and in addition or in lieu thereof, Lessor may, at its option, pursue any other remedy provided by law or in equity for the enforcement of Lessor's rights under the provisions of this lease.

In the event of breach of any condition or term contained herein by Lessee, in addition to the terms of the agreement, the Lessor shall have the right to terminate this lease upon giving written notice as provided in Paragraph 25 herein.

30. Nonwaiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and conditions of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such strict performance as to any subsequent breach by the other party of any kind whatsoever that is created by the other party of any other covenants or conditions, or of the exercise of any such option, and the same shall be and remain in full force and effect.

31. Removal of Property. In the event of any entry on or taking possession of the premises as aforesaid, the Lessor shall have the right, but not the obligation, to remove from the premises all personal property located therein or thereon and may store the same in any place selected by Lessor, including, but not limited to, a public warehouse, at the expense and risk of the owners of the said property. Unless otherwise provided by law, Lessor shall have the right to sell such stored property, without notice to the owner thereof after the property has been stored for a period of at least sixty (60) days, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Lessee to Lessor under any of the terms hereof, the balance, if any, to be paid to the owner thereof.

32. Heirs and Successors. Subject to the provisions hereof pertaining to assignment and subletting, the covenants and conditions of this lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors, and assigns of any of all of the parties hereto.

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33. Holding over. Should the Lessee, without the prior written consent of the Lessor, hold over after the expiration of the term of this lease, Lessee agrees to pay Lessor monthly rental as shall be established by Lessor.

Should the Lessee, with the prior written consent of the Lessor, hold over after the expiration of the terms of this lease, Lessee agrees to pay Lessor the rate of rental as set forth by this lease, unless a different rate is agreed upon.

In either event Lessee shall also be bound by all of the terms, covenants, and conditions as herein specified, so far as possible.

34. Lessor's Ownership. Lessor warrants that it is the owner of the leased premises and that it has the right to lease said premises under the terms of this lease. Lessor will defend Lessee's right to quiet enjoyment of the premises from disturbance by anyone claiming by, through, or under Lessor.

35. Nondiscrimination.

- a) The Lessee, for itself, its representatives, successors in interest and assigns, as a part of the consideration hereof does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained, or otherwise operated on said property described in this lease for a purpose for which a Department of Transportation permit is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Program of the Department of Transportation, and as said regulations may be amended.
- b) The Lessee, for itself, its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from the participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; or (2) in the construction of any improvements in, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Program of the Department of Transportation, and as said regulations may be amended.
- c) In the event of breach of any of the above nondiscrimination covenants, the Lessor shall have the right to terminate this lease and to re-enter and repossess said premises and facilities thereon and hold the same as if said lease had never been made or issued.

36. Hazardous Substances. The Lessee shall not permit hazardous substances, including any substances, materials, wastes, pollutants, oils or regulated substances, or substances defined or designated as hazardous, toxic, radioactive, dangerous, or any other term in or under any environmental laws which may affect environmental or human health, to exist on the

premises without complying with all rules, regulations, and policies of the State of Oregon and the United States Environmental Protection Agency. Lessee shall promptly notify the City Fire Department of the existence of any hazardous substances as required by state and federal regulations and shall comply with any requirements for hazardous waste disposal as may be imposed by applicable federal and state laws.

37. Motor Vehicle Parking on Premises. At any time when the Lessee is making use of aircraft, Lessee shall be permitted to park all motor vehicles within the aircraft hanger buildings. Such vehicles shall, at all times be parked within the premises.

38. Parking Aircraft on Premises. The Lessee shall at no time store any aircraft or permit any aircraft to be stored on the exterior portion of the premises. The Lessee has the right to hangar aircraft on said leased premises and the right to charge hangar rental fees at rates no less than those rates now or in the future charged by the City of McMinnville for comparable hangars. Aircraft may be parked on the exterior portion of the leased premises only for loading, unloading, fueling, and other purposes associated with short-term maintenance.

39. Venue. The venue of any suit, claim, demand, or proceeding which may be brought by either party under the terms of this lease or growing out of the tenancy under this lease shall be at the option of the Lessor in court(s) in Yamhill County, Oregon.

40. Site Plan. Where reference is made in this lease to a plot plan or site plan, it is understood and agreed between the parties that such plan must include, at a minimum, those matters hereinafter set forth and shall be in the form of a scale drawing of the entire premises with all of those matters set forth to scale and legibly thereon:

- a) Location of all structures and sizes thereof, together with size and location of any future structures which the Lessee anticipates may be placed on the premises;
- b) Location of all roads, driveways, entrances, and exits;
- c) Location of all parking areas and description of method of delineating such areas by curbs or other methods;
- d) Location of all utilities and, in case of underground utilities, mention thereof;
- e) Interior and exterior drainage;
- f) Location and type of all fencing and gates;
- g) Site and exterior building lighting.

IN WITNESS WHEREOF, the parties hereto have executed this lease on the 29 day of July, 2010.

Approved as to Form:

[Signature]
City Attorney

Lessor:

CITY OF McMINNVILLE
By [Signature]
City Manager

State of OREGON
County of Yamhill

Subscribed and sworn to (or affirm) before me on 7/29 ^{SB} 2010



Shawn M. Branson
Notary Public-State of Oregon
My commission expires: 12.9.11

Lessee:

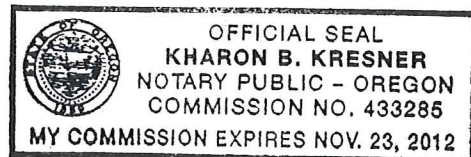
By [Signature]
GRAHAM L GOAD

By _____

State of OREGON
County of Yamhill

Subscribed and sworn to (or affirm) before me on 7/26 2010

[Signature]
Notary Public-State of Oregon
My commission expires: 11/23/2012



IN WITNESS WHEREOF, the parties hereto have executed this lease on the 29 day of July 2010.

Approved as to Form:

[Signature]
City Attorney

Lessor:

CITY OF McMinnville
By [Signature]
City Manager

State of OREGON
County of Yamhill

Subscribed and sworn to (or affirm) before me on July 29, 2010



[Signature]
Notary Public - State of Oregon
My commission expires: 12.9.11

Lessee:

By _____

By [Signature]
Robert G. Harris

State of ~~OREGON~~ Montana
County of Yamhill ~~Flathhead~~

Subscribed and sworn to (or affirm) before me on July 22, 2010



JENNIFER RUTHER
NOTARY PUBLIC - MONTANA
Residing at
Columbia Falls, Montana
My Commission Expires
April 8, 2012

[Signature]
Notary Public - State of Oregon Montana
My commission expires: 4/8/2012

Lease Parcel 14

LEGAL DESCRIPTION

EXHIBIT A

A tract of land being a portion of the northeast one-quarter of Section 26 and the north one-half of the John White Donation Land Claim No. 82, more particularly described as follows:

COMMENCING at the Northwest plat corner of the "McMinnville Airport Condominium Hangers", recorded March 31, 1994, Yamhill County Survey Records; thence N.69°55'34"E., a distance of 1003.22 feet to the True Point of Beginning; thence N. 32°46'44"W., a distance of 155.00 feet; thence N57°13'16"E., a distance of 139.00 feet; thence S.32°46'44"E., a distance of 155.00 feet; thence S.57°13'16"W., a distance of 139.00 feet to the Point of Beginning.

Containing 21,545 square feet, more or less.

Bearings are based upon the plat of the "McMinnville Airport Condominium Hangers", recorded March 31, 1994, Yamhill County Survey Records.



Airport Liability Certificate of Insurance

DATE ISSUED **3/2/2012**
 NAMED INSURED **NW AIR REPAIR, INC. AND ITS INDIVIDUAL EXECUTIVE OFFICERS AND SHAREHOLDERS**
 ADDRESS OF INSURED **4010 CIRRUS AVE. MCMINNVILLE, OR 97128**
 INSURANCE COMPANY **HALLMARK INSURANCE COMPANY**
 POLICY NUMBER **AP99-08050-05**
 POLICY EFFECTIVE DATE **3/1/2012**
 POLICY EXPIRATION DATE **3/1/2013**
 AIRPORT DESCRIPTION **MCMINNVILLE MUNICIPAL AIRPORT, MCMINNVILLE, OREGON**

Coverage Summary

TOTAL POLICY COVERAGE LIMIT	LIMIT OF COVERAGE
	\$1,000,000 Each Occurrence
A. BODILY INJURY AND PROPERTY DAMAGE COVERAGE	\$1,000,000 Each Occurrence
Hazard Division 1. Airport Operations	\$1,000,000 Each Occurrence
	\$1,000,000 Each Person

This Certificate is issued to the following Certificate Holder:

Name	Address
CITY OF MCMINNVILLE	230 EAST 2ND ST. MCMINNVILLE, OR 97128

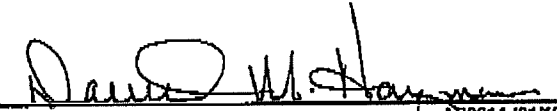
Coverage under the following Coverage and Hazard Divisions is extended to include the named Certificate Holder as an insured subject to all of the applicable policy terms, conditions and provisions applicable to such coverage.

Coverage A. Hazard Division 1. Airport Operations

Notice of cancellation of the policy will be provided to the Certificate Holder in accordance with the terms and provisions of the policy.

THIS CERTIFICATE OF INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE PROVIDED BY THE INSURANCE POLICY REFERENCED ABOVE.

AEROSPACE INSURANCE MANAGERS, INC.


 LZ AP2014 (01/10)

15280 Addison Road Suite 250 | Addison, Texas 75001 | Tel 972.852.1200 888.880.1289 Fax 972.852.1212 | aerospaceim.com
 221 East Glenoaks Boulevard, Suite 150 | Glendale, California 91207 | Tel. 818.547.1400 Fax 818.547.3800 | West Coast Office

Staff Report

DATE: May 25, 2021
TO: Mayor and City Councilors
FROM: Jennifer Cuellar, Finance Director
SUBJECT: Audit Services contract with Merina and Co.

Strategic Priority & Goal:



CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize and deliver municipal services with discipline and focus

Report in Brief:

The City issued a Request for Proposal (RFP) for Audit Services on February 5, 2021, and received four proposals by the March 22 deadline. The two firms receiving the highest scores from the evaluation group (made up of three city staffers and two finance leaders from other local jurisdictions in McMinnville) were interviewed by the Audit Committee on April 23, 2021. After deliberation, the Audit Committee chose to issue an Intent to Award Notice in favor of Merina and Co.

Background:

The City issued the RFP because the contract with its current audit firm ended with the FY2019-20 audit cycle. The audit firm proposers were evaluated based on factors such as firm qualifications, specific audit approach, and fees for services provided.

The contract includes annual audit services and production of the financial statements for both the City and the McMinnville Urban Renewal Agency. Federal single audit services for the City are also included in the contract and will be charged only for those years in which a federal audit is required.

The Resolution presented to the Council approves entering into a contract with Merina & Company.

The contract will be a not to exceed contract for five years from FY2020-21 to FY2024-25 with the option for five additional annual extensions, a contract term considered best practice by the Government Finance Officer's Association. Fees will be charged based on actual hours worked by members of the firm, allowing for the possibility that audit fees may come in under annual maximum charges.

Attachments:

1. Proposed Resolution No. 2021-32
2. Contract with Merina and Co.

Recommendation:

Staff recommends approval of the Resolution and contract as provided.

RESOLUTION NO. 2021 - 32

A Resolution approving entering into a contract with Merina & Company LLP.

RECITALS:

In February 2021, the City of McMinnville issued a Request for Proposals for Professional Audit Services. In April 2021, the City’s Audit Committee evaluated the proposals received and determined that it is in the best interest of the City to contract with Merina & Company LLP for professional audit services.

The City desires to contract with Merina & Company LLP to provide professional audit services for fiscal years 2020-21 through 2024-25 with the option of providing audit services to the City for five additional fiscal years.

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

1. That entry into a Professional Services Agreement between the City of McMinnville and Merina & Company LLP for the contract sum of \$447,175, which agreement is in substantially similar form to Exhibit A attached hereto and incorporated herein, is hereby approved.
2. The City Manager is hereby authorized and directed to execute the agreement with Merina & Company LLP.
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 25th day of May 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 25th day of May 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

CITY OF McMinnville
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) for the Audit Services Project (“Project”) is made and entered into on this _____ day of May 2021 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Merina & Company, L.L.P.**, an Oregon limited liability partnership, doing business as Merina+Co (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Consultant shall diligently perform the audit services according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

2.1. The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than March 31, 2026 (“Initial Term”), whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

2.2. The City and Consultant may extend the Initial Term of this Agreement in one (1) year increments, not to exceed a total of five (5) years beyond the Initial Term. Any extension of the Initial Term pursuant to this Section 2.2 must be agreed to in writing by the parties.

Section 3. Consultant’s Services

3.1. All written documents prepared by Consultant in conjunction with the Services shall bear the signature, name, or logo of, or otherwise be identified as coming from, Consultant’s authorized Project Manager.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.3. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

3.4. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed FOUR HUNDRED FORTY THOUSAND ONE HUNDRED SEVENTY-FIVE DOLLARS (\$440,175), for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 16**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies that are not specifically covered by **Exhibit A**.

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges,

licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 5. City's Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2020-21. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 14**.

Section 6. City's Project Manager

The City's Project Manager is Jennifer Cuellar. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 7. Consultant's Project Manager

Consultant's Project Manager is Tonya Moffitt. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 8. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 9. Subcontractors and Assignments

9.1. Unless expressly authorized in **Exhibit A** or **Section 10** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant, provided Consultant advises the City

of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

9.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

9.3. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 10. Consultant Is Independent Contractor

10.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

10.2. Consultant may request that some consulting services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

10.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 10** and meet the same insurance requirements of Consultant under this Agreement.

Section 11. Consultant Responsibilities

11.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

11.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City. References to "subcontractor" mean a subcontractor at any tier.

11.4. COVID-19 Safety Measures. Consultant must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Consultant's employees and/or subconsultants, City employees, and the public. Consultant must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Consultant is required to stop or delay work due to a COVID-19 related event, Consultant shall not be entitled to any additional payment, remobilization costs, or delay damages.

Section 12. Indemnity

12.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful

misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

12.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 13. Insurance

13.1. Insurance Requirements. Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. Any and all agents, contractors, or subcontractors with which Consultant contracts to work on the Services must have insurance that conforms to the insurance requirements in this Agreement. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

13.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

13.1.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

13.1.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

13.1.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

13.1.5. Insurance Carrier Rating. Coverages provided by Consultant and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

13.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the

insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

13.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

13.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 14. Early Termination; Default

14.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

14.1.1. By mutual written consent of the parties;

14.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; or

14.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

14.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

14.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

14.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 18**, for which Consultant has received payment or the City has made payment.

Section 15. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 16. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 17. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 18. Property of the City

18.1. All documents, reports, and research gathered or prepared by Consultant under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, diaries, and inspection reports, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

18.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 19. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of McMinnville
 Attn: Jennifer Cuellar
 230 NE Second Street
 McMinnville, OR 97128

To Consultant: Merina+Co
 Attn: Tonya Moffitt
 7624 SW Mohawk Street
 Tualatin, OR 97062

Section 20. Miscellaneous Provisions

20.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

20.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

20.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

20.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

20.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

20.6. Jurisdiction. Venue for any dispute will be in Yamhill County Circuit Court.

20.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

20.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

20.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

20.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

20.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

20.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

20.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

20.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

20.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

20.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

20.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

20.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

20.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

20.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

MERINA & COMPANY, L.L.P.
d/b/a Merina+Co

By: _____

Print Name: _____

As Its: _____

Employer I.D. No. _____

CITY:

CITY OF MCMINNVILLE

By: _____

Print Name: _____

As Its: _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of McMinnville, Oregon

EXHIBIT A
SCOPE OF WORK

Consultant will be performing audit services as described below for the five-year period through fiscal year 2024-25. The parties anticipate that the audit services for the fifth year (fiscal year 2024-25) will be completed within the Contract term (March 31, 2026).

A. SERVICES TO BE PROVIDED

1. Comprehensive Annual Financial Report – City of McMinnville

The City prepares a Comprehensive Annual Financial Report (CAFR), consistent with generally accepted accounting principles (GAAP), in full compliance with the pronouncements of the Governmental Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB), and including disclosures required by State regulations.

Consultant will produce the basic financial statements, unless the City implements a financial reporting software solution.

City staff will produce the Management Discussion and Analysis, Transmittal letter and additional statistical information. Consultant will consolidate the information and produce the CAFR document.

The purpose of Consultant’s examination is to audit and express an opinion on the fairness of presentation, in accordance with GAAP, of the general purpose financial statements taken as a whole. The additional information section of the CAFR will be examined “in relation to” the general purpose financial statements.

Consultant, as part of the audit, shall perform an evaluation of the internal accounting controls and communicate any weaknesses and recommendations as required in the CAFR and in a separate letter to management.

Consultant shall have conducted an examination of, and have issued its opinion on, the financial statements, including Consultant’s comments and disclosures required by the Minimum Standards for Audits of Oregon Municipal Corporations, no later than December 15 after the close of each fiscal year ending June 30. Each year, Consultant will propose a testing, document review and production schedule in order to meet this deadline which will be reviewed by and agreed to by the City.

2. Basic Financial Statements – Urban Renewal Agency (URA)

Consultant will produce basic financial statements for URA.

City staff will produce the Management Discussion and Analysis for the URA. Consultant will then consolidate the information for the component unit and produce the audit document.

The deadline for the completion of the production of the basic financial statements for the component unit is no later than December 15 after the close of the fiscal year ending June 30. URA specific items will be included in the above noted audit schedule.

3. Report on the Single Audit – City of McMinnville

A report on the results of a single audit of the City’s grants as required by Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) will be included as a component of the CAFR document. City staff will prepare the Schedule of Federal Financial Assistance.

The City anticipates single audits will not be required every year for the City but should never be a factor for the URA.

Consultant will provide advice to the City regarding any discrepancies in the City Financial policies to comply with Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) or other relevant federal awards requirements.

4. Manner that activities will be carried out

The City prefers to conduct its work in the most efficient and environmentally sensitive manner possible, including minimizing the amount of paper utilized in operations and maximizing the ability of staff and auditor ability to access records remotely.

5. Communication to the Governing Body

Consultant shall prepare, in letter form, a Communication to the Governing Body to include recommendations to management. The Communication to the Governing Body shall include any findings, observations, opinions, comments or recommendations, relating to internal control, accounting systems, data processing, compliance with laws, rules and regulations, and any other matters that come to the attention of Consultant during the course of the examination and, in the opinion of Consultant, warrant the attention of management. Such recommendations shall not be construed as special or additional studies, and shall be limited to those recommendations usually associated with the study of internal control systems and procedures as a part of an examination of financial statements. The Communication to the Governing Body and management's written responses shall be discussed with City officials prior to publication. Consultant will prepare copies of the final report to the City following the same schedule as for the CAFR.

6. Modifications to Original Audit Scope and Contract Amount

Should audit or relevant accounting standards change during the Contract term, it is the City's expectation that Consultant will make the appropriate changes to its testing, examination and areas of its expressed opinions, etc. In the event that the scope of work identified herein is significantly changed due to unanticipated audit or accounting standard changes, Consultant may propose a reasonable fee adjustment based on the actual cost to provide the additional work. Any such request must be accompanied by substantiating documentation. In the event that circumstances disclosed by the audit in any year indicate that a more extensive and detailed examination is required, in addition to that which would be sufficient under normal circumstances, Consultant shall provide all pertinent facts relative to the extraordinary circumstances together with Consultant's cost estimate of the additional services to the City. Any fees relating to such extensions of examination procedures are to be considered additional fees and subject to negotiation. Any change to the scope of work or dollar amount of the Contract must be approved by written amendment to the Contract and signed by all parties.

The City retains the right to reduce the scope of work, and Contract amount accordingly, in the City's discretion in the event sufficient funds are not appropriated to pay the total Contract amount.

7. Other Required Services

Consultant shall provide a variety of technical assistance throughout the term of the Contract. This assistance shall include answers to accounting, reporting or internal control questions; and assistance and guidance in implementing GASB pronouncements and updating reporting standards.

Consultant will be asked to provide recommendations to the City to better utilize technology and

update practices to add transparency, improve operational efficiency, strengthen internal controls and minimize negative environmental impacts due to its activities.

Materials and sets of working papers developed during the Contract term will be maintained for a minimum of five (5) years from the date of the audit reports, at the auditor's expense, and will be made available for examination by authorized representatives of the federal audit agency, Oregon Secretary of State, the U.S. General Accounting Office, and the City.

In addition, Consultant shall respond to the inquiries of successor auditors and allow successor auditors to review work papers related to matters of accounting significance and internal control.

Consultant's management or other representatives will be present at meetings of the Audit Committee and City Council when matters regarding the audit or related reports are discussed. Meetings with individual city councilors or managers may also be requested.

B. SCHEDULE OF CITY AND URBAN RENEWAL AUDITS

1. Audit Planning and Interim Fieldwork - May-June 2021 (100 hours)
Understanding the Entity and its Environment, Assessing Risk and Designing Audit Procedures, and Understanding and Testing Internal Controls *Primarily performed by the Partner, Audit Manager, Senior, and Staff Accountants*

- a. Consideration of firm and audit team independence
- b. Preliminary meetings held and schedule for 2021 audit
- c. Review predecessor auditors work papers
- d. Submit client document request list
- e. Review minutes
- f. Document an understanding of financial activities
- g. Document an understanding of electronic processing of transactions
- h. Document internal control over financial activities
- i. Evaluate internal controls
- j. Perform risk assessment
- k. Identify audit risk factors including misstatement due to fraud
- l. Compute financial statement materiality
- m. Perform preliminary analytical review
- n. Develop overall audit plan and programs
- o. Compliance Single Audit: Identify major programs and key compliance areas

2. Final Fieldwork- September/October 2021 (350 hours)
Audit of Significant Account Balances and Classes of Transactions
Primarily performed by the Audit Manager, Senior, and Staff Accountant

- a. Perform substantive audit procedures based on risk assessment
- b. Perform analytical procedures
- c. Compute final materiality
- d. Perform final analytical review
- e. Review compliance with Oregon Local Budget Law
- f. Test compliance with Oregon Minimum Standards
- g. Summarize unadjusted misstatements and passed journal entries, if any
- h. Evaluate results of audit procedures
- i. Provide adjusting entries and final trial balance, if any adjustments
- j. Progress meeting with management

3. Compliance (Single) Audit

Primarily performed by the Audit Manager and Senior Accountants

- a. Perform tests of internal control and compliance
- b. Accumulate potential questioned costs and findings
- c. Perform procedures on prior year audit findings, if any
- d. Determine if audit procedures and results are sufficient to support the opinion

4. Audit Wrap-Up - October 2021 (100 hours)

Primarily performed by Engagement Partner and Audit Manager

- a. Review for subsequent events
- b. Obtain and evaluate attorney's letter(s)
- c. Review work papers
- d. Review financial statements and disclosures
- e. Complete Disclosure Checklist
- f. Determine if audit evidence supports our opinion

5. Reports & Drafts - October/November 2021 (120 hours)

Primarily performed by Engagement Partner, Audit Manager; and Senior Accountant

- a. Drafting of City and Urban Renewal Agency's Financial Statements
- b. Independent Auditor's Report for the City and Urban Renewal Agency
- c. Independent Auditor's Report on Compliance and on Internal Control over Financial Reporting on an Audit of Financial Statements Performed in Accordance with Oregon State Regulations for the City and Urban Renewal Agency
- d. Independent Auditor's Report on Internal Controls over Financial Reporting and on Compliance and Other Matters Based on An Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*
- e. Independent Auditor's Report on Compliance for Each Major Program, on Internal Control Over Compliance, and on the Schedule of Expenditures of Federal Awards Required by the Uniform Guidance
- f. Letter to Those Charged with Governance (AU- C 260) for the City and Urban Renewal Agency
- g. Management Letter (AU-C265) and/or exit memo of recommendations for City or Urban Renewal Agency, if necessary
- h. Obtain the responses to AU-C 265 for the City or Urban Renewal Agency, if applicable
- i. Obtain Management Representation Letter for the City and Urban Renewal Agency
- j. Prepare Summary of Revenues and Expenses for submission to the Secretary of State Audits Division for the City and Urban Renewal Agency

6. Deliver Final Reports – No later than December 15, 2021

7. Conduct Exit Conference - Mutually Agreeable Date

C. SCHEDULE FOR THE URBAN RENEWAL AGENCY

Consultant's engagement timeline for the Urban Renewal Agency's engagement parallels that of the City's as procedures are performed concurrently with the City's. Please see the *above* schedule for our work plan that is broken down by major audit activity.

PRICING

For the City:

	<u>Total Hours</u>	<u>Fiscal Year Ending June 30th,</u>				
		<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
City Financial Statement Audit: ¹	500	\$ 62,000	\$ 63,800	\$ 65,700	\$ 67,675	\$ 69,700
Single Audit: ²	50	5,000	5,150	5,300	5,475	5,650
Production of Basic Financial Statements	75	8,000	8,200	8,400	8,650	8,900
Cost of Supplies & Materials:		Included	Included	Included	Included	Included
Additional Fees (if applicable): ³		na	na	na	na	na
Total		<u>\$ 75,000</u>	<u>\$ 77,150</u>	<u>\$ 79,400</u>	<u>\$ 81,800</u>	<u>\$ 84,250</u>

¹Fees, if applicable, for: Communication to the Governing Body, Other Required Services and Initial Engagement Costs are all included in the fee for the City Financial Statement Audit.

²Assumes a single major program

³Our policy is to not charge for occasional calls on accounting, budgeting, or other matters in the normal course of business. In fact, we encourage our clients to call us so potential future problems can be avoided. We make it a point to establish a close professional relationship with our clients so they will feel comfortable calling when they have questions.

For the Urban Renewal Agency:

	<u>Total Hours</u>	<u>Fiscal Year Ending June 30th,</u>				
		<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
Annual Audit Services: ¹	50	\$ 5,000	\$ 5,150	\$ 5,300	\$ 5,475	\$ 5,650
Production of Basic Financial Statements	45	3,000	\$ 3,100	\$ 3,200	\$ 3,300	\$ 3,400
Cost of Supplies & Materials:		Included	Included	Included	Included	Included
Additional Fees (if applicable): ²		na	na	na	na	na
Total		<u>\$ 8,000</u>	<u>\$ 8,250</u>	<u>\$ 8,500</u>	<u>\$ 8,775</u>	<u>\$ 9,050</u>

¹Fees, if applicable, for: Communication to the Governing Body, Other Required Services and Initial Engagement Costs are all included in the fee for Annual Audit Services.

²Our policy is to not charge for occasional calls on accounting, budgeting, or other matters in the normal course of business. In fact, we encourage our clients to call us so potential future problems can be avoided. We make it a point to establish a close professional relationship with our clients so they will feel comfortable calling when they have questions.



City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311
www.mcminnvilleoregon.gov

STAFF REPORT

DATE: May 25, 2021
TO: Mayor and City Councilors
FROM: Heather Richards, Planning Director
SUBJECT: Resolution No. 2021-34, Planning Fee Schedule – Marijuana LUCS Forms

STRATEGIC PRIORITY & GOAL:



CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize & deliver municipal services with discipline and focus.

OBJECTIVE/S: Identify and focus on the City's core services

Report in Brief:

This is the consideration of Resolution No. 2021-34, amending the Planning Fee Schedule for the City of McMinnville relative to "Land Use Compatibility Statemen – Marijuana", effective immediately and carried into the July 1, 2021 Planning Fee Schedule.

Background:

In 2003, the McMinnville City Council adopted Resolution No. 2003-35, establishing that, "it is the belief of the City Council that developers and others using the services of the Planning Department should pay a proportionate share of the costs associated with their projects."

In 2018, the City commissioned a planning fee study to evaluate how much the fees that developers were paying with land-use permits contributed to the costs of reviewing those land-use applications. At that time, it was determined that the planning fee schedule captured a 12% cost recovery of the costs associated with reviewing private development current planning applications. The general fund and McMinnville taxpayer was underwriting 88% of the overall program costs.

After discussion, in 2018, the City Council directed city staff to propose a fee schedule that would allow the City to work towards a 100% cost recovery goal for current planning application review on the basis that private developers and applicants were the direct beneficiary of this service and that the City's General Fund and the McMinnville taxpayer should not be underwriting this service.

On December 11, 2018, the McMinnville City Council adopted Resolution No. 2018-63, a resolution that updated the planning fee schedule so that it reflected a 55% cost recovery for development services related to land-use application review, with the direction to increase the planning fee

schedule by 10% plus CPI (Portland’s CPE-W Index) on July 1 every year over the next five years towards a full cost recovery model.

Due to the pandemic in 2020, the City elected not to move forward with a Planning Fee Schedule update.

On March 9, 2021, the McMinnville City Council adopted Resolution No. 2021-12 approving an updated Planning Fee Schedule effective July 1, 2021 that reflected a 10% increase plus the 3% accumulative CPI increase over the past two years.

During the course of the City Council deliberation for the Planning Fee Schedule update, Councilor Adam Garvin asked about the fees for the Land Use Compatibility Statement – Marijuana (LUCS – Marijuana), which was proposed to be \$1,931.25 and the fees for the Land Use Compatibility Statement – Regular (LUCS – Regular), which was proposed to be \$468.00, and why they were so different. After a discussion about how the LUCS – Marijuana review was more complicated than the LUCS – Regular review due to the local spacing standards for marijuana dispensaries in the McMinnville Municipal Code and the additional coordination required with OLLC/OHA for the Marijuana LUCS forms, Councilor Garvin asked if there was a difference in review time for LUCS forms for Marijuana Dispensaries versus Marijuana Producers versus Co-Located Facilities and Change in Business Names. Staff indicated that they had not separated out those review processes in the initial planning fees study model in 2018 and would conduct a new evaluation with those separations in mind as well as a new evaluation of the LUCS review for marijuana dispensaries as the coordination with OHA has improved considerably over the past couple of years.

That evaluation resulted in new proposed fees for the following:

Type of LUCS Form	2021 Value
Dispensary	\$912.75
Producer/Wholesaler	\$667.00
Co-Located Producer/Wholesaler	\$667.00
Change in Business Name	\$477.25

Please note that since the fees for the producer/wholesaler are the same as the co-located producer/wholesaler, these are reflected in the proposed fee schedule as “Land Use Compatibility Statement – Marijuana Producer/Wholesaler”.

Discussion:

In 2018, the City of McMinnville developed a model for calculating full-cost recovery of specialty permits and fees. That model consists of three components: 1) Direct Costs (labor plus non-personnel costs (materials and services, training, etc.), and customer service costs (time that staff spends with clients prior to application submittal)); 2) Indirect Costs (the costs of the City’s administrative staff divided across the City (administrative staff equals City Manager, City Recorder, City Legal Counsel, Human Resources, Finance, IT, etc.); and 3) Reserve Fund (for Planning it is a targeted six month reserve). Direct costs and indirect costs were developed for each staff position in the Planning Division and on the Administrative team.

To calculate the costs of reviewing and approving a land-use action, there are five different stages of a land-use application review: 1) Intake; 2) Research; 3) Filling out of Form; 4) Signature; and 5) Follow-Up. Each staff person identifies how much time (15 minute increments) that they spend in each stage for a particular type of application. This is based on the average application process.

Staff went through this process for all four scenarios and then plugged the data into the model which yielded the final results. The final results incorporates the 3% CPI index on the 2018 financial numbers.

The reason that the time to process the LUCS forms is considerably less now in 2021 than it was in 2018 is because both the City and the state agencies have become much more efficient with what was a new process in 2018. In 2017 and 2018, city staff spent a lot of time on the phone with state agency representatives trying to figure out how to coordinate the local regulations with the state regulations when the state review and approval process was over 12 months long.

Unfortunately though there is still more time involved in the review and coordination than the standard LUCS forms.

The state requires a new LUCS form for every business that locates within the City of McMinnville, even if they are co-located on a site with other similar businesses, and a new LUCS form every time that the business name changes. The City has to certify the information on the LUCS forms including which requires a new review with every new LUCS form. Thus the co-location of producers and wholesalers takes the same amount time as the first business to locate on the site, and the change in business name still requires a review and certification process.

One item that came up at the March 9, 2021 City Council meeting that is not related to LUCS forms is the discussion of an annual permit and annual permit renewal fee. The City does not charge for an annual permit for marijuana specific businesses, nor does it charge an annual permit renewal fee. The only thing that the City does from a land-use perspective is review and certify LUCS forms per the state's licensing requirements.

Attachments:

- Resolution No. 2021-34

Fiscal Impact:

The approval of this Resolution results in a significant reduction in LUCS form review fees for marijuana businesses operating within the city limits of the City of McMinnville but still provides a full cost recovery model of the costs of the review for the City.

Recommendation:

"I move to adopt Resolution No. 2021-34"

RESOLUTION NO. 2021-34

A Resolution Amending the Planning Fee Schedule for Land Use Compatibility Statements for Marijuana Dispensaries, Producers and Wholesalers and Change in Business Name.

RECITALS:

The City of McMinnville collects permitting fees for land-use applications to fund the review costs associated with new development projects; and

Per Resolution No. 2003-35, it is the belief of the City Council that developers and others using the services of the Planning Department for current planning activities should pay their share of the costs associated with their projects; and

In 2018, the City commissioned a planning fee study that showed that the City was only collecting 12% of the costs of the current planning program in their fee schedule; and

On December 11, 2018, the City adopted Resolution No. 2018 – 63, a resolution that updated the planning fee schedule so that it reflected a 55% cost recovery for development services related to land-use application review, and providing direction to increase the planning fee schedule by 10% plus CPI (Portland's CPE-W Index) every year over the next five years towards a full cost recovery model; and

Due to the pandemic in 2020, the City of McMinnville elected not to increase permitting fees; and

The CPI increase from December 2018 to December, 2020 is 3%.

On March 9, 2021, the City Council approved Resolution No. 2021-12 adopting a new Planning Fee Schedule to be effective July 1, 2021.

During the deliberation, City Council requested that city staff review the fees for the Land Use Compatibility Statement – Marijuana, as they felt it might be too high, and that there were discrete but distinctive differences between the review and certification of Land Use Compatibility Statements for marijuana dispensaries versus marijuana producers and wholesalers and marijuana changes in business names;

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

1. That the City of McMinnville’s Planning Fee Schedule be amended to reflect the following fees.

Delete the following current planning fee:

TYPE OF APPLICATION	FEE
Land Use Compatibility Statement – Marijuana Change in Business Name	\$1931.25

Add the following current planning fees:

TYPE OF APPLICATION	FEE
Land Use Compatibility Statement – Marijuana Change in Business Name	\$477.25
Land Use Compatibility Statement – Marijuana Dispensary	\$912.75
Land Use Compatibility Statement – Marijuana Producer / Wholesaler	\$667.00

1. That these fees will be effective immediately and will carry forward into the adopted July 1, 2021 planning fee schedule.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 25th day of May 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 25th day of May, 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder



City of McMinnville
Planning Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7311
www.mcminnvilleoregon.gov

STAFF REPORT

DATE: May 25, 2021
TO: Mayor and City Councilors
FROM: Heather Richards, Planning Director
SUBJECT: Resolution No. 2021-35, "Updated Building Fee Schedule"

STRATEGIC PRIORITY & GOAL:



CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize & deliver municipal services with discipline and focus.

OBJECTIVE/S: Identify and focus on the City's core services

Report in Brief:

This is the consideration of Resolution No. 2021-35, adopting a Building Fee Schedule for the City of McMinnville, effective July 1, 2021.

Background:

This Resolution follows up on Resolution No. 2021-13, which was adopted on March 9, 2021 as a preliminary approval for the proposed fee schedule, which was then provided to the Oregon Building Codes for a required 45-day notice period per OAR 918-020-0220(1)(a). A public hearing per ORS 294.160 was also conducted on March 9, 2021.

Public notice of the proposal and the public hearing was provided in the News Register on Tuesday, March 2 and Friday, March 5, 2021. A press release regarding the public hearing and proposal was distributed on March 1, 2021. City staff provided a presentation on the proposed Building Fee Schedule to the Chamber of Commerce Government Affairs Committee on March 4, 2021. And an email was sent out to developers working in McMinnville describing the proposed Building Fee Schedule on March 1, 2021.

No public comments were received.

Discussion:

This proposed updated Building Fee Schedule raises all fees by 3% to account for construction CPI increases.

This fee schedule update also:

- Assumes full cost recovery. The operating cost of the Building Division is defined as the direct cost of operating the Division and the indirect costs identified in the 2018 Indirect Cost Allocation Plan.
- Generally, fees will increase three percent across all categories.
- The intent of the fee schedule is to maintain a reserve equivalent to 6 – 12 months operating budget.
- The fees identified in the Building Fee Schedule are those charged by the City of McMinnville. Any surcharges or other applicable fees adopted by the State of Oregon or Yamhill County shall be in addition to the above fees.
- The Building Fee Schedule adopted in this resolution shall be the maximum fee schedule for each program and shall not be exceeded without further Council action.

Fiscal Impact:

It is anticipated that the Building Fee Schedule will increase building permits by 3%. The Building Fee Schedule should fully fund the Building Program and allow for a six month reserve build-up over five years.

Attachments:

Resolution No. 2021-35
Proposed 2021 Building Fee Schedule

Action / Recommended Motion:

“I move to approve Resolution No. 2021-35.”

RESOLUTION NO. 2021-35

A Resolution approving a Building Fee Schedule and repealing all previous resolutions adopting building fee schedules on the effective date of this fee schedule.

RECITALS:

Per ORS 455.210, the City of McMinnville is authorized to establish full cost recovery fees to administer and manage a building program in the City of McMinnville; and

In May, 2018, the Oregon Building Codes Division informed the City of McMinnville that the City's Building Fee Schedule was outdated and needed to be updated; and

From May – November, 2018, the City of McMinnville worked with Capital Accounting Partners, LLC and the Oregon Building Codes Division to update the Building Fee Schedule; and

In August, 2018, the City of McMinnville hosted a meeting with the development community to discuss the results of the fee schedule evaluation; and

On December 11, 2018, City Council adopted the new Building Fee Schedule with the intention that it would be updated every year to reflect any necessary cost of living adjustments; and.

On December 10, 2019, City Council adopted Resolution No. 2019-65, increasing the Building Fee Schedule by CPI, effective January 1, 2020; and

On March 9, 2021, City Council adopted Resolution No. 2021-13, preliminarily approving the proposed fee schedule, allowing for the 45-day notice to the Oregon Building Codes Division, and

The State of Oregon, Building Codes Division was provided notice more than 45 days in advance of the fee change final adoption date and effective date.

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

1. That the City of McMinnville's Building Fee Schedule will be as established by the fee schedule attached to this Resolution.
2. That this fee schedule will take effect July 1, 2021.

MISCELLANEOUS PROVISIONS:

The attached Building Fee Schedule –

- Assumes full cost recovery. The operating cost of the Building Division is defined as the direct cost of operating the Division and the indirect costs identified in the 2018 Indirect Cost Allocation Plan.

- Generally, fees will increase three percent across all categories.
- The intent of the fee schedule is to maintain a reserve equivalent to 6 – 12 months operating budget.
- The fees identified in the Building Fee Schedule are those charged by the City of McMinnville. Any surcharges or other applicable fees adopted by the State of Oregon or Yamhill County shall be in addition to the above fees.
- The Building Fee Schedule adopted in this resolution shall be the maximum fee schedule for each program and shall not be exceeded without further Council action.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 25th day of May, 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 25th day of May, 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

July 1, 2021 Proposed Building Fee Schedule

STRUCTURAL PERMIT FEES

STRUCTURAL PERMIT		
<p>Project Valuation: According to Oregon Administrative Rule 918-050-0100</p>		
<p>New Construction, Residential: The valuation is determined using the ICC Building Valuation Data Table current as of April 1 of each year, multiplied by the square footage of the dwelling, addition, garage or accessory structure. Project value is then applied to the table below to determine the building permit fee.</p> <ul style="list-style-type: none"> Residential carports, covered porches, patios and decks use 50% of the value of a private garage (“utility, miscellaneous”) from the valuation table. 		
<p>New Construction, Commercial: The valuation is the higher of:</p> <ol style="list-style-type: none"> The valuation based on the ICC Building Valuation Data Table current as of April 1 of each year, using the occupancy and construction type as determined by the building official, multiplied by the square footage of the structure; or The value stated by the applicant <p>Project value is then applied to the table below to determine the building permit fee.</p>		
<p>Alteration or Repair: Based on the fair market value as determined by the building official, and then applying the valuation to the fee schedule below.</p>		
<p>When the construction or occupancy type does not fit the ICC Building Valuation Data Table, the valuation shall be determined by the building official with input from the applicant</p>		
<p>Use total value of construction work determined above to calculate the Building Permit fee below:</p>		
Valuation	CURRENT FEE	PROPOSED FEE
\$1 - \$500	\$17.16	\$17.67
\$501 - \$2,000	\$17.16 for the first \$500 plus \$2.23 for each additional \$100 or fraction thereof, to and including \$2,000	\$17.67 for the first \$500 plus \$2.30 for each additional \$100 or fraction thereof, to and including \$2,000
\$2,001 - \$50,000	<p>\$2,001 - \$25,000 – \$50.53 for the first \$2,000 plus \$10.22 for each additional \$1,000 or fraction thereof to and including \$25,000.</p>	<p>\$2,001 - \$25,000 – \$52.71 for the first \$2,000 plus \$10.53 for each additional \$1,000 or fraction thereof to and including \$25,000.</p>
	<p>\$25,001 - \$50,000 – \$285.54 for the first \$25,000 plus \$5.11 for each additional \$1,000 or fraction thereof to and including \$50,000.</p>	<p>\$25,001 - \$50,000 – \$294.36 for the first \$25,000 plus \$5.26 for each additional \$1,000 or fraction thereof to and including \$50,000.</p>
\$50,001 - \$500,000	<p>\$50,001 - \$100,000 \$413.26 for the first \$50,000 plus \$5.11 for each additional \$1,000 or fraction thereof to and including \$100,000</p>	<p>\$50,001 - \$100,000 \$425.86 for the first \$50,000 plus \$5.26 for each additional \$1,000 or fraction thereof to and including \$100,000.</p>

	\$100,001-\$500,000 \$668.70 for the first \$100,000 plus \$4.09 for each additional \$1,000 or fraction thereof to and including \$500,000	\$100,001-\$500,000 \$688.86 for the first \$100,000 plus \$4.21 for each additional \$1,000 or fraction thereof to and including \$500,000.
\$500,001 and above	\$500,001-\$1,000,000 \$2304.34 for the first \$500,000 plus \$3.47 for each additional \$1,000 or fraction thereof to and including \$1,000,000 \$1,000,001 Plus \$4039.89 for the first \$100,000 plus \$2.66 for each additional \$1,000 or fraction thereof	\$500,001-\$1,000,000 \$2372.86 for the first \$500,000 plus \$3.57 for each additional \$1,000 or fraction thereof to and including \$1,000,000. \$1,000,001 Plus \$4157.86 for the first \$1,000,000 plus \$2.74 for each additional \$1,000 or fraction thereof.
OTHER STRUCTURAL FEES	PROPOSED FEE	
Structural Plan Review	65% of structural permit fee	65% of structural permit fee
Fire Life Safety Plan Review	40% of structural permit fee	40% of structural permit fee
Additional Plan Review after initial review	\$75.00/hr (min of ½ hour)	\$77.00/hour (min of ½ hour)
Reinspection – per each	\$75.00 each	\$77.00 each
Each additional inspection, above allowable – per each	\$75.00 each	\$77.00 each
Inspections for which no fee is specifically indicated (as required) - hourly	\$75.00/hour	\$77.00/hour
Inspection outside of normal business hours - hourly	\$113.00/hour (minimum of 2 hour)	\$116.00/hour (minimum of 2 hour)
Deferred Submittal Plan Review Fee – in addition to project plan review fees	65% of the building permit fee calculated using the value of the deferred portion with a \$155.00 minimum	Hourly plan review with \$160.00 minimum
Phased Project Plan Review Fee – in addition to project plan review fees	\$258.00 minimum phasing (application) fee plus 10% of the TOTAL project building permit fee not to exceed \$1545.00 per phase	\$266.00 minimum phasing (application) fee plus 10% of the TOTAL project building permit fee not to exceed \$1591.00 per phase
Structural demolition – complete demolition, not subject to State Surcharge	\$108.00	\$111.00
Structural alteration (<u>not</u> demo) – partial, soft, interior	Fee as per Structural Permit Fee table by valuation.	Fee as per Structural Permit Fee table by valuation.
Seismic Hazard Plan Check Fee (authorized by ORS 455.447(3))	1% of total structure and mechanical specialty code fees for essential and hazardous facilities, and major and special occupancy structures.	1% of total structure and mechanical specialty code fees for essential and hazardous facilities, and major and special occupancy structures.
Temporary Certificate of Occupancy	\$155.00	\$160.00
Structural Minimum Permit Fee	\$131.00	\$135.00

Residential Fire Suppression – Standalone System 13R, fee includes plan review [See Plumbing Fee section for Continuous Loop/Multipurpose System 13D]		
Square Footage of Area to be Covered		
0 – 2000 sq ft	\$180.00	\$185.00
2001 – 3600 sq ft	\$252.00	\$260.00
3601 - 7200 sq ft	\$270.00	\$278.00
7201 sq ft and greater	\$315.00	\$324.00
Commercial Fire Suppression		
Solar Permit – Prescriptive Path System, fee includes initial plan review	150.00	155.00
Solar Permit – Non-Prescriptive Path System	Fee as per Structural Permit Fee table by valuation to include the solar panels, racking, mounting elements, rails and the cost of labor to install. <i>Solar electrical equipment including collector panels and inverters shall be excluded from the Structural Permit valuation.</i>	Fee as per Structural Permit Fee table by valuation to include the solar panels, racking, mounting elements, rails and the cost of labor to install. <i>Solar electrical equipment including collector panels and inverters shall be excluded from the Structural Permit valuation.</i>
Investigation Fee – hourly	\$75.00/hour (minimum of 2 hour)	\$77.00/hour (minimum of 2 hour)

MANUFACTURED DWELLING PERMIT FEES

MFD DWELLING PLACEMENT	CURRENT FEE	PROPOSED FEE
Manufactured Dwelling Placement Fee *	\$221.00	\$228.00
State (Cabana) Fee	\$30.00	\$30.00
Manufactured Home Awning	Fee as per Structural Permit Fee table by valuation, incurs State Surcharge	Fee as per Structural Permit Fee table by valuation, incurs State Surcharge
Manufactured Home Alteration	Fee as per Structural Permit Fee table by valuation, incurs State Surcharge	Fee as per Structural Permit Fee table by valuation, incurs State Surcharge
Investigation Fee	\$75.00/hour	\$77.00/hour (minimum of 2 hour)
* Includes the concrete slab, runners or foundations that are prescriptive, electrical feeder and plumbing connections and all cross-over connections and up to 30 lineal feet of site utilities. Decks, other accessory structures, and foundations that are not prescriptive, utility connections beyond 30 lineal feet, new electrical services or additional branch circuits, and new plumbing - may require separate permits. All decks 30" above ground, carports, garages, porches, and patios are based on valuation and may also require separate permits.		
-- See Structural schedule by valuation for non-dwelling modular placements		
MANUFACTURED DWELLING/RV PARKS – AREA DEVELOPMENT PERMIT (ADP)		
The Area Development Permit fee to be calculated based on the valuations shown in Table 2 of OAR 918-600-0030 for Manufactured Dwelling/Mobile Home Parks and Table 2 of OAR 918-650-0030 for Recreational Park & Organizational Camp – and applying the valuation amount to the Structural Permit Fee table included in this schedule.		

MECHANICAL PERMIT FEES

RESIDENTIAL MECHANICAL	CURRENT FEE	PROPOSED FEE
Air conditioner	\$52.00	\$54.00
Air handling unit of up to 10000 cfm	\$52.00	\$54.00
Air handling unit 10001 cfm and over	\$52.00	\$54.00
Appliance of piece of equipment regulated by code but no classified in other appliance categories	\$52.00	\$54.00
Attic or crawl space fans	\$52.00	\$54.00
Chimney/liner/flue/vent	\$52.00	\$54.00
Clothes dryer exhaust	\$52.00	\$54.00
Decorative gas fireplace	\$52.00	\$54.00
Evaporative cooler other than portable	\$52.00	\$54.00
Floor furnace, including vent	\$52.00	\$54.00
Flue vent for water heater or gas fireplace	\$52.00	\$54.00
Furnace – greater than 100000 BTU	\$52.00	\$54.00
Furnace – up to 100000 BTU	\$52.00	\$54.00
Furnace/burner including duct work/vent/liner	\$52.00	\$54.00
Gas or wood fireplace/insert	\$52.00	\$54.00
Gas fuel piping outlets	\$52.00 (1-4 Outlets) \$15 each additional outlet	\$54.00 (1-4 Outlets) \$16 each additional outlet in excess of 4
Heat pump	\$52.00	\$54.00
Hood served by mechanical exhaust, including ducts for hood	\$52.00	\$54.00
Hydronic hot water system	\$52.00	\$54.00
Installation or relocation domestic/type incinerator	\$52.00	\$54.00
Mini split system	\$52.00	\$54.00
Oil tank/gas diesel generators	\$52.00	\$54.00
Pool or spa heater, kiln	\$52.00	\$54.00
Range hood/other kitchen equipment	\$52.00	\$54.00
Repair, alteration, or addition to mechanical appliance including installation of controls	\$52.00	\$54.00
Suspended heater, recessed wall heater, or floor mounted heater	\$52.00	\$54.00
Ventilation fan connected to single duct	\$52.00	\$54.00

Ventilation system not a portion of heating or air-conditioning system authorized by permit	\$52.00	\$54.00
Water heater	\$52.00	\$54.00
Wood/pellet stove	\$52.00	\$54.00
Other heating/cooling	\$52.00	\$54.00
Other fuel appliance	\$52.00	\$54.00
Other environment exhaust/ventilation	\$52.00	\$54.00
If a plan check is required	65% of mechanical permit fee with a \$206.00 minimum.	65% of mechanical permit fee with a \$212.00 minimum.

COMMERCIAL MECHANICAL FEES TABLE		
Valuation	CURRENT FEE	PROPOSED FEE
\$0 - \$5,000	\$1-\$1,000 \$56.65 \$1,001-\$5,000 \$56.65 for the first \$1,000 plus \$1.65 for each additional \$100 or fraction thereof, to and including \$5,000.	\$1-\$1,000 \$58.35 \$1,001-\$5,000 \$58.35 for the first \$1,000 plus \$1.70 for each additional \$100 or fraction thereof, to and including \$5,000.
\$5,001 - \$10,000	\$5,001-\$10,000 \$122.57 for the first \$5,000 plus \$10.30 for each additional \$1,000, or fraction thereof, to and including \$10,000	\$5,001-\$10,000 \$126.35 for the first \$5,000 plus \$10.61 for each additional \$1,000, or fraction thereof, to and including \$10,000
\$10,001 - \$100,000	\$10,001-\$50,000 \$174.07 for the first \$10,000 plus \$9.27 for each additional \$1,000 or fraction thereof, to and including \$50,000 \$50,001-\$100,000 \$544.87 for the first \$50,000 plus \$8.24 for each additional \$1,000 or fraction thereof, to and including \$100,000.	\$10,001-\$50,000 \$179.40 for the first \$10,000 plus \$9.55 for each additional \$1,000 or fraction thereof, to and including \$50,000 \$50,001-\$100,000 \$561.40 for the first \$50,000 plus \$8.49 for each additional \$1,000 or fraction thereof, to and including \$100,000.
\$100,001 and above	\$956.87 for first \$100,000 plus \$8.24 for each additional \$1,000 or fraction thereof	\$985.90 for first \$100,000 plus \$8.49 for each additional \$1,000 or fraction thereof
OTHER MECHANICAL FEES	PROPOSED FEE	PROPOSED FEE
Mechanical Plan Review	50% of mechanical permit fee	50% of mechanical permit fee
Additional Plan Review-per hour	\$75.00/hour	\$77.00/hour
Reinspection – per each	\$75.00/per each	\$77.00/per each
Each additional inspection, above allowable – per each	\$75.00/per each	\$77.00/per each
Inspections for which no fee is specifically – per each indicated (as required)	\$75.00/hour, minimum 1 hour	\$77.00/hour, minimum 1 hour
Investigation Fee – hourly	\$75.00/hour (minimum of 2 hour)	\$77.00/hour (minimum of 2 hour)
Mechanical Minimum Permit Fee	\$52.00	\$54.00

PLUMBING PERMIT FEES

RESIDENTIAL NEW CONSTRUCTION	CURRENT FEE	PROPOSED FEE
1 Bath	\$75.00	\$77.00
2 Bath	\$112.00	\$115.00
3 Bath	\$150.00	\$155.00
Additional Bathroom	\$37.00	\$38.00
Additional Kitchen	\$37.00	\$38.00
COMMERCIAL AND NON-NEW RESIDENTIAL	CURRENT FEE	PROPOSED FEE
Sanitary Sewer - First 100 feet or less	\$41.00	\$42.00
Sanitary Sewer - Each additional 100 feet or fraction thereof	\$34.00	\$35.00
Storm – first 100 feet or less	\$41.00	\$42.00
Storm – Each additional 100 feet or fraction thereof	\$34.00	\$35.00
Water – first 100 feet or less	\$41.00	\$42.00
Water – Each additional 100 feet or fraction thereof	\$34.00	\$35.00
FIXTURES – FEE PER EACH	CURRENT FEE	PROPOSED FEE
Absorption valve	\$52.00	\$54.00
Backflow preventer	\$52.00	\$54.00
Backwater valve	\$52.00	\$54.00
Catch basin or area drain	\$52.00	\$54.00
Clothes washer	\$52.00	\$54.00
Dishwasher	\$52.00	\$54.00
Drinking fountain	\$52.00	\$54.00
Ejectors/sump pump	\$52.00	\$54.00
Expansion tank	\$52.00	\$54.00
Fixture cap	\$52.00	\$54.00
Floor drain/floor sink/hub drain	\$52.00	\$54.00
Garbage disposal	\$52.00	\$54.00
Hose bib	\$52.00	\$54.00
Ice maker	\$52.00	\$54.00
Primer	\$52.00	\$54.00
Residential fire sprinklers	\$52.00	\$54.00
Sink/basin/lavatory	\$52.00	\$54.00
Stormwater facility	\$52.00	\$54.00
Swimming pool piping	\$52.00	\$54.00
Tub/shower/shower pan	\$52.00	\$54.00
Urinal	\$52.00	\$54.00
Water closet	\$52.00	\$54.00
Water heater	\$52.00	\$54.00
Other – plumbing	\$52.00	\$54.00
Alternate potable water heating system	\$52.00	\$54.00
Interceptor/grease trap	\$52.00	\$54.00

Manholes	\$52.00	\$54.00
Roof drain (commercial)	\$52.00	\$54.00
If a plan check is required	65% of plumbing permit fee with a \$206.00 minimum.	65% of plumbing permit fee with a \$212.00 minimum.

PLUMBING, MEDICAL GAS – fee based on installation costs and system equipment, including but not limited to inlets, outlets, fixtures and appliances		
Valuation	CURRENT FEE	PROPOSED FEE
\$0 - \$5,000	\$1-\$1,000 \$56.65 \$1,001-\$5,000 \$56.65 for the first \$1,000 plus \$1.65 for each additional \$100 or fraction thereof, to and including \$5,000.	\$1-\$1,000 \$58.35 \$1,001-\$5,000 \$58.35 for the first \$1,000 plus \$1.70 for each additional \$100 or fraction thereof, to and including \$5,000.
\$5,001 - \$10,000	\$5,001-\$10,000 \$122.57 for the first \$5,000 plus \$10.30 for each additional \$1,000, or fraction thereof, to and including \$10,000	\$5,001-\$10,000 \$126.35 for the first \$5,000 plus \$10.61 for each additional \$1,000, or fraction thereof, to and including \$10,000
\$10,001 - \$100,000	\$10,001-\$50,000 \$174.07 for the first \$10,000 plus \$9.27 for each additional \$1,000 or fraction thereof, to and including \$50,000 \$50,001-\$100,000 \$544.87 for the first \$50,000 plus \$8.24 for each additional \$1,000 or fraction thereof, to and including \$100,000.	\$10,001-\$50,000 \$179.40 for the first \$10,000 plus \$9.55 for each additional \$1,000 or fraction thereof, to and including \$50,000 \$50,001-\$100,000 \$561.40 for the first \$50,000 plus \$8.49 for each additional \$1,000 or fraction thereof, to and including \$100,000.
\$100,001 and above	\$956.87 for first \$100,000 plus \$8.24 for each additional \$1,000 or fraction thereof	\$985.90 for first \$100,000 plus \$8.49 for each additional \$1,000 or fraction thereof
Residential Fire Suppression – Standalone System 13R, fee includes plan review [See Structural Fee section for Continuous Loop/Multipurpose System 13R]		
Square Footage of Area to be Covered		
0 – 2000 sq ft	\$180	\$185
2001 – 3600 sq ft	\$252	\$260
3601 - 7200 sq ft	\$270	\$278
7201 sq ft and greater	\$315	\$324
OTHER PLUMBING FEES	CURRENT FEE	PROPOSED FEE
Plumbing Plan Review	40% of commercial plumbing permit fee	40% of plumbing permit fee
Re-piping Replacing in-building water supply lines	\$150 for first floor \$38 for each additional story excluding basement	\$155 for first floor \$39 for each additional story excluding basement
Plumbing Plan Review – residential	40% of commercial plumbing permit fee	
Additional Plan Review – per hour	\$75.00/hour	\$77.00/hour

Reinspection – per each	\$75.00/each	\$77.00/each
Each additional inspection, above allowable – per each	\$75.00/each	\$77.00/each
Inspections for which no fee is specifically indicated (as required) – per hour	\$75.00/hour	\$77.00/each
Inspection outside of normal business hours – per hour	\$113.00/hour (minimum of 2 hour)	\$116.00/hour (minimum of 2 hour)
Investigation Fee – hourly	\$75.00/hour (minimum of 2 hour)	\$77.00/hour (minimum of 2 hour)

MISC FEES

TYPE OF APPLICATION	CURRENT FEE	PROPOSED FEE
Permit Reinstatement fee – to renew already expired permit, as eligible	\$25.00 (Reinstate within 60 days) plus state surcharge	\$26.00 (Reinstate within 60 days) plus state surcharge
Investigation Fee – hourly		\$77.00/hour (minimum of 2 hour)
Inspection outside of normal business hours – per hour		\$116.00/hour (minimum of 2 hour)
Permit Extension fee – to extend expiration on active permit; not subject to State Surcharge	\$75.00	\$77.00
Copy fees (up to 11"x17")	\$0.10 each	\$0.10 each
Returned Check fee (NSF)	\$25.00	Refer to City policy
Master Plans – Structural – setup fee	300.00	\$309.00
Master Plans – Structural – Initial review		65% of structural permit fee
Master Plans – Structural – second and subsequent reviews	10% of the proposed valuation	10% of structural permit fee
Seismic Surcharge – Structural/Mechanical – review required on all essential structures	1% of building permit fee	1% of building permit fee
Refund processing fee – not subject to State Surcharge	\$75.00	\$77.00
Scanning & oversized prints	Time & materials	Time & materials

Building permit fees for qualifying affordable housing projects per McMinnville Municipal Code, Section 3.10.060, are reduced by 50% (Resolution No. 2016-81).

STAFF REPORT

DATE: May 25, 2021
TO: Mayor and City Councilors
FROM: Kylie Bayer, Human Resources Manager
SUBJECT: Ordinance No. 5103, An Ordinance Amending Section 2.35.030 of the McMinnville Municipal Code, Specific to Membership: Number of Members, Appointments, and Ex Officio Members.

STRATEGIC PRIORITY & GOAL:



ENGAGEMENT & INCLUSION

Create a culture of acceptance & mutual respect that acknowledges differences & strives for equity.

OBJECTIVE/S: Grow City's employees and Boards and Commissions to reflect our community

Report in Brief:

This is the consideration of Ordinance No. 5103, an Ordinance Amending Section 2.35.030 of the McMinnville Municipal Code, Specific to Membership: Number of Members, Appointments, and Ex Officio Members.

Background:

On October 6, 2020, the City Council approved Ordinance No. 5097 establishing a Diversity, Equity & Inclusion Advisory Committee (DEIAC).

The DEIAC is responsible for the following:

- 1) Advising the Council on policy decisions related to diversity, equity, and inclusion;
- 2) Making recommendations to the Council on public engagement strategies and methods by which McMinnville residents can better participate in the decision-making process;
- 3) Advising the City on culturally responsive service delivery, programming, and communication strategies;
- 4) Updating and overseeing progress on the City's Diversity, Equity and Inclusion Plan;
- 5) Overseeing progress on applicable goals and objectives in the 2019 Mac-Town 2032 Strategic Plan; and
- 6) Identifying local leaders and building leadership capacity in McMinnville's communities of color.

Ordinance No. 5097 specified that a youth liaison be appointed to the committee as an ex officio member.

Discussion:

At the May 13, 2021 DEIAC regular meeting, the committee voted to recommend changing section 2.35.030 of Ordinance No. 5097 to make the youth liaison and City Council liaison full voting members, bringing membership from seven members to nine.

A committee with some members as full voting members and others as non-voting members does not align with the committee's purpose to make recommendations to the Council on public engagement strategies and methods by with McMinnville residents can better participate in the decision-making process.

Attachments:

Ordinance No. 5103

Fiscal Impact:

There is no anticipated fiscal impact to the City of McMinnville with this decision.

Recommendation:

It is recommended that the Council move to approve Ordinance No. 5103, An Ordinance Amending Section 2.35.030 of the McMinnville Municipal Code, Specific to Membership: Number of Members, Appointments, and Ex Officio Members.

ORDINANCE NO. 5103

An Ordinance Amending Section 2.35.030 of the McMinnville Municipal Code Specific to Membership: Number of Members, Appointments, and Ex Officio Members.

RECITALS:

Whereas, the City of McMinnville adopted the Mac-Town2032 Strategic Plan (“Strategic Plan”) on campaign finance legislation for candidate elections on January 8, 2019 via Resolution No. 2019-06; and

Whereas, one of the Goals of the Strategic Plan is to “create a culture of acceptance and mutual respect that acknowledges differences and strives for equity;” and

Whereas, one of the action items listed in the Strategic Plan to achieve the above-recited Goal is to create a diversity, equity, and inclusion advisory committee; and

Whereas, the City of McMinnville wishes to create a standing diversity, equity, and inclusion committee that will advise the Common Council for the City of McMinnville on policy decisions through a diversity, equity, and inclusion lens, among other purposes and duties; and

Whereas, on October 13, 2020, the Common Council adopted Ordinance No. 5097, which established the Diversity, Equity, and Inclusion Committee (“Committee”) and created Chapter 2.35 of the McMinnville Municipal Code; and

Whereas, Ordinance No. 5097 established that a youth liaison could be an *ex officio* member of the Committee, but with no voting rights; and

Whereas, the Committee, at its May 13, 2021 meeting, recommended that the structure of the Committee to be changed to allow the youth member to be a voting member of the Committee; and

Whereas, to ensure that the Committee retains an odd number of voting members for quorum purposes, the Committee also recommended that the number of Committee members be increased from seven (7) members to nine (9) members; and

Whereas, these revisions to the structure of the Committee are reflected in Exhibits A and B attached hereto and incorporated by reference herein, which amends Section 2.35.030 of the McMinnville Municipal Code.

NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

1. The Common Council for City of McMinnville adopts the above-stated recitals and findings as if fully set forth herein.
2. Section 2.35.030 of the McMinnville Municipal Code is hereby amended to read as set forth on Exhibit A attached hereto and incorporated herein. Exhibit B attached hereto is a clean version of the updates to Section 2.35.030.

3. The City Recorder shall conform these amendments to the City's Municipal Code format and correct any scrivener's errors.
4. This Ordinance shall be in full force and effect thirty (30) days from the date of final passage and approval.

Adopted by the Council on this 25th day of May 2021, by the following votes:

Ayes: _____

Nays: _____

Abstain: _____

Approved this 25th day of May 2021.

MAYOR

Attest:

Approved as to form:

CITY RECORDER

CITY ATTORNEY

EXHIBIT:

- A. Redline version of Chapter 2.35.030
- B. Clean version of Chapter 2.35.030

Exhibit A to Ordinance No. 5103

“2.35.030 Membership.

A. *Number of Members.* The Diversity, Equity, and Inclusion Committee shall be composed of ~~seven~~nine members.

B. *Residency.* Members must reside, own a business, or attend school within the City of McMinnville city limits. A majority of members shall reside within the city limits. The Council can appoint a member to the Diversity, Equity, and Inclusion Committee who does not meet any of these residency criteria if it is determined that the member brings significant value to the purpose of the Committee.

C. *Representation.* Individual seats are not geographically designated. Council members, planning commissioners, and water and light commissioners shall not serve as Diversity, Equity, and Inclusion Committee members.

D. *Appointments.* The Council will appoint the committee members. The City strives for members of the Diversity, Equity, and Inclusion Committee to bring their lived experiences as Black, Indigenous, and People of Color (BIPOC); lesbian, gay, bisexual, trans, queer/questioning, intersexed, asexual, and all other sexualities, sexes, and gendered/non-gendered (LGBTQIA+) people, and/or people experiencing disabilities, as well as the ability to think broadly in terms of how issues of racism, sexism, ableism, and other discriminatory and prejudicial biases impact all residents in McMinnville. Additionally, one member will be under age 21 at time of appointment and one member will be a current City Councilor.-

E. *Terms.* All terms are for four years commencing with January of each year. All members may serve two consecutive four-year terms. Members who have served two full terms may be reappointed to the Diversity, Equity, and Inclusion Committee after a four-year hiatus from the committee.

F. *Removal.* A committee member may be removed by the Council for misconduct, nonperformance of duty, or three successive unexcused absences from regular meetings. The committee may, by motion, request that a member be removed by the Council. If the Council finds misconduct, nonperformance of duties or three successive unexcused absences from regular meetings by the member, the member shall be removed.

G. *Ex Officio Members.* ~~One ex-officio youth (21 years of age and under) may be appointed by the Council, to serve a three-year term. The ex-officio youth shall not be a voting member. Additional ex-officio~~Ex officio members may be appointed by the city manager or city manager designee and will serve a three-year term. ~~Additional ex-Ex~~Ex officio members shall not be voting members.”

Exhibit B to Ordinance No. 5103

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B. *Residency.* Members must reside, own a business, or attend school within the City of McMinnville city limits. A majority of members shall reside within the city limits. The Council can appoint a member to the Diversity, Equity, and Inclusion Committee who does not meet any of these residency criteria if it is determined that the member brings significant value to the purpose of the Committee.

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Ex Officio Members. *Ex officio* members may be appointed by the city manager or city manager designee and will serve a three-year term. *Ex officio* members shall not be voting members.”