

Kent Taylor Civic Hall Council Chambers 200 NE Second Street McMinnville, OR 97128

City Council Meeting Agenda Tuesday, December 13, 2022 6:15 p.m. – Executive Session (CLOSED TO THE PUBLIC) 7:00 p.m. – City Council Regular Meeting REVISED 12/12/2022

Welcome! The public is strongly encouraged to participate remotely but there is 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.

The public is strongly encouraged to relay concerns and comments to the Council in one of three ways:
Email at any time up to 12 p.m. on Monday, December 12th to claudia.cisneros@mcminnvilleoregon.gov
If appearing via telephone only please sign up prior by 12 p.m. on December 12th by emailing the City Recorder at claudia.cisneros@mcminnvilleoregon.gov as the chat function is not available when calling in zoom;
Join the zoom meeting use the raise hand feature in zoom to request to speak, once your turn is up we will announce your name and unmute your mic. You will need to provide your First and Last name, Address, and contact information (email or phone) to the City.

You can live broadcast the City Council Meeting on cable channels Xfinity 11 and 331, Frontier 29 or webstream here: www.mcm11.org/live

#### CITY COUNCIL REGULAR MEETING:

You may join online via Zoom Meeting: https://mcminnvilleoregon.zoom.us/j/84494565696?pwd=cHhhRkNjclc0R2hXbkRnRGI4RGZyUT09

> Zoom ID: 844 9456 5696 Zoom Password: 773302 Or you can call in and listen via zoom: 1-253- 215- 8782 ID: 844 9456 5696

# 6:15 PM – EXECUTIVE SESSION – VIA ZOOM AND SEATING AT CIVIC HALL (NOT OPEN TO THE PUBLIC)

- 1. CALL TO ORDER
- 2. **EXECUTIVE SESSION pursuant to ORS 192.660 (2)(i):** To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.
- 3. ADJOURNMENT

### 7:00 PM - REGULAR COUNCIL MEETING - VIA ZOOM A AND SEATING AT CIVIC HALL

- 1. CALL TO ORDER & ROLL CALL
- 2. PLEDGE OF ALLEGIANCE
- 3. OATH OF OFFICE
  - a. Mayor Remy Drabkin

# 4. PROCLAMATION

- a. Representative Ron Noble Proclamation (Added on 12.12.2022)
- 5. INVITATION TO COMMUNITY MEMBERS 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.
- 6. PUBLIC HEARING
  - a. Public Hearing to consider **Ordinance No. <u>5128</u>**: An Ordinance Deciding on the Appeal of the Planning Commission's Denial of a Short-Term Rental Permit for 790 NW 21st Street.
- 7. ADVICE/ INFORMATION ITEMS
  - a. Reports from Councilors on Committee & Board Assignments
  - b. Department Head Reports
  - c. June 2022, July 2022, and August 2022 Cash and Investment Report (in packet)
- 8. CONSENT AGENDA
  - a. Consider Resolution No. <u>2022-67</u>: A Resolution authorizing the City Manager to enter into a purchase agreement with Premier Truck Group of Portland for the procurement of a 2023
     Freightliner 114SD chassis with a General Equipment Swaploader Model SL-400 with two (2) dump boxes through the Oregon Department of Administrative Services Contract PA1640.
  - b. Consider **Resolution No. <u>2022-68</u>**: A Resolution authorizing the City Manager to enter into a contract with Applied Technical Systems Inc. for the procurement, construction, and installation of the Cozine Pump Station Emergency Stand-by Generator, Project 2022-6.
  - c. Consider **Resolution No. <u>2022-69</u>**: A Resolution appointing Jerry Mason, Lonny Watne, and Scott Cunningham as representatives of the City of McMinnville Budget Committee.
  - d. Consider **Resolution No. <u>2022-71</u>**: A Resolution approving code compliance liens on properties to recover unpaid corrective action cost and civil penalty citations.
  - e. Consider **Resolution No. <u>2022-74</u>**: A Resolution authorizing the City Manager to enter into a contract with Fackler Construction Company for the Construction Manager/General Contract for the AnyDoor Place, a McMinnville Navigation Center.
  - f. Consider **Resolution No. <u>2022-75</u>**: A Resolution adopting an increase in online lien search fees and repealing all previous resolutions regarding this fee at the time this becomes effective.
  - g. Consider **Resolution No. <u>2022-76</u>**: A Resolution appointing and re-appointing members to the City's Airport Commission.
  - h. Consider **Resolution No. <u>2022-77</u>**: A Resolution awarding the contract for the design of the Chandlers Addition Sanitary Sewer Project.
  - Consider Resolution No. <u>2022-78</u>: A Resolution approving the issuance of the certificate for the canvass of the returns of the votes cast at the General Election conducted on November 8, 2022, in regard to Measure 36-215 "Prohibits psilocybin-related businesses within McMinnville. Prohibition sunsets after two years" and the election of three City Councilors and the Mayor.

- j. Consider **Resolution No. <u>2022-73</u>**: A Resolution appointing and re-appointing members to the City's various Boards, Committees, and Commissions. (Added on 12.12.2022)
- 9. NEW BUSINESS (Action Item)
  - a. McMinnville Water and Light Commission Appointment.
- 10. RESOLUTION
  - a. Consider **Resolution No. <u>2022-70</u>**: A Resolution Approving Amendment #3 To Loan Agreement OTIF-0048.

# **11. ORDINANCE**

- Consider the first reading with a possible second reading of Ordinance No. <u>5128</u>: An Ordinance Deciding on the Appeal of the Planning Commission's Denial of a Short-Term Rental Permit for 790 NW 21st Street.
- b. Consider the first reading with a possible second reading of **Ordinance No. <u>5129</u>**: An Ordinance Amending the Comcast Cable Television Franchise Agreement to Extend the Term.
- c. Consider the first reading with a possible second reading of **Ordinance No. <u>5130</u>**: An Ordinance Amending the Ziply Cable Television Franchise Agreement to Extend the Term.

# 12. ADJOURNMENT OF REGULAR MEETING



December 13, 2022

STATE OF OREGON)County of Yamhill) ss.City of McMinnville)

OATH OF OFFICE

I, <u>**REMY DRABKIN**</u>, do solemnly swear (or affirm) that I will support the Constitution of the United States and of the State of Oregon, and that I will, to the best of my ability, perform the duties of the office of **Mayor**, of the City of McMinnville during my continuance therein, so help me God.

Remy Drabkin

Subscribed and sworn to before me this 13<sup>th</sup> day of December, 2022.

Cynthia Kaufman Noble, Honorable Judge



# PROCLAMATION

*Whereas,* this is a proclamation celebrating all of the accomplishments and positive impact that Representative Ron Noble had on the City of McMinnville, while serving two terms in the Oregon State Legislature; and

*Whereas,* after serving the citizens of McMinnville as the Police Chief for many years, upon retirement Ron Noble ran for and won the election to serve McMinnville as a state Representative in the Oregon Housing of Representatives representing District 24; and

*Whereas,* Representative Noble's first took office in January 2017 and will end his second term on December 31, 2022; and

**Whereas,** Representative Noble served as Co-chair of the House and Joint Conduct Committees; Joint Transportation Committee, and Vice-chair of Judiciary and Human Services and Housing Committees. He also served on the committees for House Health Care, Human Services, House Conduct, and Transportation Policy. And Representative Noble was appointed by Governor Kate Brown to serve as the Mid-Valley Regional Solutions Advisory Committee; and

**Whereas,** Representative Noble supported the investments for coordinated homeless response systems in HB 4123 and the City of McMinnville's Navigation Center in HB 4001 and HB 5024 by securing \$1,500,000 for the McMinnville Navigation Center which has since led to an additional \$1,400,000 grant for the McMinnville Navigation Center for a total of \$2,900,000 allowing McMinnville to build a much needed low-barrier shelter with on-site supportive services to help McMinnville residents experiencing homelessness achieve shelter and stability to improve their lives; and

*Whereas,* Representative Noble provided a \$750,000 grant to the City of McMinnville to help McMinnville businesses recover and become resilient after COVID. This grant will fund business assistance grants, forgivable loans, and business training and workforce development opportunities for McMinnville's businesses; and

*Whereas,* Representative Noble has helped to secure many other state grants and funds to help the City of McMinnville and its partners provide programs and services for the citizens of McMinnville; and

*Whereas,* Representative Noble has served as inspiration for other leaders in our state by his ability to work across the aisle, his dedication, involvement, passion, inquisitiveness, inclusiveness, and friendship; and

*Whereas,* Representative Noble's family has been a strong support system to him over his years of service; and

*Whereas,* Representative Noble's sense of service and commitment to the community is valued by the citizens of the City of McMinnville.

**NOW, THEREFORE,** I, Remy Drabkin, Mayor of the City of McMinnville do hereby proclaim **December 13, 2022** as

# **Representative Ron Noble Day**

to thank him for all of his service to the citizens of McMinnville.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the OFFICIAL Seal of the City of McMinnville to be affixed this 13<sup>th</sup> day of December 2022.

Remy Drabkin, Mayor

To the Mcminnville City Council,

I would like this statement to be entered into the record for the council meeting of:

December 13th 2022.

My name is Parker Smith. I'm the owner of Smith and Company Painting. I'm the 4<sup>th</sup> generation of my family to be born in McMinnville. Our office and family owned and operated apartment complex is located on SE Davis St. There have been a dozen or so times over the past handful of years that I personally needed to call the police because of problems with vagrants. There is a steady flow of drug addicts and vagrants that walk by and or through our property. They frequently set up camps in the Davis St dip tunnel which adjoins our property. They also frequently set up camps behind our property along Cozine Creek. There have been dozens of incidents where vandalism and thefts have occurred on our property with either our personal property and or the property of the tenants that live in our apartment complex.

I personally feel that the punishments for people that are involved in the type of lifestyle that so many of the vagrants live are not sufficient and or are not enforced. I don't know why the punishments are not more severe. I also don't know what it would take to make them harsh enough to where it would dissuade people from breaking them time and time again. These types of people don't care if they get arrested day in and day out because what little punishment they "might" get slapped with, means nothing to them. What good does it do to have such weak laws and punishments that it does nothing to prevent the law breakers from breaking them so often? Something needs to be done to not only help the ones who want help, but at the same time make Mcminnville and Yamhill County a less attractive place to come for those who have nothing but trouble to offer our great town!!

I would love it if the leaders of our great community could come together to put a solid plan of action in place and who would be willing to tweak the plan as necessary in order to see it succeed as time goes on.

From:	Johnson
To:	Claudia Cisneros; Remy Drabkin; Adam Garvin; Chris Chenoweth; Zack Geary; Kellie Menke; Sal Peralta; Jeff
	Towery; Jessica Payne
Cc:	morrisinc@onlinemac.com
Subject:	Mollycoddling of Crime by McMinnville City Council and Police Department
Date:	Friday, December 2, 2022 5:55:18 PM

This message originated outside of the City of McMinnville.

I would like this statement to be entered into the record for the council meeting of December 13<sup>th</sup>, 2022.

Mayor Drabkin and City Council,

We are partial year residents of McMinnville. We chose McMinnville to build a vacation home because it was a safe location for a part-time home, but since we built in 2015, the level of crime and undesirables in McMinnville has escalated sharply. We no longer feel safe. Too much acceptance and mollycoddling of crime and bad behaviors is occurring by the City and it's police department.

We have zero empathy or tolerance for the transients that have been shipped to McMinnville from Portland or those that have wandered to there on their own. We have fought similar issues in Democrat-run Houston, TX - rising crime rates, begging at every major intersection (they actually stand on 18" wide medians between 6 lanes of high-speed traffic), trash everywhere, etc. You do not want McMinnville to deteriorate to the level of Houston, but you are on that path unless you act soon.

As I have advised the Houston Police Dept and the Mayor, all cities need to implement legal harassment of all homeless people. This includes writing citations for jaywalking, ticketing for failure to maintain their vehicles to state standards, harassment for the most minor infractions, creating ordinances that put time limits on loitering, creating ordinances that prohibit beggars from approaching anyone within 3' or asking for money more than once. Houston has the latter two items. If an infraction occurs, promptly arrest and prosecute them. In addition, McMinnville's Mayor needs to follow the Houston mayor's example in which he advised all Houston residents to <u>not</u> give money or anything of value to beggars. Also, meet with the leaders of local churches and discourage them from enabling and supporting the homeless lifestyle with lockers, rest areas, food, etc. unless they can provide proof of seeking a job. For the mentally ill, put them into a mental facility.

There is a rumor that the McMinnville police are unwilling to address acts of

vandalism that were recorded on camera by a business owner. My personal interaction with the McMinnville police did not give me a very favorable impression. They ask for far more information than is required for a potential crime and are slow to respond. For example, I reported artists drawing on the street corners on 3rd street. I did not know if they were authorized or vandals, so I called the police. They asked numerous questions (such as complete descriptions of the person including color of clothes, really?). They finally sent an officer 15 minutes later (3 blocks away) after the artists had left the area. They need to respond quickly; hire more police if necessary.

Finally, figure out a way to evict the campers parked and littering at Joe Dancer park. Increasing the littering fine would be one way to legally harass them. Ensure collection of the fine. If they don't have the money, confiscate their vehicle. They will likely leave town before you do so.

We support the Morris' petition fully. Don't ruin what once was a great little town.

Regards,

R and A Johnson McMinnville, OR 97128

P.s. We are not providing our full names or exact address for fear of vandalism.

Sent from my iPad

From:	Morris Carpet Cleaning
To:	Claudia Cisneros; Remy Drabkin; Adam Garvin; Chris Chenoweth; Zack Geary; Kellie Menke; Sal Peralta; Jeff
	Towery; Jessica Payne
Subject:	Re: Mollycoddling of Crime by McMinnville City Council and Police Department
Date:	Sunday, December 4, 2022 1:39:21 PM

#### This message originated outside of the City of McMinnville.

While I support Mr. Johnson's right to express concerns he may have to the council I need to clarify that the Morris' are not doing a petition.

Kim Morris

From: Johnson
Sent: Friday, December 2, 2022 5:52 PM
To: Claudia.cisneros@mcminnvilleoregon.gov; Remy.drabkin@mcminnvilleoregon.gov; Adam.garvin@mcminnvilleoregon.gov; Chris.chenoweth@mcminnvilleoregon.gov; Zack.geary@mcminnvilleoregon.gov; Kellie.menke@mcminnvilleoregon.gov; Sal.peralta@mcminnvilleoregon.gov; Jeff.towery@mcminnvilleoregon.gov; Jessica.payne@mcminnvilleoregon.gov
Cc: morrisinc@onlinemac.com
Subject: Mollycoddling of Crime by McMinnville City Council and Police Department

I would like this statement to be entered into the record for the council meeting of December  $13^{th}$ , 2022.

Mayor Drabkin and City Council,

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There is a rumor that the McMinnville police are unwilling to address acts of vandalism that were recorded on camera by a business owner. My personal interaction with the McMinnville police did not give me a very favorable impression. They ask for far more information than is required for a potential crime and are slow to respond. For example, I reported artists drawing on the street corners on 3rd street. I did not know if they were authorized or vandals, so I called the police. They asked numerous questions (such as complete descriptions of the person including color of clothes, really?). They finally sent an officer 15 minutes later (3 blocks away) after the artists had left the area. They need to respond quickly; hire more police if necessary.

Finally, figure out a way to evict the campers parked and littering at Joe Dancer park. Increasing the littering fine would be one way to legally harass them. Ensure collection of the fine. If they don't have the money, confiscate their vehicle. They will likely leave town before you do so.

We support the Morris' petition fully. Don't ruin what once was a great little town.

Regards,

R and A Johnson McMinnville, OR 97128

P.s. We are not providing our full names or exact address for fear of vandalism.

Sent from my iPad

From:	Bryan Worden
To:	Claudia Cisneros; Remy Drabkin; Adam Garvin; Chris Chenoweth; Zack Geary; Kellie Menke; Sal Peralta; Jeff
	Towery; Jessica Payne
Subject:	Letter for December 13 meeting
Date:	Tuesday, December 6, 2022 4:22:22 PM
Attachments:	We sent you safe versions of your files.msg City of McMinnville Letter.docx

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

#### This message originated outside of the City of McMinnville.

Please find the attached letter concerning current issues we are dealing with in the city of McMinnville, due to what we believe are too lax of laws and the lack of resources provided to law enforcement and the citizens themselves to combat the issues.

I would like this statement to be entered into the record for the council meeting of

*December 13<sup>th</sup>, 2022.* 

Thank you,

Bryan Worden

# I would like this statement to be entered into the record for the council meeting of

# December 13<sup>th</sup>, 2022.

I am a lifelong resident and own multiple commercial properties in town that I have to constantly monitor for damage and vandalism from the homeless and unregulated population in McMinnville. The law have become so lax that my trespass agreements with the city are a basic waste of time. I deal with having to constantly monitor camera systems, do a drive through, multiple times throughout the day and night, as well as asking my friends that might out and about to drive through and check to see if I have issues on my property.

I have multiple tenants. 1 is on the highway with multiple cameras, catching constant vandalism and vagrancy on or about their business. When the city is called, they basically tell them that it will be documented and they will keep an eye on things. Documenting seems to be fruitless and I can't, with good faith expect the McMinnville Police to take time, while short staffed to keep an eye on things.

Examples of issues on my properties include:

- Damage to wiring and infrastructure
- Irreversible damage to structures and vehicles on property
- Tagging penises and other nonsensical spray painting on structures and vehicles
- Theft from vehicles and RVs on property as well as businesses on properties
- Constant human fecal matter
- Constant various human waste
- Recovery of random stolen goods from around town
- Added security costs
- Loss of potential future income due to security issues
- Constant added costs of debris and trash removal

Currently, I cannot, with good conscious, easily offer my properties for rent and tell my potential tenant that they will no deal with these issues. Which constantly effects my potential income but also my ability to continually have faith in the direction of the city of McMinnville as a whole. Without leadership stepping up and starting to deal with these issues, the problem will continue to get worse and dive us deeper into a Portland like society, which our city can ill-afford.

My family and the families of the business owners that occupy the buildings they rent from me, to run their businesses ask the city to start making necessary changes and approach this issue as a whole before it gets so far out of hand that we begin to be compared to the city of Portland. Which we absolutely can not and will not recover from.

Sincerely,

Bryan and Cassie Worden

From:	Sarah Heiman
То:	<u>Claudia Cisneros; Remy Drabkin; Adam Garvin; Chris Chenoweth; Zack Geary; Kellie Menke; Sal Peralta; Jeff</u> <u>Towery; Jessica Payne</u>
Subject:	Fw: meeting
Date:	Wednesday, December 7, 2022 12:17:16 PM

This message originated outside of the City of McMinnville.

I would like this statement to be entered into the record for the council meeting of December 13th, 2022.

Dear McMinnville City Council Members,

As a concerned citizen, patron and business owner of McMinnville I request you to lead our community to take action to correct multiple problems plaguing our community.

Crime is running without accountability because our elected and appointed leaders are choosing to allow lawlessness to run unchecked. We have laws and ordinances in place to ensure safety and property security for visitors, citizens and business owners. Lawlessness without consequence is beginning to devastate our community. Safety to those who call McMinnville home need to be our city's first priority. McMinnville should be a town we can be proud to share with others, to invite people to come and visit. We understand that many of our public services including the police force are understaffed. Why are they understaffed? Why are we having trouble hiring an adequate police force for our community? Do we have a poor work culture in our local police force? The mentally III and addicted folks require urgent services that may not be available. I know of different avenues people can take but on December 6, 2022 I saw a post of someone trying to help a family member with addition by reaching out to the community for who accepts medicare. She received the run around all over with little help. This should not be a difficult task for an addict to find help once they decide they need it! It should be readily available and easy for them to find whether they have income, insurance or not. Homelessness is a very challenging cultural and economic reality. What we are doing right now is not working so lets figure out what other communities are doing correctly so we don't have to reinvent the wheel and can use money saved from figuring out to actually implementing it. We can do better and We must do better!

Newberg despite its problems has a committed police force that appears to be doing their best to ensure others uphold the law and city ordinances. How are they different from McMinnville? Robbery and crime in McMinnville must be fought. Homelessness must not be enabled. We must be creative to help those who are homeless get back on their feet without enabling them. Scientifically validated support for the addicted and mentally ill should be generously provided for those who can demonstrate improved well being.

We do not need to repeat the failures Portland and other major metropolitan areas have made. Passively allowing cultural destruction of our community will result in our hard working honorable citizens to flee our community in search of a safer and better place to call home for their families and businesses. Biting the hand that feeds you (tax dollars) will only lead to loss for our community.

Together we can reverse the pitiful decaying trend that's plaquing our community!

Sincerely,

Sarah Heiman

From:	Kellie Menke
To:	Claudia Cisneros; Matt Scales
Subject:	Fwd: Statement letter
Date:	Thursday, December 8, 2022 4:43:11 AM
Attachments:	We sent you safe versions of your files.msg
	Signed letter for mayor Drabkin.pdf

# Get Outlook for iOS

From: Quick Fix Handyman <quickfixhandyman19@gmail.com>
Sent: Wednesday, December 7, 2022 6:39:50 PM
To: Kellie Menke <Kellie.Menke@mcminnvilleoregon.gov>
Subject: Statement letter

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

Good evening,

I would like this statement to be entered into the record for the council meeting of December 13<sup>th</sup>, 2022.

I have attached the letter regarding my experience with our transient/homeless community.

Thank you for your time.

Sent from Mail for Windows

December 5th, 2022

To whom it may concern;

My name is Alberto Palacios, and I am the owner of Quick Fix Handyman. I am currently renting out a building located on Irvine Street here in McMinnville since July of this year. I have encountered many issues related to our ongoing homeless/transient population here in town. Our first encounter was with a gentleman that was parked on Irvine Street next to the building. He would always find a way to come and talk to either me or my staff, asking for money or just making them uncomfortable. When he left, I felt more comfortable because I knew that there was no one lurking around the building, and I knew my things were safe. A few weeks later, another camper came around. This one would go towards the back of the building, next to the dumpsters, and urinate. This is completely unacceptable because we are a locally owned family business and on occasion, we will have clients in our office. This isn't what I want my clients to see when they come into the office. For them, I was able to get an officer to come out and give them a trespassing notice. There is another gentleman who has made a shed on the other side of the fence next to the building who has brought a lot of items with him. I have seen him start a fire, to keep warm, 2 times since he has been here. That is a safety hazard not only to him but for the building as well. I am afraid that if the fire is not contained, it could reach the building, where I have all my equipment and paperwork. This would be devastating for not only my family but for the families of the people who work with me. I could potentially lose everything I have if this were to happen. I ask that something be done regarding homelessness and the transient population in our town. As with everything, there are always the good and the bad ones. I believe in second chances, but they need to be addressed properly.

Sincerely, Malner

Alberto Palacios

Owner, Quick Fix Handyman

From:	Poseyland
To:	Claudia Cisneros; remy.drakin@mcminnvilleoregon.gov; adam.garvin@mcminnvilleorgeon.gov; Chris Chenoweth;
	<u>zack.geary@mcminnvilloregon.gov; Kellie Menke; Sal Peralta; Jeff Towery; Jessica Payne</u>
Subject:	I would like this statement to be entered into the record for the council meeting december 13, 2022
Date:	Friday, December 9, 2022 3:27:25 PM
Attachments:	We sent you safe versions of your files.msg
	Dear City Council (002).docx

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

#### This message originated outside of the City of McMinnville.

I would like this statement to be entered into the record for the council meeting December 13, 2022. Thank you, Jennifer Hargis Dear City Council,

I would like this statement to be entered into the record for the council meeting of December 13<sup>th</sup>, 2022.

I am making this statement on behalf of the Businesses here in town and as a concerned lifelong citizen of McMinnville. I am the General Manager of Poseyland Florist, and we have had to deal with the transient population vandalizing, tagging, and damaging our property for far too long with no way of dealing with the problem. Transients are repeatedly breaking into our locked trash bins, intentionally spreading garbage and debris all over our parking lot. More concerning is the drug paraphernalia that is being brought on to the property and left to contend with. The transients have repeatedly "tagged" (spray canned) our buildings including front door, garbage cans, with profanities and other obscenities. Questionable belongings are being brought and left on the property, shoved into small spaces between our buildings. When the transients return to retrieve the items, they will go out of their way to harass my employees who feel threated. To no avail with each occurrence, we have reported the event by calling the non-emergency line for aid in dealing with this intentional reoccurring harassment. Unfortunately, because of the laws there are no consequences for their actions, and they know this. This is going to continue to happen and will only get worse if we do not change the laws and make them accountable for their actions. This is not only costing us money and time, but also affecting our business and our employees. I urge you to listen to the people in our community that something needs to be done.

Thank you for your time,

Jennifer Hargis

From:	cindee.paulsen@frontier.com
То:	<u>Jeff Towery; Claudia Cisneros</u>
Subject:	Citizen concern for McMinnville homeless - transient - drug/mental health problem
Date:	Friday, December 9, 2022 3:49:11 PM
Attachments:	We sent you safe versions of your files.msg City letter 120822.docx

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

#### This message originated outside of the City of McMinnville.

Please find attached our letter regarding concerns we have with the ongoing homeless - transient - drug/mental health problem in our city.

Steve & Cindee Paulsen

December 8, 2022

Dear City Manager Jeff Towry and City recorder Claudia Cisneros:

I would like this statement to be entered into the record for the council meeting of December 13, 2022.

We write this letter today to voice our concern for our city, McMinnville and the ongoing homeless, transient, and mental health/drug problem. This problem has been going on far too long without any improvement, in fact it has gotten worse. If the problem is not addressed it will continue to grow. We as a city can no longer sit idle doing minimal, turn our heads or think someone else will fix it and expect it to go away.

To begin with we are not new to McMinnville. We both grew up here attending the schools and graduating from MHS. Our family dates back 4 generations McMinnville and 6 generations Oregonian so there is local town history. We decided to stay local raising our 3 children who also were born, attended schools and graduated from McMinnville. Our granddaughter currently is attending elementary school here. We are homeowners and tax paying citizens who over the years have been involved in supporting schools, parks, and our community to improve the livability of our area.

While our children were growing up on the east side of town we were frequent visitors to the parks, primarily Wortman park, first driving there, then walking and finally riding our bikes when the park structures were located on the east side of park. The city improved the park by adding a play structure on the west side as well. It's very sad that you can drive by at all times of day and very seldom see kids enjoying the play areas. In fact I have never taken my own grandchildren to play at Wortman.

Why -- all you have to do is drive down McDaniel or Lafayette Avenue and it's very clear. Now you drive by on either east or west side of Wortman and it looks like tent/trash/RV's on one side and RV park (December 8th counted 10 RV's set up on west side) on the other.

This is only one small area of McMinnville as all you have to do is drive around and it's everywhere. We are appalled at the condition of our city but don't think this is new information to you. One area gets cleaned up only to have the garbage move to another area. It's an ongoing battle utilizing our resources reacting to the situation and costly. It's time we do something and address the issue. It's a disservice to the individuals who are truly homeless due to circumstances and looking to improve their situation to put them in the same classification of those who have no desire to improve their living arrangements. They are not looking for employment or housing, just the free services available without any accountability or change. Unfortunately, our services are not endless and come at a cost. Our city/county currently does not have the staff or resources to address the mental health population something known first hand working in the medical field for almost 20 years.

The fact that we as home owning tax paying citizens are expected to abide by the city rules/ordinances but this class of individuals are not held to the same standard is wrong. You can't have a conversation without the state of our city being a topic with the camping (vehicles, RV's, tents, etc), theft, graffiti, mounds of garbage, people obviously not in their right mind (drugs and/or mental health) being of great concern and our safety. We have not even touched on the effects this has on tourists and their desire to return when they encounter people sleeping on sidewalks or others being disruptive while enjoying a meal/beverage in our downtown area.

This is going to take the collaborative effort on all fronts - the police and sheriff's departments can't be the sole problem solvers. This effort needs to take place with the City of McMinnville, Yamhill County, city associations, church's, law enforcement (police and sheriff) as well as citizen's working together to address the issue. We need to start by enforcing the rules we have in place and continue with vigilance. There needs to be known resources so when situations are confronted they have a direction for those wanting help and consequences to those that have no desire to go by the rules. We need to continue and not become complacent or turn our heads. We urge the McMinnville City Council members to take this seriously and start the process. This is not a small problem that can be fixed in a short time but will take the consistent vigilant actions on all fronts, including citizens to take our city back.

Respectfully, Steve and Cindee Paulsen 1151 NE 16th St McMinnville, OR 97128

From:	Morris Design
То:	Remy Drabkin; Chris Chenoweth; Adam Garvin; Zack Geary; Jessica Payne; Sal Peralta; Kellie Menke; Jeff
	Towery; Claudia Cisneros
Subject:	Re: Letter to the City of McMinnville
Date:	Sunday, December 11, 2022 2:01:39 PM
Attachments:	We sent you safe versions of your files.msg
	City Letter 12-11-2022.pdf

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

Letter is attached.

From: Morris Design
Sent: Sunday, December 11, 2022 1:56 PM
To: Remy Drabkin ; chris.chenoweth@mcminnvilleoregon.gov ; Adam Garvin ; Zack.geary@mcminnvilleoregon.gov ; jessica.payne@mcminnvilleoregon.gov ; sal.peralta@mcminnvilleoregon.gov ; kellie.menke@mcminnvilleoregon.gov ; jeff.towery@mcminnvilleoregon.gov ; claudia.cisneros@mcminnvilleoregon.gov
Subject: Letter to the City of McMinnville

Please have the attached letter and attachments entered into the record for the meeting of December 13, 2022.

Thank you Mike & Kim Morris Mayor Drabkin and City Council,

#### Exhibit A

We are writing to you today because we are very concerned about the state of our city and the direction it has gone in the past few years and is continuing to head. The increase in camping, thievery, garbage, unsanitary conditions, property damage, fires and threats to our safety is a huge concern.

#### Problem:

N 128 W

Our city has an increasing number of transients or vagrants that our living on our streets. It is important to differentiate this group from the homeless population. This group of individuals is not looking for transitional housing or gainful employment. They are choosing a lifestyle with no rules or boundaries. They steal, beg, vandalize and use our services as a way to sustain this chosen lifestyle. By lumping the two groups together it is a disservice to the homeless, and to us, the citizens and taxpayers of McMinnville. The transient population is having a significant impact on our homeless population by using services designed to help people trying to get back on their feet. When they are lumped together community members think the people out stealing and vandalizing our city and yelling obscenities downtown are the homeless and they ask "Why are we trying to help them?" Most of the transients aren't even from McMinnville originally, they have chosen to come here. Reasons we have been told are:

-They hear they can get free stuff and services in McMinnville

-They made a choice to leave their current home on an adventure and landed here....without sufficient funds to sustain.

There is another segment to this that should also be mentioned and that is the mentally unstable and/or tweakers choosing to be disruptive and openly threatening to other people, mostly noted in our downtown area. Both segments are affecting the livability, safety and security of our town.

#### Issues:

#### Camping outside of the city ordinance

\*Campers, trailers and tent camping is still happening in our city outside of the city ordinance.

Thievery

\*Citizens and businesses are having items stolen and it is increasing. Bikes, gas, cars, etc.

#### Property Damage

\*Break ins, Fires, graffiti

Garbage and unsanitary conditions

\*Transients tend to pile up items in a location and then move on and leave all the garbage behind. This garbage can contain food, urine, feces, and drug paraphernalia. This brings mice and rats and health risks to others.

#### Graffiti

\*On buildings & businesses, vehicles, city property, utility boxes, etc.

#### Threats and disruptive actions

\*Yelling of obscenities, partially clothed individuals, groups blocking sidewalks, threatening behavior

#### Violence

\*Knives have been pulled on individuals. Threats of harm. There are shootings that may or may not part of this group, but it is still an issue in our city.

#### Taxes and Services

\*Police, Fire, Mental Health, Public Works are all services we the taxpayers pay for and they are being consumed by others.

#### Solution Ideas:

1). A commitment from the City Council to make addressing these issues a priority

2). Make fully staffing our Police Dept. a priority

3). Enforce laws and ordinances to the fullest that they can be addressed

4). Approach Visit McMinnville and McMinnville Downtown Association and ask if they will work with the community and other agencies to help address issues either financially and/or with communication to others.

5). Contact the Rail Road about a trespass order to be placed on file (Kim reached out already)

6). Reach out to Yamhill County to see if they would help facilitate a mental health action team to address issues in this area.

7). Educate the citizens and businesses as to who to call and when to call. Code Enforcement or a Police Officer. Can property owners sign trespass orders?

8). We need to know that when we call YCOM we will get assistance and/or a call if necessary. A call within a reasonable time frame.

9). We need to make sure exclusion zones are identified. People within those zones know who has been excluded and they need to be diligent about calling authorities.

We believe the solution is cooperation and team work between citizens, property owners, business owners, the railroad, the McMinnville Downtown Association, Yamhill County, Visit McMinnville, visitors and most importantly the City of McMinnville. All of us should come to the table with a mind set to work together for the betterment of McMinnville as a whole. We are willing to work on facilitating bringing all these groups to the table to work on tools for a solution, but we need a commitment from the City Council that they will be an active positive partner and stand behind your tax paying citizens by enforcing the laws to the fullest. Laws and ordinances we already have on our books.

Historically, on multiple occasions, the community has become frustrated with this on-going situation and has addressed it with the City Council. The City reacts to the concerns only to fail to stay proactive and vigilant. We need to be proactive and not reactive to all these issues. We would hope that by working together and staying focused on the goal we can get a handle on the situation and then continue to work on maintaining it without fail. The word needs to get out that McMinnville won't allow such behavior.

Our police officers are spending time reacting to issues created by illegal activity caused by these vagrants, so it would be nice to see an officer or officers dedicated to patrols in areas of the city where most populate; currently the downtown core, the railroad tracks, Lafayette Ave and Riverside Drive. As groups move patrols should follow staying vigilant. These patrols would not only enforce laws like camping, open burning, but other potential crimes as well. When one individual has six disassembled bicycles, we all know they didn't buy them. The intent is to send a consistent message that they are being watched and held accountable for their actions. Their items or camper will be confiscated if the ordinances aren't followed.

As a community we need to stand up for our City, watch out for our neighbors and children and be willing to tell individuals "you can't behave that way and if you continue to we will call the authorities." We are submitting this letter to the City on behalf of ourselves and all the concerned individuals who have signed below. They are citizens, property owners, employees, business owners or frequent users of McMinnville.

For this to be successful the entire community needs to be engaged. We need to stop enabling individuals by giving them handouts without an expectation of being clean and/or in active treatment, must be honest, they can't be a threating to others and they need to participate in helping themselves. There is no need to get a job or try to improve their situation if they-re getting fed, blankets, a phone, showers and can steal other items.

We call on the City Council to take these issues seriously and support actions that will support taxpaying citizens and the livability of our community.

Mike and Kim Morris - supported by 300 others, signatures attached

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Amended on 12.14.2022 28 of 515

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31 Signatures

Amended on 12.14.2022 31 of 515

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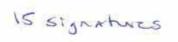
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A Legend: B-Business Owner C-Citizen P-Property Owner V- Visitor

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Legend: B-Business Owner C-Citizen P-Property Owner V- Visitor

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1	Signiture	Printed Name	Designation
2	Earse director	Elyse Ruzicka	C
3	Al-R+	Allison Best	B, C, P
4	TMIL	VINCENT TAFF	CP
5	usu Petrum	Susie Paterson	SP
6	Find & Peter	Egriest Patarson	FP
7	Donal A	Dongid Lehmann	B
8	Deresa Trawford	Teresa Crawford	PC
9	Ron Conford	Ren Crawford	PC
10	the Jack	Hathan Zook	В
11	Deligrah DKelley		C,P
12	Heidik Mort (	Heidi K Mort	CP
13	Pour KNOBLOCH	Paul Knoblock	e P B
14	TOMPET KNOBLAR	Nothan Martin	
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Amended on 12.14.2022 35 of 515

Legend: B-Business Owner C-Citizen P-Property Owner V-Visitor

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1	Signiture	Printed Name	Designation
2	mitte	Jennifek Hargis Krysta Byers Nadyd Santoyo Rilee Hargis	CIP
3	Marchen	L'AVISTA BURNS	C
4	TOMINA Santain	Nadura Sciptoria	C
5	RIUNAR	Palee Havais	Č,
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4 signatures

Signature attachment for exhibit A

Legend:

B-Business Owner C-Citizen P-Property Owner V-Visitor or e-program

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Signature attachment for exhibit A

Legend: B-Business Owner C-Citizen P-Property Owner V-Visitor

	A	В	C
1	Signiture	Printed Name	Designation
2	naomi C. Mahn	Noom! Maha	B Mahn Property Managem B My System Shield B The Oak B Sona Ltd.
3	Van and	David Micha	B My Sister Style
4	Dr Mala	Paul Maha	B The Cark
5	The Male	David Maha David Maha David Maha	B Sona I to
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 From:
 Heather Miller

 To:
 Claudia Cisneros

 Subject:
 Letter for City Council Packet 12.13.2022

 Date:
 Tuesday, December 13, 2022 10:22:35 AM

 Attachments:
 We sent you safe versions of your files.msg MDA Letter to Council 12.13.22.pdf

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

#### Please see attached, thank you.

Heather Miller

Owner Local Flow Health Bar

575 NE 3rd St. <u>McMinnville, OR 97128</u> office: 971.261.2167 mobile: 971.901.1464 @localflowmac www.localflowhealthbar.com December 13, 2022

Mayor Drabkin, McMinnville City Council Members and City Staff,

We write to you on behalf of our downtown constituents who have expressed increasing concerns regarding safety, vandalism, and repeated inappropriate/criminal behavior.

MDA Incident Tracker				
Name	Email	Date	Time	Description
Dave Rucklos	dave@downtownmcminnville.com	10-21- 22		Female subject walked up 3rd Street through downtown with pants around her knees and no underwear. Police called. Delayed response. Subject eluded me and circled round to reappear at 3rd and Cowls.
Dave Rucklos	dave@downtownmcminnville.com	10-21- 22		Verbally accosted by female (Christine Roberts) as pursuing male subject with pants around knees. Four-letter words used to berate.
Heidi Moore Agency		10/12/22		Last Wednesday, a woman come into the office and start harassing my solo employee who was in the office. We have started keeping our doors locked when there is only one person here just because of these sorts of things. It's happened several times over the past year or so and out of safety I've advised them to lock the door when they are here by themselves or if they feel uneasy. I really don't like having my doors locked as it makes it hard for current clients, vendors, guests, or potential new clients to come in to do business.
Vortex Records	store@thevortex.biz	10/20/22		A teenager walking by our storefront was verbally accosted by Christine Roberts, a common occurrence since her release from custody. Her spontaneous profanity comes as a shock to anyone confronted with her five-foot tall 'street personality' with the vocabulary of a drunken sailor. The image of downtown as a safe, enjoyable destination is tarnished every time she encounters strangers, shoppers, and store employees throughout the 3rd Street area.
R. Stuart Tasting Room	casee@rstuartandco.com	10/22/22		I know you all asked us to let you know when there were any negative instances downtown regarding our business. I

Incidents reported to our office in late October recorded the following:

	received a phone call last night from a staff member that was working the Wine Bar. She ended up closing 20 minutes early because Terry (I believe that is her name) was accosting her from outside the Wine Bar. She was standing directly in front of our door and yelling at our staff member through the glass. She showed up at 7:43pm and left about 5 minutes later. The staff member wasn't sure what she was exactly saying and thankfully she never entered our business.
--	--

Similar reports continue to be documented. Drugs and mental illness are the primary drivers of this condition. There is a criminal element operating unchecked and our members and customers are afraid for their safety.

We acknowledge the constraints put on law enforcement by the 9<sup>th</sup> District Court decision in Martin v. Boise (camping authority). We understand the challenges faced in law enforcement recruitment and retention. We realize our courts are at capacity, with a backlog of cases due to the pandemic. But we cannot turn our back on the need to keep our business community and citizens safe from physical and verbal abuse.

We also acknowledge that this activity is not isolated to the downtown core and we join our larger McMinnville business community's concern with the long-term impacts on business and quality of life for all residents.

We ask you as leaders of our community to commit all resources and support toward cleaning up our current condition. Engage all of us including Yamhill County and the state of Oregon in "our" effort to provide a safe and healthy environment in our city.

The McMinnville Downtown Association has identified public safety as a primary concern for our organization. We are ready to engage and collaborate to find solutions for this growing concern in our community. We would encourage the development of a task force with representatives from public safety, the City of McMinnville, Visit McMinnville, MDA, MEDP, Chamber of Commerce, County mental health and community members at large to work towards a "McMinnville" centric solution.

Most sincerely,

MDA Board of Directors Dave Rucklos, Executive Director McMinnville Downtown Association

### City Council - Public Comment - December 13, 2022

Several years ago, there was much angst when two huge billboards were erected on Rt 99. As I remember, the reason that occurred was there was no city ordinance addressing signage or setting design requirements. Subsequent to those billboards going up, I believe the City Council did indeed address signage so that would not happen again.

Now, in the last few months, I have noticed numerous hotels being established on 3rd Street. We had McMenamin's, then the Atticus, then the Tributary Hotel. I read on December 5th in Hotel News Resource, "the IHG Hotels and Resorts (IHG) today announced the signing of its first. Mignette Collection hotel in the US in McMinnville, Oregon." The article referred to The five story Gwendolyn Hotel. I also read in the last few weeks that the owners of the building where Mack Theater is, are also planning to build a hotel. Some of these establishments like 3rd Street Flats, are locally owned, but some are not. At least one of these hotels is offering their cheapest room the week of December 13th at more than \$800 per night.

Is all of the 2nd floor of Third Street going to be posh hotels? Is someone besides me noticing this seems to be a trend? How will that change Third Street's first floor retail spaces, when suddenly all their business is coming from out of town? We always note the charm of Third Street, but what charm will it hold for residents when visitors are taking up all the parking? Will the retail space suddenly turn into chain stores?

I encourage the City Council to give thought to how they envision Third Street in ten years. Does that vision include a hotel on every corner? I think hotels might be the next "billboard", but if that is the case lets have some thought to how we grow, rather than pass regulations after the fact when it is too late to address what is already here.

Denise Murphy 957 NW Cascade Way McMinnville zembal@mac.com **Document for City Council Meeting** 

# Hello Council my name is Dylan Kiger and I would like to start by thanking you for the hard work you do and the willingness to listen to concerned business owners and citizens pertaining to the state of "our" beloved City!

Incidents we have encountered:

Two machetes pulled on me.

One 10-inch Rambo style knife.

Many, verbal attacks of foul language.

Many, verbal attacks threating my life.

Sleepless nights hoping our business is OK when I arrive the next morning.

Countless nights staying up all night at our business keeping eyes out. Upgraded cameras and camera system at the tune of just under \$35,000 dollars.

So many cut fence lines, stopped counting how many, repaired at our own cost.

Transitioned an employee to security detail only.

Fuel stolen from Box Truck.

Fuel lines cut and fuel stolen from many vehicles on our property. Catalytic Converter cut from box truck repaired by Todd's Exhaust at the tune of over \$2,000.

Graffiti on almost every spot of our business. Removed at our expense.

Tools that were locked up in truck tool boxes stolen replaced at our expense. Human Feces on our structures.

- Abundance of used needles capped and uncapped.
- Power being stolen from our outlets I had to put steel plates over all of them.
- The list goes on but as you know our time is limited.

I am 40y/o and have been a lifelong resident of this town and to see what is going on and being allowed in the town is absolutely unacceptable! I

think far too often citizens are interchanging the terminology of the homeless/houseless/the individuals that truly need the help and the ones that choose this life of drug use, thievery, vandalism, and flat out disrespect to our once beautiful city. From what I have seen over the past 2+ years is our city being extremely reactive to the troubling issues at hand and

not proactive. It absolutely makes me nauseated that these criminals and yes they are criminals have more rights and privileges than my own law obeying family. My daughter is 13y/o and My Wife and I will absolutely not allow her to walk across town anymore, day or night by herself and this saddens me.

With all respect I find this falls clearly in the hands of our city leaders. I am more than willing to assist in starting to resolve these issues before they become bigger than the already have, all we need is our city leaders to ask for help. By no means am I questioning your knowledge or hard work you put into this wonderful city we call home but council can only do so much without

asking for assistance from myself and other concerned citizens.

#### Community Meeting to Improve Mac

Hello! My name is Mark Morrison. My wife and I moved here 3 years ago. When we first visited MAC, we were impressed by how friendly people were on the streets downtown. Most of them were interested to share their thoughts and hopes for the town. As we walked along 3<sup>rd</sup> street, I was reminded of how nice it was to enjoy new friends and get to know what the town was about. Well, that was one of the primary reasons we moved here.

We didn't see vagrants (or transients or present-day gypsies) walking around half dressed or with their pants pulled down to their knees. We didn't hear vulgarities being screamed to anybody that was around (or when nobody was around). The streets seemed safe and friendly for our grand-children to visit. However, that is not the case as we walk the streets today. We witness vagrants stealing money from business "tip jars" when "nobody is looking"; half dressed people walking down the street without anybody batting an eye – because it has become "normal". Broken down RV's and temporary shelters parking in neighborhoods, next to schools and in parks for days or weeks. Well, this is our home – that we choose to live and pay taxes for municipal services.

We need to work together as a community (with YCAP?) to help those who are seeking housing or have been temporarily dis-placed to get employment so they can improve their situations. One of my thoughts is to provide temporary shelter as they are trained or work towards supporting themselves (if they are able). Those that are able should work for their food and shelter – not just take handouts. Working will provide self esteem for them.

Thankyou,

Mark & Carolyn Morrison

496 NE Norton Ln

My name is Mike Morris, I live at 935 NW 19<sup>th</sup> Street McMinnville Oregon and I'm a recovering alcoholic and an active member of a 12 step recovery program. On December 28<sup>th</sup> of this I will have 18 years of sobriety. During that time I have attended thousands of 12 step meetings and heard from tens of thousands of alcoholics and addicts. I am not a doctor, professional drug and alcohol counselor, social service provider or run or work for an organization that provides services to alcoholic and addicts. I am not part of an organization or group that receives city, county, state or federal funding to run a program.

As an active member of a 12 step recovery program I have seen more people die from drug and alcohol addiction than the majority of people in this room combined, but to balance that for every one lost I have seen thousands recover. On any given week in Yamhill County there are at least 65 AA or NA meetings and this does not include programs run by churches or the county. I tell you this so you understand that for the addict or alcoholic looking to get clean and sober there are many opportunities.

One of the keys for the addict and alcoholic to decide to get clean and sober is to finally hit their rock bottom which is different for every individual. My concern is that society and communities like ours have become their enablers. When their parents, spouses, siblings, children and friends have said enough is enough, society steps in to provide what is needed to keep them at a point in their addiction that provides a level of comfort and tolerance that prevents them from hitting rock bottom and choosing sobriety over addiction. The pain and misery never exceeds the pleasure of the high. THERE COMES NO MOTE Added on 12.14.2022 42 SAU

1 of 2

Amended on 12.14.2022 53 of 515 Please know that I am here to help the addict and alcoholic that want recovery but I cannot support enabling. I believe we as a community need to accept there are people out there that are not ready for help and want to continue a lifestyle of living on the street without rules and engage in criminal activity, those are the individual that we need to stop enabling and begin applying the laws and tools available to us to try and instill different behavior or there will be consequences for their actions.

Lastly I believe we as a community can be leaders in the fight against homelessness and at the same time be tough on the individuals that only take from us and our community. I believe we can provide navigation centers, transitional housing, social services and basic needs to those wanting a hand up to get back to living a healthy productive life while at the same time enforce the laws to the fullest to send a message that illegal and criminal activity are not acceptable in McMinnville.



503-434-7311 www.mcminnvilleoregon.gov

## **STAFF REPORT**

DATE: December 13, 2022
TO: Mayor and City Councilors
FROM: Heather Richards, Community Development Director
SUBJECT: Ordinance No. 5128, Appeal of a Planning Commission Denial for a Short-Term Rental Permit, STR 7-22, 790 NW 21st Street, Tax Lot R4417-AC-02344

#### **STRATEGIC PRIORITY & GOAL:**

GROWTH & DEVELOPMENT CHARACTER Guide growth & development strategically, responsively & responsibly to enhance our unique character.

### OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community

#### Report in Brief:

This is a public hearing to consider the appeal of an October 6, 2022, Planning Commission decision to deny a short-term rental permit for 790 NW 21<sup>st</sup> Street. Emily LaGow, the applicant, appealed the Planning Commission's decision to the City Council on October 21, 2022.

Per Section 17.72.180 of the McMinnville Municipal Code (MMC), if an appeal of a Planning Commission is filed within the appropriate period, the City Council shall receive a report and recommendation from the Planning Commission and shall hold a public hearing on the appeal.

<u>17.72.180</u> Appeal from Ruling of Planning Commission. An action or ruling of the Planning Commission pursuant to this title may be appealed to the City Council within 15 (fifteen) calendar days of the date the written notice of the decision is mailed. Written notice of the appeal shall be filed with the City Planning Department and shall identify the decision sought to be reviewed, including the date of the decision and a statement of interest from the person seeking review specifying that they were party to the initial proceedings. If the appeal is not taken within the 15 (fifteen) day period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall receive a report and recommendation thereon from the Planning Commission and shall hold a public hearing on the appeal. Notice of a City Council hearing on an appeal of a decision of the Planning Commission shall take the form of that provided for the initial application before the Planning Commission.

#### Attachments:

5) Ordinance No. 5128

6) Public Comments Received for Appeal

8) STR 7 – 22 Public Record

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>7)</sup> Application for Appeal

#### Background:

Emily LaGow submitted an application for a short-term rental permit at 790 NW 21<sup>st</sup> Street on June 10, 2022, prior to the short-term rental permit moratorium. While city staff was processing the application, the City received a complaint on July 4, 2022, that the property was already operating as a short-term rental prior to receiving a permit and that the property was advertised online as a short-term rental prior to receiving a short-term rental permit.

The City placed the property into its code enforcement program. If a business is operating without the proper permits, the City has the option to shut-down the business or allow the business to enter into a compliance plan with the City to abate the issue – in this case, that meant ceasing any operation as a short-term rental and going into a public hearing process for the short-term rental permit.

The applicant stated that the property was managed by ITrips and that the management company moved some clients who were renting another property in McMinnville as a short-term rental during the July 4<sup>th</sup> weekend to this property due to an air conditioning failure at the other property. This action then switched the property to a short-term rental status in their software programs and online. this issue arose due to the property management company accidentally listing the property for a short-term rental basis after it had to move guests from another nearby short-term rental to this property due to an emergency situation.

The Planning Commission hosted a public hearing on September 1, 2022. At that time they heard public testimony expressing concerns about the accuracy of the application submitted and what was represented online for the property, that resulted in a discrepancy of the data to support the review criteria. For example, the code requires one off-street parking space per guest room. The application represented the property as a four-bedroom short-term rental but the advertising online was for a five-bedroom property. The property can only accommodate four off-street parking spaces, and the surrounding residents were concerned about people parking on the street. Another concern was that the applicant was not appropriately responding to the code criteria that a person living within the 97128 zip code needs to be available to respond to issues at the property. The applicant provided the name of someone that she was contracted with to provide those services and a phone number, but when a neighboring property owner called the phone number provided they learned that it went to a call center from 11 PM – 7 AM.

The Planning Commission was concerned about the issues raised and several other discrepancies in the application provided and the management of the property. The Planning Commission closed the public hearing on September 1, 2022. The applicant chose to exercise their right for a seven-day period to respond to the concerns and provided an email response on September 9, 2022.

Then the Planning Commission met on October 6, 2022, to deliberate on the land-use application and voted 7 - 1 to deny the application on the basis that it did not provide enough off-street parking spaces for the number of guestrooms on the property (advertised as five guestrooms) and that the management company's Portland-based call center did not satisfy the criteria for someone living within the 97128 zip code to respond to issues at the property.

Below is a synopsis of those concerns:

Section 17.12.010(P)(3) – One parking space is required for each guest room of the short-term rental to ensure on-street parking is not unduly impacted. The application indicated that the home

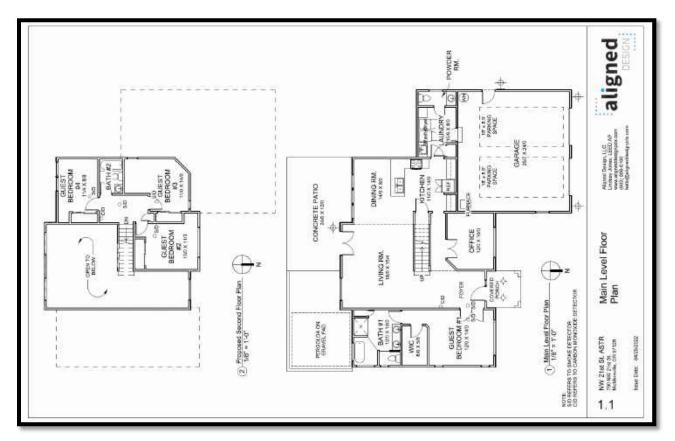
Attachments:

<sup>1)</sup> Ordinance No. 5128

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>3)</sup> Application for Appeal

<sup>4)</sup> STR 7 – 22 Public Record



was a *"four (4) bedroom, three (3) bath home"*, and provided a floor plan that indicated the same. Please see below.

However, it was disclosed at the public hearing that there are actually five guest rooms in the house offered in the rental listing. Apparently, an office had been converted into a guest room and the home's layout that was provided as part of the short-term rental application was not representative of what was advertised online, including a home layout identifying five guest rooms.

The applicant in her rebuttal stated that she would reduce the number of guest rooms to four bedrooms if the property was used as a short-term rental and that it had five bedrooms only when it was being advertised as a long-term rental.

Staff amended its recommendation that the parking criteria had been met from its September 1, 2022, to a finding that this criterion was not satisfied based on the new evidence entered into the record. And the Planning Commission affirmed that finding in their decision.

Attachments:

<sup>1)</sup> Ordinance No. 5128

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>3)</sup> Application for Appeal

<sup>4)</sup> STR 7 – 22 Public Record

#### Screenshot from ITrip Vacations, Baker Creek Retreat, September 30, 2022:

Exquisite Wine Country Escape, New Décor Throughout, Patio & Fire Table, 1.5 Miles to McMinnville		E		
Baker Creek Retreat	4 Bedrooms	2.5 Bathr	atoms Slideps 10	
\$4,256 - \$11,032 / month in McMinnville canvelling net	🗢 Favorite	🙆 Sha	ire 🔲 Availability	
Nestied in the heart of wine country within the Williamette Valley, this incredible five bedroom option for your family or small group visiting the area. Sitting a couple blocks away from Miche	POR THESE CONTRACT		Sleeping Arrangements	
uption for your ranking of small group visiting the area, shing a couple brocks away from Mich- just over a mile to downtown McMinnville, The Baker Creek Retreat is a fantastic option for yo	연구가 가슴이었어 다 다양 옷이 물건입니다 ??		Bedroom 1 (main floor): King	
that this area of the Pacific Northwest has to offer.		-0111265	Bedroom 2 (main floor): Queen	
As you enter, the foyer opens up to the entire home. You will find the open floor plan combining	9 C C C C C C C C C C C C C C C C C C C		Bedroom 3 (Second floor): Queen	
kitchen layout, making it perfect for groups to enjoy together. One of the many great features bodrooms and laundry on this floor.			Bedroom 4 (Second floor): Queen	
Ascending upstairs you will find another three exquisitely finished bedrooms including the bunk room, equipped with a mounted big screen TV and gaming console. Another full bath accompanies these bedrooms as well.		d with	Bedroom 5 (Second floor): Bunk Twin (2)	
In the backyard, you will find a gazebo that covers some plush dutdoor seating and a fire table more Adirondack chairs, some glant Jenga, and a treehouse overlooking the manicured lawn		016 9		
Every bit of the decor and furnishing was procured to create that perfect blend of style and co	mfort for your sta	У.		
Please don't hesitate to reach out if you have any guestions at all.				

Every bit of the décor and furnishing was procured to create that perfect blend of style and comfort for your stay.

Please don't hesitate to reach out if you have any questions at all.

Sleeping Arrangements:

Bedroom 1 (main floor): King bed

Bedroom 2 (main floor): Queen bed

Bedroom 3 (Second floor): Queen bed

Bedroom 4 (Second floor): Queen bed

Bedroom 5 (Second floor): Twin bunk bed

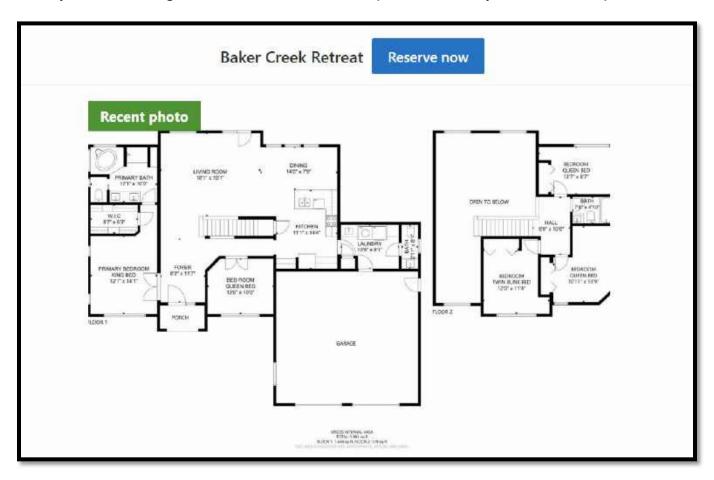
#### Attachments:

1) Ordinance No. 5128

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>3)</sup> Application for Appeal

<sup>4)</sup> STR 7 – 22 Public Record



A floorplan on Booking.com shows five bedrooms. (Screenshot, September 30, 2022):

Photos of five bedrooms on booking.com (Screenshot, September 30, 2022):



The Planning Commission wanted clarification on how many bedrooms there were in the property and why there was a discrepancy.

Response from the applicant:

- Q. One parking spot per advertised bedroom?
- *R.* We will reduce the number of available bedrooms across all listings and house rules to 4 bedrooms/8 people maximum. We will ask that cars be parked in the garage as

Attachments:

- Exhibit A to Ordinance No. 5128 Decision Document, Findings of Fact, Conclusory Findings
- 2) Public Comments Received for Appeal

<sup>1)</sup> Ordinance No. 5128

<sup>3)</sup> Application for Appeal

<sup>4)</sup> STR 7 – 22 Public Record

well as the driveway so that we don't have cars blocking the sidewalk. The House Rules and Listings will reflect this consistently.

Section 17.12.010(P)(7) – A person living within the 97128 zip code needs to be available to respond to issues at the property. It was not clear to the Planning Commission if the person listed on the application was that person or if it was the management company which is based in Portland.

Response from the applicant:

- Q. Has the applicant come up with a responsible person? Who is available at 11:00 at night? Was Erika alerted that she is the contact? Prove to us that someone is available. Why the two different names/email address for Erika?
- *R.* The code states: "That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to an emergency or complaint related to the vacation home rental." This statement does not specify whether the contact be a property manager, someone who can make "executive decisions," or a housecleaner. The spirit of the discussion on 9/1/22 indicates that the city would like a property manager, or business owner, or the property owner, to be available, but with respect, this seems like a discussion suited toward a change to the code, vs. a debate over the qualifications of the person that has been identified in this application to be the contact.

Therefore, our responsible person is Erika Correa. She lives within the geographic area of 97128, works for the property manager, iTrip, and has agreed to this responsibility. She does provide cleaning and inspection services of the home. The phone number and email listed on the application are hers. In addition, iTrip has provided her with an Avachato number (<u>www.avachato.com</u>) that we will also list in the House Rules. An Avachato number allows us to automatically forward any call via text to her number to someone else in McMinnville in a pinch if she sick, travelling or unavailable for some other temporary reason. Her number will be dedicated to this property, so she knows when it rings, there is a complaint or an emergency. She also knows that if she gets a call or text and cannot resolve it immediately, she will contact upper management immediately for resolution. We kindly ask that the neighbors not test her so she can give her attention to emergencies only. We will make her available to the Planning Commission if they'd like to call and speak with her.

In addition, again within the spirit of the 9/1/22 discussion to have a "more responsible person be available," the applicant found a property manager: Wild Haven at 619 NE 3rd St, McMinnville, OR 97128. Michele Bertagna is identified as a Property Manager. Wild Haven would make Ms. Bertagna available for emergencies. However:

- Applicant is under contract with iTrip with termination allowed with 60 days' notice. Applicant is unable to switch to the new property manager in time for the 9/9 deadline for written feedback to the Commission.
- There is no guarantee that Ms. Bertagna will be available 24/7 either as she has other clients, sleeps, gets sick, and presumably takes vacations

Attachments:

<sup>1)</sup> Ordinance No. 5128

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>3)</sup> Application for Appeal

<sup>4)</sup> STR 7 – 22 Public Record

periodically. The solution we have provided above ensures that Erika (or her phone, set to forward to an iTrip contact in McMinnville) will be available for calls at any time day or night to a local contact.

 Per a brief discussion with Ms. Bertagna on Thursday, 9/8, it is the applicant's understanding that this alternative property management company does not immediately offer the call forwarding or monitoring services offered by iTrip (i.e., a decibel meter; likely these services could be added in time). However, iTrip offers a more comprehensive set of services now to manage the STR to code overall, help ensure the neighbors aren't disturbed and that issues get resolved quickly.

Additional response from the applicant that reaffirms the use of a call center from 11 PM to 7:00 AM.

- Q. Testimony that came in that no one answered the 24/7 hotline and that it ends at 11PM. Opportunity to respond to that?
- *R.* From 11:00 pm to 7:00 AM the calls go to a call center. Depending on the region, the call center contacts the appropriate manager or whomever else depending on the issue. If for any reason the person they try to reach can't be reached, it escalates up to the next person all the way to the two owners of the company.

#### Applicable Standards and Issues – Staff Review

Originally staff recommended approval of the short-term rental permit for the September 1 public hearing, but after the disclosure of so many discrepancies between the application and the data online about the property during the public testimony, staff reviewed the data entered into the record and amended its recommendation to a denial for the October 6 deliberation meeting. Below is a synopsis of that review.

Use and development of properties in the R-1 zone are subject to the applicable standards of the zone and general provisions of the Zoning Ordinance. No modifications to the site or the exterior of the existing single-family dwelling are proposed at this time, so the only applicable standards for the proposed short-term rental are those listed in Section 17.12.010(P) for use of the property for a Short-Term Rental.

These standards and associated staff review are summarized below. The specific findings regarding the applicable standards are addressed in the Decision Document.

#### Summary of Findings Regarding Consistency with Applicable Standards

Standard	Summary of Findings
17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	<b>Satisfied.</b> The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	<b>Satisfied.</b> The map provided as <i>Figure 4</i> shows no other short-term rental within 200 feet.

Attachments:

1) Ordinance No. 5128

- 2) Public Comments Received for Appeal
- 3) Application for Appeal
- 4) STR 7 22 Public Record

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	<ul> <li>Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling.</li> <li>As an ongoing condition of approval, the structure shall retain the characteristics of a residence.</li> </ul>
3. That a minimum of one off-street parking space be provided for each guest room.	<b>Not Satisfied.</b> The application stated that there were four guest rooms and four off-street parking spaces. During the due diligence of the public hearing it was learned that there are five guest rooms. The applicant does not have a provision for five off-street parking spaces. Advertisements online show the house furnished and advertised as five guest rooms.
4. That signage is limited to only one non- illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	<ul><li>Satisfied with Conditions. No signage is proposed at this time.</li><li>As an ongoing condition of approval, any signage shall comply with this standard.</li></ul>
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	<b>Satisfied with Conditions.</b> As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	<ul> <li>Satisfied with Conditions. The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application.</li> <li>As an ongoing condition of approval, the structure shall remain in compliance with this standard.</li> </ul>
7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	<b>Not Clear.</b> The property owner in their rebuttal provided conflicting information. One response states that Erika Correa will be available 24 hours per day seven days a week, and another response indicates that the short term rental will be managed with a call service from 11 PM to 7 AM.

Attachments:

1) Ordinance No. 5128

- 2) Public Comments Received for Appeal
- 3) Application for Appeal
- 4) STR 7 22 Public Record

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<ul> <li>8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:</li> <li>a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or</li> <li>b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.</li> </ul>	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	<b>Satisfied with Conditions.</b> This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	Not Applicable. Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above.

#### Attachments:

1) Ordinance No. 5128

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>3)</sup> Application for Appeal

<sup>4)</sup> STR 7 – 22 Public Record

CONCLUSION & RECOMMENDATION:	The proposed Short-Term Rental application is problematic in three primary ways:
	<ol> <li>The property was operated as a short-term rental without a permit. The management company, ITrip placed a family from another rental into the property over the 4<sup>th</sup> of July weekend when the air conditioning went out on the other rental.</li> </ol>
	2) The application indicated that there were four guest rooms and the property had the required four off-street parking spaces. With due diligence, it was learned that there were five guest rooms and the applicant was going to rely on the management company to limit short-term rentals to four guest rooms and allow long-term rentals to be rented with five guest rooms.
	<ol> <li>Testimony was provided that the applicant's local contact was not available after 11 PM. The rebuttal from the applicant is confusing.</li> </ol>
	The permit criteria are not met with the application. Staff recommends a denial.

#### **Discussion**

The applicant is appealing the Planning Commission based on the following:

- 1) City ordinances do not require the applicant to identify the criteria and findings that they are appealing.
- 2) Procedural error in the date stated for an appeal application to be received by the City of McMinnville.
- 3) Decision document does not have factual findings to support the Planning Commission decision.
- 4) Decision is not supported by substantive evidence in the record.

Please see screenshot of the applicant's appeal application below. The full application is provided in Attachment 3 to this staff report.

Attachments:

1) Ordinance No. 5128

2) Public Comments Received for Appeal

4) STR 7 – 22 Public Record

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>3)</sup> Application for Appeal

The final decision document that the Planning Commission voted on to support their decision includes the findings of fact and substantive evidence to support the Planning Commission's conclusory findings. That document can be also be found in Attachment 4 to this staff report.

#### Screenshot from applicant's appeal application explaining the basis for the appeal:

As an initial matter, there is nothing in the City's ordinances that requires an appellant to "identify the criteria and findings you are appealing. McMinnville ordinance 3380, Section 17.72.180 does not require any such identification, as is required in Section 17.72.170.

Next, the transmittal letter that accompanied the planning commission's incorrectly states that the

appeal is due on October 21st, 2022. The decision being appealed was signed by the chair of the planning

commission on October 7th, 2022. Fifteen (15) days from October 7th, 2022 is October 22nd - not October 21st

- which makes the appeal due by October 24th, 2022. The decision is not accompanied by a certificate of

mailing, so the actual date of mailing is unknown - one of many procedural errors of the challenged decision.

Third, the decision being appealed does not make factual finding sufficient to support the planning commission's decision - yet another procedural error in the decision.

Finally, as a substantive matter, the decision being appealed is not supported by substantial evidence

in the record. The applicant met her burden of proof with respect to the applicable criteria. The decision

appears to be based not on the facts as presented, but rather on general opposition by neighbors who do not want a short-term rental property in their neighborhood.

#### Attachments:

- 1) Ordinance No. 5128
- Exhibit A to Ordinance No. 5128 Decision Document, Findings of Fact, Conclusory Findings 2) Public Comments Received for Appeal
- 3) Application for Appeal
- 4) STR 7 22 Public Record

#### **City Council Options:**

- 1) Adopt Ordinance No. 5128 with the Decision Document, Findings of Fact and Conclusory Findings adopted by the Planning Commission.
- 2) Direct staff to draft a new Decision Document, Findings of Fact and Conclusory Findings for adoption.

#### Attachments:

<sup>1)</sup> Ordinance No. 5128

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>2)</sup> Public Comments Received for Appeal

<sup>3)</sup> Application for Appeal

<sup>4)</sup> STR 7 – 22 Public Record

#### **Staff Recommendation:**

Adopt Ordinance No. 5128 with the Decision Document, Findings of Fact and Conclusory Findings adopted by the Planning Commission.

Attachments:

1) Ordinance No. 5128

Exhibit A to Ordinance No. 5128 - Decision Document, Findings of Fact, Conclusory Findings

<sup>3)</sup> Application for Appeal

<sup>4)</sup> STR 7 – 22 Public Record



COMMUNITY DEVELOPMENT 231 NE Fifth Street McMinnville, OR 97128 (503) 434-7311 www.mcminnvilleoregon.gov

## ATTACHMENT 1 – ORDINANCE NO. 5128

Consisting of:

- Ordinance No. 5128
- Exhibit A: Decision Document, Findings of Fact and Conclusory Findings for AP 1-22, STR 7-22

#### **ORDINANCE NO. 5128**

# AN ORDINANCE DECIDING ON THE APPEAL OF THE PLANNING COMMISSION'S DENIAL OF A SHORT-TERM RENTAL PERMIT FOR 790 NW 21<sup>st</sup> STREET.

#### **RECITALS:**

**WHEREAS**, on October 6, 2022, the McMinnville Planning Commission, after hosting a public hearing, considering the evidence, and findings of fact, voted to deny a short-term rental permit application for the property at 790 NW 21<sup>st</sup>, based on the conclusory findings that the application did not comply with Sections 17.12.010(P)(1) and (3) of the McMinnville Municipal Code; and

**WHEREAS**, per Section 17.72.150 of the McMinnville Municipal Code written notice of the Planning Commission decision was provided to the applicant on October 7, 2022; and

**WHEREAS**, per Section 17.72.180 of the McMinnville Municipal Code, the applicant submitted an appeal of the Planning Commission decision on October 21, 2022; and

**WHEREAS**, on December 13, 2022, the McMinnville City Council hosted a public hearing and considered the evidence.

### NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

- 1. That the Council adopts the Decision Document, Findings of Fact and Conclusory Findings as documented in Exhibit A; and.
- 2. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 13<sup>th</sup> day of December,2022 by the following votes:

Ayes: \_\_\_\_\_

Nays:

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBITS:

A. AP 1-22 (STR 7-22) Decision Document, Findings of Fact and Conclusionary Findings



**CITY OF MCMINNVILLE PLANNING DEPARTMENT** 231 NE FIFTH STREET MCMINNVILLE, OR 97128

503-434-7311 www.mcminnvilleoregon.gov

## DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A PLANNING COMMISSION DENIAL OF A SHORT-TERM RENTAL PERMIT AT 790 NW 21st STREET

- **DOCKET:** AP 1-22 (STR 7-22)
- **REQUEST:** Appeal of a Planning Commission denial for a short-term rental permit at 790 NW 21<sup>st</sup> Street.
- LOCATION: 790 NW 21st St. Tax Lot: R4417-AC-02344
- **ZONING:** R-1 (Single-Family Residential)
- APPLICANT: Emily (Joyce) LaGow
- **STAFF:** Heather Richards, Community Development Director Adam Tate, Associate Planner

#### DATE DEEMED

**COMPLETE:** July 11, 2022

#### **DECISION MAKING**

**BODY & ACTION:** The McMinnville Planning Commission makes the final decision unless the Planning Commission's decision is appealed to the City Council.

#### PLANNING COMMISSION

DECISION DATE

**& LOCATION:** September 1, 2022, Hybrid Public Hearing. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 879 8953 9440

October 6, 2022, Hybrid Public Meeting. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 834 6597 3462

- **PROCEDURE:** The application is processed in accordance with the procedures in Section 17.72.120 of the Zoning Ordinance. This short-term rental was found to be operating without a permit and referred to code compliance. The application will now be heard before a public hearing and reviewed by the Planning Commission. in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the Zoning Ordinance.
- **CRITERIA:** The applicable criteria and standards for a Short-Term Rental are specified in Section 17.12.010(P) of the Zoning Ordinance.
- **APPEAL:** As specified in Section 17.72.180 of the Zoning Ordinance, the Planning Commission's decision may be appealed to the City Council within 15 calendar

days of the date the written notice of decision is mailed. The City's final decision is subject to the 120-day processing timeline, including the resolution of any local appeal.

CITY COUNCIL DECISION DATE & LOCATION:	December 13, 2022, Hybrid Public Hearing. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 847 1563 4603
PROCEDURE:	The City Council considers the appeal of the Planning Commission denial by hosting a public hearing, considering the evidence, and rendering a decision. In accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the Zoning Ordinance.
CRITERIA:	The applicable criteria and standards for a Short-Term Rental are specified in Section 17.12.010(P) of the Zoning Ordinance.

#### DECISION

Based on the findings of fact and conclusionary findings, the City Council finds that the Planning Commission's decision to deny the short-term rental permit at 790 NW 21<sup>st</sup> Street is the correct decision for the City of McMinnville.

City Council: Remy Drabkin, Mayor of the City of McMinnville

Planning Department: \_\_\_\_\_ Heather Richards, Planning Director

Date:\_\_\_\_\_

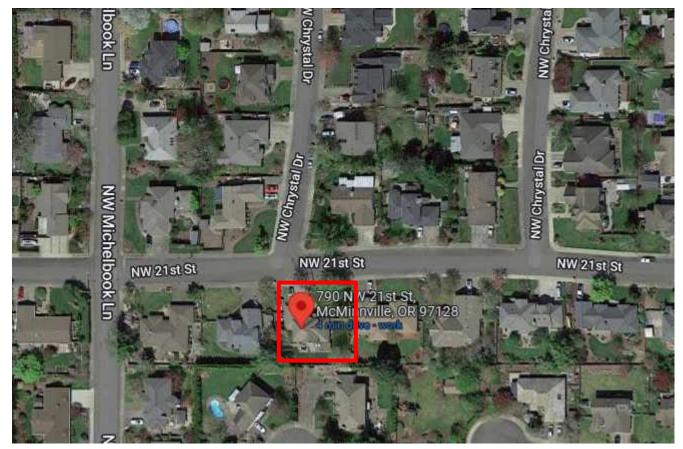
Date:\_\_\_\_\_

#### I. APPLICATION SUMMARY:

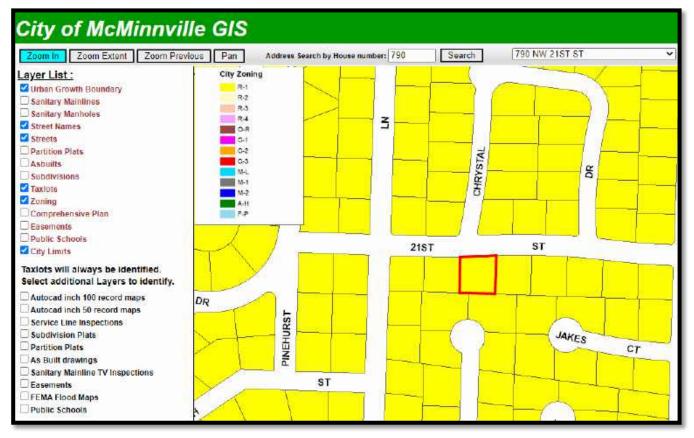
#### Subject Property & Request

The subject property is located at 790 NW 21st Street. The property is zoned R-1. A Short-Term Rental is a permitted use in the R-1 zone as specified in Section 17.15.010(P), subject to compliance with the referenced standards in Section 17.12.010(P), and subject to the procedures specified in Section 17.72 of the Zoning Ordinance. See Figure 1 for Vicinity Map, Figure 2 for Zoning Map, Figure 3 for Applicant's Site Plan. See Figure 4 for map of Short-Term Rentals with 200' buffer shown. The application submittal includes additional materials including a floorplan diagram, photos, and information from the neighborhood meeting. Those additional materials are included in Attachment 1.

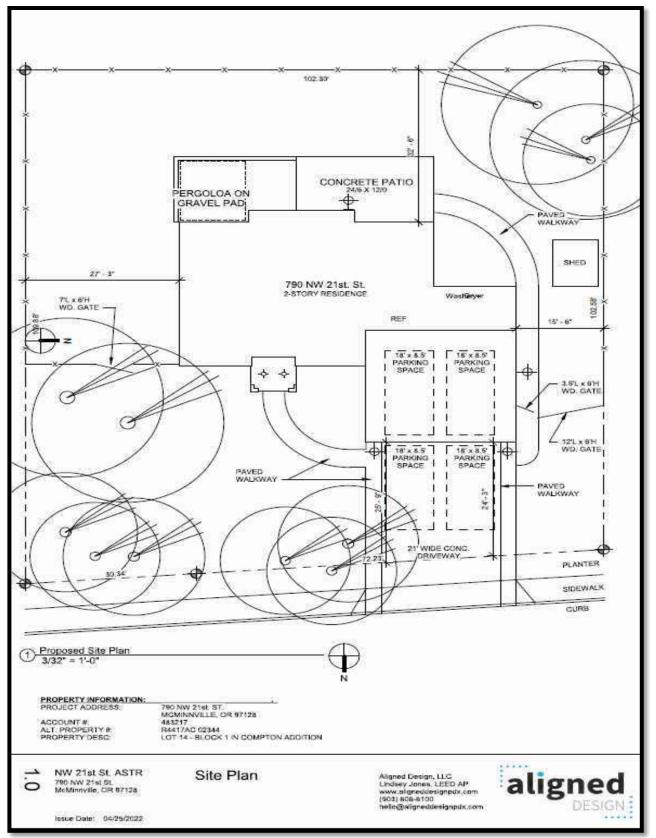
#### Figure 1. Vicinity Map



### Figure 2. Zoning Map



#### Figure 3. Applicant's Site Plan



#### Figure 4. Map of Short-Term Rentals with 200-Foot Buffer



#### Summary of Applicable Standards and Issues

Use and development of properties in the R-1 zone are subject to the applicable standards of the zone and general provisions of the Zoning Ordinance. No modifications to the site or existing single-family dwelling are proposed at this time, so the only applicable standards for the proposed short-term rental are those listed in Section 17.12.010(P) for use of the property for a Short-Term Rental.

The standards and associated findings are summarized below. The specific findings regarding the applicable standards are addressed in Section VII of this Decision Document. As a Type II land-use application, the criteria need to be clear and objective.

The table below illustrates how the application either complies or does not comply with applicable criteria.

## Summary of Findings Regarding Consistency with Applicable Standards (Table on next page)

Standard	Summary of Findings
17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	<b>Satisfied.</b> The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	<b>Satisfied.</b> The map provided as <i>Figure 4</i> shows no other short-term rental within 200 feet.
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	<ul> <li>Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling.</li> <li>As an ongoing condition of approval, the structure</li> </ul>
	shall retain the characteristics of a residence.
3. That a minimum of one off-street parking space be provided for each guest room.	<b>Not Satisfied.</b> The application stated that there were four guest rooms and four off-street parking spaces. During the due diligence of the public hearing it was learned that there are five guest rooms. The applicant does not have a provision for five off-street parking spaces. Advertisements online show the house furnished and advertised as five guest rooms.
4. That signage is limited to only one non- illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	<b>Satisfied with Conditions.</b> No signage is proposed at this time.
	As an ongoing condition of approval, any signage shall comply with this standard.
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	<b>Satisfied with Conditions.</b> As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	<b>Satisfied with Conditions.</b> The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application.
	As an ongoing condition of approval, the structure shall remain in compliance with this standard.

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	<b>Not Clear.</b> The property owner in their rebuttal provided conflicting information. One response states that Erika Correa will be available 24 hours per day seven days a week, and another response indicates that the short term rental will be managed with a call service from 11 PM to 7 AM.
<ul> <li>8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:</li> <li>a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or</li> <li>b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.</li> </ul>	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	<b>Satisfied with Conditions.</b> This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	Not Applicable. Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above. If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints, and will be listed as a condition of approval for this application.

- 1. That five (5) off-street parking spaces (paved or of a hardscape surface) are required for the use of the Short Term Rental, per the five (5) guest rooms provided.
- 2. That 10-year Lithium battery-powered smoke alarms and CO2 alarms must be installed in accordance with Sections R314 and R315 of the Building Code. For this one-story building, smoke alarms shall be installed in each sleeping room and outside each separate sleeping area within 21 feet of any door to a sleeping room, measured along a path of travel. On CO2 alarm is required.
- 3. That prior to use of the subject property for vacation home rental purposes, the applicant shall register with the McMinnville Finance Department as a transient lodging provider. Local Transient Lodging Tax shall be collected and remitted to the City as provided in McMinnville Ordinance No. 4974.
- 4. That, as this use is required to be occupied as a single-family residence, occupancy of the vacation home rental shall be limited at all times to no more than five unrelated persons, or one or more individuals related by blood, marriage, adoption, or legal guardianship, or other duly authorized custodial relationship.
- 5. That all other requirements of Section 17.12.010(P) of the Zoning Ordinance referencing vacation home rental use shall be complied with throughout the time this property is used for such purpose, which are outlined below.
  - A. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.
  - B. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.
  - C. That a minimum of one off-street parking space be provided for each guest room.
  - D. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.
  - E. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.
  - F. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.
  - G. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.
  - H. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:

- b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.
- I. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.
- J. Complaints on conditions "A" through "I" above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

### III. ATTACHMENTS:

- 1. AP 1-22 Application and Attachments (on file with the Planning Department)
- 2. AP 1-22 Public Record (on file with the Planning Department)
- 3. STR 7-22 Application and Attachments (on file with the Planning Department)
- 4. STR 7-22 Public Record (on file with the Planning Department)

### IV. COMMENTS:

#### Public Comments

- 1. Email received July 4, 2022, from Mark Pitts, notifying the Planning Director that the short-term rental was operating before their permit was approved.
- 2. Email received on August 29, 2022, from Mark Pitts
- 3. Email received on August 30, 2022 from Kelli Grinch
- 4. Email received from Jay Post on August 30, 2022
- 5. Email received from Kathy Loving on September 1, 2022
- 6. Email received from Mark Pitts, 11.29.22
- 7. Email received from Mollie Post, 11.30.22

#### V. FINDINGS OF FACT - PROCEDURAL FINDINGS

- 1. The applicant mailed notice of a neighborhood meeting dated April 27, 2022, and held a neighborhood meeting on May 25, 2022.
- 2. The applicant submitted the Short-Term Rental application (STR 7-22) on June 10, 2022.
- 3. On July 4, 2022, a local resident reported to the Planning Director that the property was operating as a short-term rental before their application was approved, and provided an Airbnb listing showing the property for rent.

- 4. On July 5, 2022, the property was put into code compliance and the property owner was notified that they must stop current short-term rental operations and given the option to either withdraw their permit or have it go before a public hearing of the Planning Commission.
- 5. On July 11, 2022, the applicant informed the Planning Director that they wanted to move forward with the application and the application was deemed complete.
- 6. The hearing date was set for September 1, 2022. On August 3, 2022, notice of the application and the September 1, 2022, Planning Commission public hearing was mailed to property owners within 300 feet of the subject property in accordance with Section 17.72.120 of the Zoning Ordinance.
- 7. Notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.120 of the Zoning Ordinance: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas.

No comments were received from any agencies.

- 8. Notice of the application and the September 1, 2022, Planning Commission public hearing was published in the News Register on Friday, August 26, in accordance with Section 17.72.120 of the Zoning Ordinance.
- 9. On September 1, 2022, the Planning Commission held a duly noticed public hearing to consider the application. The public hearing was closed after hearing testimony on September 1, 2022.
- 10. On September 9, 2022, the applicant provided a written rebuttal to the public hearing testimony of September 1, 2022.
- 11. On October 6, 2022, the Planning Commission deliberated and rendered a decision.
- 12. On October 7, per Section 17.72.150 of the MMC, the Planning Department provided written notice of the decision to the appl
- 13. On October 21, 2022, the applicant submitted an application to appeal the Planning Commission decision to the City Council.
- 14. Per Section 17.72.180 of the MMC, a public hearing for the appeal was scheduled for December 13, 2022 with the City Council.
- 15. On November 21, 2022, notice of the application and the December 13, 2022, City Council public hearing was mailed to property owners within 300 feet of the subject property in accordance with Section 17.72.120 of the Zoning Ordinance.
- 16. Notice of the appeal and the December 13, 2022, City Council public hearing was published in the News Register on Friday, December 2, in accordance with Section 17.72.120 of the Zoning Ordinance.
- 17. On December 13, 2022, the City Council held a duly noticed public hearing to consider the appeal. The public hearing was closed after hearing testimony on December 13, 2022.

18. On December 13, 2022, the City Council deliberated and rendered a decision.

#### VI. FINDINGS OF FACT - GENERAL FINDINGS

- 1. Location: 790 NW 21<sup>st</sup> St. Tax Lot R4417-AC-02344
- 2. Size: Approximately 0.2489 acres
- 3. Comprehensive Plan Map Designation: Residential
- 4. **Zoning:** R-1 (Single-Family Residential)
- 5. **Overlay Zones/Special Districts:** None
- 6. **Current Use:** Single-family dwelling
- 7. Inventoried Significant Resources:
  - a. Historic Resources: None
  - b. **Other:** None identified
- 8. Other Features:
  - a. Slopes: The site is generally flat.
  - b. Easements: No public easements identified
- 9. **Utilities:** The property is served with basic municipal services, including water, sewer, power, and franchise utilities.
- 10. **Transportation:** NW 21<sup>st</sup> Street is classified as a local residential street in the McMinnville TSP. Local streets have a 50-foot right-of-way.

#### VII. CONCLUSIONARY FINDINGS:

The Conclusionary Findings are the findings regarding consistency with the applicable criteria and standards for the application.

The applicable standards for a Short-Term Rental are specified in Section 17.12.010 (O) of the Zoning Ordinance. Development standards for the R-1 Zone are provided in Chapter 17.12 of the Zoning Ordinance; however, the proposed short-term rental will be located within the existing single-family dwelling, and no new development is proposed at this time.

#### McMinnville Zoning Ordinance

The following Sections of Title 17, Zoning Ordinance, of the McMinnville Municipal Code provide criteria and standards applicable to the request:

Section 17.12.010 lists permitted uses in the R-1 Zone. Subsection (P) provides the following:

P. Short-term rental, subject to the provisions of Section 17.72.110

**FINDING: SATISFIED WITH CONDITIONS.** The proposed use described in the application is single-family home used for a short-term rental. These are both permitted uses.

Section 17.12.010(P) provides the following:

P. Short-term rental, subject to the provisions of Section 17.72.110 and the following standards.

Section 17.72.110. Applications – Director's Review with Notification.

**FINDING: SATISFIED.** Section 17.72.110 provides the applicable procedural requirements. As addressed in Section V of this Decision Document, the application has been processed in accordance with the applicable procedures.

Standards in 17.12.010(P):

1. Short-term rentals shall not be located within 200 feet of another short-term rental, or on the same property as another short-term rental.

**FINDING: SATISFIED.** There is no other short-term rental within 200 feet of another short-term rental. There is not another short-term rental on the subject property. See *Figure 4* for a map of short-term rentals.

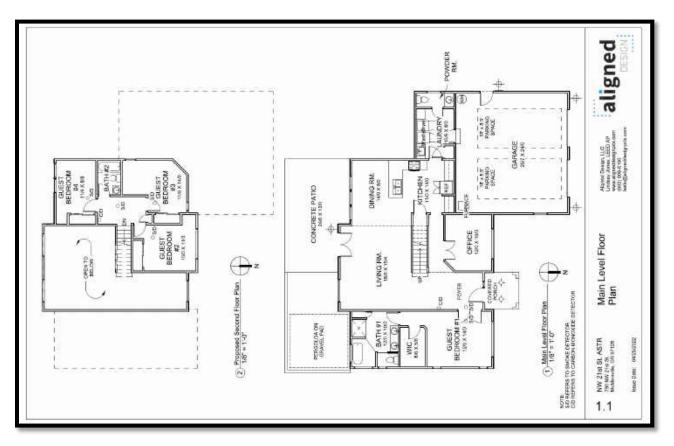
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.

**FINDING: SATISFIED WITH CONDITIONS.** The existing use in which the proposed short-term rental is proposed is a single-family dwelling. No outward modifications to the residence are proposed at this time.

3. That a minimum of one off-street parking space be provided for each guest room.

**FINDING: NOT SATISFIED.** The application indicated that the home was a *"four (4) bedroom, three (3) bath home"*, and provided a floor plan that indicated the same. Please see below. As such, the applicant provided a site plan with four off-street parking spaces. Based on testimony at the public hearing and more research it has been determined that the property has five guestrooms and the applicant does not have room for five off-street parking spaces on the site plan.

Evidentiary basis of the property being utilized with five bedrooms follows on the next page.



## Floor plan provided with the application illustrating four bedrooms:

it was disclosed at the public hearing that there are actually five guest rooms in the house offered in the rental listing. Below is a screenshot of the listing with an infographic that indicates four bedrooms, but the narrative states that *"this incredible five-bedroom retreat"*, and further detail in the listing describes two bedrooms on the main floor and three bedrooms on the second floor.

#### Screenshot from ITrip Vacations, Baker Creek Retreat, September 30, 2022:

Exquisite Wine Country Escape, New Décor Throughout, Patio & Fire Table, 1.5 Miles to McMinnville Baker Creek Retreat	ABedrooms 25.84th	vicionia Shiega 10
\$4,256 - \$11,032 / month in McMinnville canwoldtrip.net	🗢 Favorite 🛛 🙆 Sh	are 🔲 Availability
Nestled in the heart of wine country within the Williamette Valley, this incredible five bedroo option for your family or small group visiting the area. Sitting a couple blocks away from Mik just over a mile to downtown McMinnville, The Baker Creek Retreat is a fantastic option for	chelbook Country Club and	Sleeping Arrangements Bedroom 1 (main floor): King
that this area of the Pacific Northwest has to offer. As you enter, the foyer opens up to the entire nome. You will find the open floor plan combining the living, dining, and kitchen tayout, making it perfect for groups to enjoy together. One of the many great features is the two main level bodrooms and laundry on this floor.		Bedroom 2 (main floor): Queen Bedroom 3 (Second floor): Queen
		Bedroom 4 (Second floor): Queen
Ascending upstairs you will find another three exquisitely finished bedrooms including the a mounted big screen TV and gaming console. Another full bath accompanies these bedro		Bedroom 5 (Second floor): Bunk Twin (2)
In the backyard, you will find a gazebo that covers some plush outdoor seating and a fire ta more Adirondack chairs, some glant Jenga, and a treehouse overlooking the manicured law		
Every bit of the decor and furnishing was procured to create that perfect blend of style and	comfort for your stay.	
Please don't nesitaté to reach out if you have any questions at all.		

Every bit of the décor and furnishing was procured to create that perfect blend of style and comfort for your stay.

Please don't hesitate to reach out if you have any questions at all.

Sleeping Arrangements:

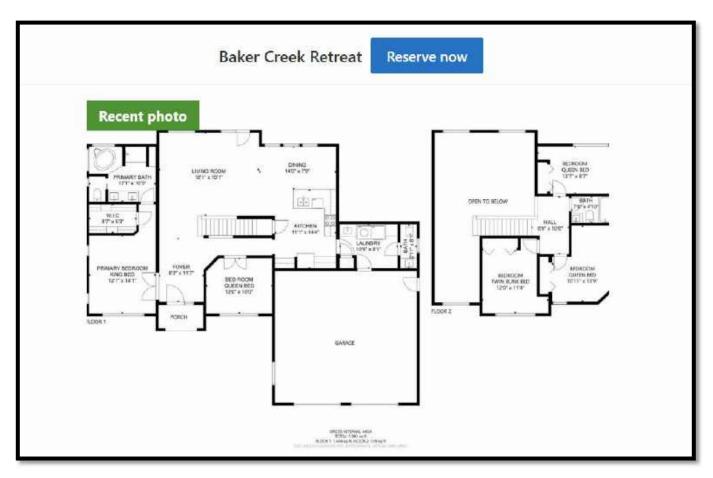
Bedroom 1 (main floor): King bed

Bedroom 2 (main floor): Queen bed

Bedroom 3 (Second floor): Queen bed

Bedroom 4 (Second floor): Queen bed

Bedroom 5 (Second floor): Twin bunk bed



### A floorplan on Booking.com shows five bedrooms. (Screenshot, September 30, 2022):

Photos of five bedrooms on booking.com (Screenshot, September 30, 2022):



4. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.

**FINDING: SATISFIED WITH CONDITIONS.** The application doesn't indicate any proposed signage at this time. As an ongoing condition of approval, any future signage shall comply with this requirement.

5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.

**FINDING: SATISFIED WITH CONDITIONS.** This provision is an on-going requirement for the operation of the short-term rental and is included as a condition of approval.

6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.

**FINDING: SATISFIED WITH CONDITIONS.** Subsection (2)(d) of Ordinance No. 3997 specifies that, for a lodging house, that smoke detectors are required "in all corridors or areas giving access to rooms used for sleeping purposes, and in all sleeping rooms. Where sleeping rooms are on an upper level, an additional detector shall be placed at the center of the ceiling directly above the stairway."

The application identifies the location of smoke detectors consistent with this requirement, with a smoke detector in each guest room and the hallway, for a total of six smoke detectors and carbon monoxide detectors. This is a two-story single-family dwelling.

The application demonstrates compliance with this standard. As an ongoing condition of approval, the structure shall remain in compliance with this standard.

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental.

**FINDING: NOT SATISFIED.** The property owner does not live within the geographic area of the 97128 zip code. On the application, the applicant provided the contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental. The contact information and residence location are provided in Section 5 of the application form submitted by the applicant. The location of the residence is within the City of McMinnville and the geographic area of the 97128 zip code.

However, at the public hearing, it was disclosed that the number provided went to a call service from 11 PM to 7 AM. The applicant was asked to respond to that issue in a rebuttal report. A response was provided via email from Emily LaGow on September 9, 2022. The response from the applicant provided conflicting information.

Response from the applicant:

- Q. Has the applicant come up with a responsible person? Who is available at 11:00 at night? Was Erika alerted that she is the contact? Prove to us that someone is available. Why the two different names/email address for Erika?
- R. The code states: "That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond

immediately to an emergency or complaint related to the vacation home rental." This statement does not specify whether the contact be a property manager, someone who can make "executive decisions," or a housecleaner. The spirit of the discussion on 9/1/22 indicates that the city would like a property manager, or business owner, or the property owner, to be available, but with respect, this seems like a discussion suited toward a change to the code, vs. a debate over the qualifications of the person that has been identified in this application to be the contact.

Therefore, our responsible person is Erika Correa. She lives within the geographic area of 97128, works for the property manager, iTrip, and has agreed to this responsibility. She does provide cleaning and inspection services of the home. The phone number and email listed on the application are hers. In addition, iTrip has provided her with an Avachato number (<u>www.avachato.com</u>) that we will also list in the House Rules. An Avachato number allows us to automatically forward any call via text to her number to someone else in McMinnville in a pinch if she sick, travelling or unavailable for some other temporary reason. Her number will be dedicated to this property, so she knows when it rings, there is a complaint or an emergency. She also knows that if she gets a call or text and cannot resolve it immediately, she will contact upper management immediately for resolution. We kindly ask that the neighbors not test her so she can give her attention to emergencies only. We will make her available to the Planning Commission if they'd like to call and speak with her.

In addition, again within the spirit of the 9/1/22 discussion to have a "more responsible person be available," the applicant found a property manager: Wild Haven at 619 NE 3rd St, McMinnville, OR 97128. Michele Bertagna is identified as a Property Manager. Wild Haven would make Ms. Bertagna available for emergencies. However:

- Applicant is under contract with iTrip with termination allowed with 60 days' notice. Applicant is unable to switch to the new property manager in time for the 9/9 deadline for written feedback to the Commission.
- There is no guarantee that Ms. Bertagna will be available 24/7 either as she has other clients, sleeps, gets sick, and presumably takes vacations periodically. The solution we have provided above ensures that Erika (or her phone, set to forward to an iTrip contact in McMinnville) will be available for calls at any time day or night to a local contact.
- Per a brief discussion with Ms. Bertagna on Thursday, 9/8, it is the applicant's understanding that this alternative property management company does not immediately offer the call forwarding or monitoring services offered by iTrip (i.e., a decibel meter; likely these services could be added in time). However, iTrip offers a more comprehensive set of services now to manage the STR to code overall, help ensure the neighbors aren't disturbed and that issues get resolved quickly.

Additional response from the applicant:

- Q. Testimony that came in that no one answered the 24/7 hotline and that it ends at 11PM. Opportunity to respond to that?
- R. From 11:00 pm to 7:00 AM the calls go to a call center. Depending on the region, the call center contacts the appropriate manager or whomever else depending on the issue. If for any reason the person they try to reach can't be reached, it escalates up to the next person all the way to the two owners of the company.

- 8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short-term rental permit for the subject property will become void. The use of the subject property as a short-term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:
  - a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
  - b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.

**FINDING: SATISFIED WITH CONDITIONS.** The applicant is the current property owner at the time of application.

This code provision is an ongoing requirement for the operation of the short-term rental and is included as a condition of approval.

9. Permits must be renewed annually. Failure to renew the short-term rental permit annually will result in the permit becoming void, and the use of the subject property as a short-term rental will again be subject to the application and review procedures in Section 17.72.110.

**FINDING: SATISFIED WITH CONDITIONS.** This code provision is an ongoing requirement for the operation of the short-term rental, included as a condition of approval.

10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinances. If the short-term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

**FINDING: NOT APPLICABLE:** Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above.

#### <u>17.72.150 Notice of Decision.</u>

Within five (5) working days after a decision has been rendered, the Planning Department shall provide written notice of the decision to all parties who participated.

**FINDING: SATISFIED:** Notice of the Planning Commission decision was provided to the applicant within five days after the decision was rendered by the Planning Commission.

#### <u>17.72.160</u> Effective Date of Decision.

Unless an appeal is filed, a decision made by the Planning Director or the Planning Commission shall become final fifteen (15) calendar days from the date that the notice of the decision is mailed. Unless an appeal is filed, a decision made by the City Council shall become final 21 (twenty-one) days from the date that the notice of decision is mailed. (Ord. 5106 §2, 2021)

**FINDING: SATISFIED:** The applicant appealed the Planning Commission decision on October 21, 2022, within fifteen calendar days from the date that the notice of the decision was provided.

#### 17.72.180 Appeal from Ruling of Planning Commission.

An action or ruling of the Planning Commission pursuant to this title may be appealed to the City Council within 15 (fifteen) calendar days of the date the written notice of the decision is mailed. Written notice of the appeal shall be filed with the City Planning Department and shall identify the decision sought to be reviewed, including the date of the decision and a statement of interest from the person seeking review specifying that they were party to the initial proceedings. If the appeal is not taken within the 15 (fifteen) day period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall receive a report and recommendation thereon from the Planning Commission and shall hold a public hearing on the appeal. Notice of a City Council hearing on an appeal of a decision of the Planning Commission shall take the form of that provided for the initial application before the Planning Commission.

**FINDING: SATISFIED:** The applicant appealed the Planning Commission decision on October 21, 2022, within fifteen calendar days from the date that the notice of the decision was provided. A public hearing was scheduled for December 13, 2022, with the City Council where the City Council received a staff report and recommendation from the Planning Commission. Notice of the City Council public hearing was provided per the initial application before the Planning Commission.

HR



COMMUNITY DEVELOPMENT 231 NE Fifth Street McMinnville, OR 97128 (503) 434-7311 www.mcminnvilleoregon.gov

## ATTACHMENT 2 – (Amended 12.12.22) PUBLIC TESTIMONY RECEIVED (AP 1-22)

Consisting of:

Up until December 6, 2022:

- Mark Pitts, 11.29.22
- Mollie Post, 11.30.22

December 6 – December 12, 2022:

- Nick Grinich, 12.07.22
- Kathy Loving, 12.08.22
- Linda Storr, 12.08.22

McMinnville City Council McMinnville Oregon November 29, 2022

Members of the City Council:

Because the City Council is in the rare position of considering the 790 NW 21st appeal in anticipation of receiving the results of the Planning Commissions general study of short term rentals, I'd like to address both in this letter.

#### Policy Comments:

I'd like to begin by thanking the City Council for its recent extension of the moratorium on Short Term Rentals in McMinnville. As a citizen (and based on some newspaper coverage) I view the moratorium and the study the Planning Commission is doing as an acknowledgment that the current STR policy needs attention.

As I said when I presented the 21st Street petition with 50 signatures to City Council several weeks ago supporting the moratorium on STR's, the concerns include:

- STR's reduce the stock of single family housing at a time of high demand.
- Demand for STR's is moderate to low. The industry web site "AllTheRooms.com" indicates STR occupancy in McMinnville in 2021 was 45%, meaning high demand family homes converted to STR's were empty <u>most of the time</u>.
- Visit McMinnville indicated that hotel occupancy last year, before new hotels came online, was 60%.
- Given the high demand for single family housing and the much lower demand for STR's and hotel rooms, our neighborhood is at a loss to understand why the city currently has such an "STR-friendly" policy and is hopeful that the newly adopted moratorium will either be extended until real need for short-term lodging can be demonstrated or that a new policy can be keyed to demonstrable high demand targets.

Second, I'd like to thank the Planning Commission, even within the context of a now-suspended STR process, for denying the application from 790 NW 21st Street.

Taken together, the message so far is that even using a policy which needs attention, the Planning Commission denied this application. For the City Council to overturn the denial in the midst of intense attention to short term rentals would, I believe, send the wrong message to the Planning Commission, potential applicants and the general public. It would also encourage denied applicants in a new process to assume support from the City Council--another message best not sent.

#### Specific 790 NW 21st Street Comments:

In addition, I am writing to express my opposition to the short term rental application for the home at 790 NW 21st Street for the following reasons:

- First, the home began advertising on AirBnB in July, 2022--after submitting her application to the Planning Commission but without having received approval. My previous letters have "blamed" the homeowner, but after hearing testimony from her and the explanation of the early posting from her iTrips representative, I believe it is either inept or "sharp" iTrips business practices that caused the house to be advertised early.
- Second, in the most recent documents available to neighbors at the Planning Commission appeals hearing there was still no satisfactory response to item #7 on the STR requirements list--that someone be available "immediately" in the 97128 zip code to address neighborhood concerns. The document referenced the use of a management company, but included snarky comments that that person would need to be away to sleep, eat and for vacations, so clearly still not complying with the spirit of item #7.
- Third, the experts on the Planning Commission staff recommended denial of the application and the citizen members of the Planning Commission itself voted 7-1 to deny. As indicated earlier, to overturn these two panels whose job it is to review such applications in one rare instance when they deny is to send a confusing message at a pivotal moment in McMinnville STR policy history.

With all of this information in mind, I and my neighbors would respectfully request that the work of the Planning Commission be affirmed and the denial of the application for STR at 790 NW 21st street be upheld.

Respectfully submitted,

Mark E. Pitts For the Ad Hoc 21st Street STR Concern Team



#### This message originated outside of the City of McMinnville.

#### To Ms. Richards and McMinnville City Council:

I am writing to express my concern about the application for Short Term Rental for the property at 790 NW 21st Street in McMinnville. I have lived right around the corner at 2038 NW Michelbook Lane since 1997. We, too, are part of the Compton Addition neighborhood.

My main concern is that this applicant seems not to want to follow the rules. For example, they rented the house as a STR prior to approval. Also, at the initial neighborhood information meeting and subsequent planning commission meeting we were asserted with parking for four cars that would <u>na</u> be on the street. Subsequently, it was rented as a long term rental and cars were parked on the street throughout the October tenancy. I walk my dog twice a day and observed cars parked on the street most of the time. I only wish I had started taking photos sooner and more frequently (ice below).

Please consider, if the owner and property managers do not follow the rules while they are in the delicate process of applying for STR approval, what rules will they disregard once they have approval? Will they show respect for the neighborhood?

Thank you for your consideration.

Sincerely, Mollie McKibben Post

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

# MEMORANDUM

DATE:December 12, 2022TO:Mayor and City CouncilorsFROM:Heather Richards, Planning DirectorSUBJECT:New Public Testimony for AP 1-22 (STR 7-22), Appeal of Planning Commission<br/>Denial of a Short Term Rental Permit for 790 NW 21st Street.

Mayor and Councilors,

Following is the public testimony that has been received for Docket AP 1-22, appeal of the Planning Commission denial of a short-term rental permit at 790 NW 21<sup>st</sup> Street, since the meeting packet was distributed on December 6, 2022.

Public Testimony:

Email from Nick Grinich, 12.07.22 Email from Kathy Loving, 12.08.22 Letter from Linda Storr, 12.08.22

From:	Nick Grinich
То:	Claudia Cisneros; Heather Richards
Subject:	Dec 13 Appeal to McMinnville City Council of Denial of STR Application for 790 NW 21st ST
Date:	Wednesday, December 7, 2022 9:00:38 AM

#### This message originated outside of the City of McMinnville.

Dear Councilors,

I urge you to uphold the Planning Commission's 7-1 vote denying the STR Application for 790 NW 21st ST.

Note that the applicant placed her house for short term rent on Airbnb during the permitting process, prior to receiving a STR permit.

The STR applicant for this property fails to provide an adequate emergency contact person living in McMinnville, as required by the City. At the initial public hearing before the Planning Commission, the Commission gave the applicant 7 additional days to address this problem of lack of a local contact to handle emergencies with the STR property. Instead of fixing this deficiency, by their written response, the applicate states that the responsible party would be "Erica or her phone set to forward to iTrip," with iTrip using an out-of- area call center after 11:00pm. The applicant further goes on to say that "this seems like a discussion suited towards a change in the code." Clearly, the requirement to provide a local person to handle emergency calls is not met.

The STR applicant's house is a 5 bedroom property, though only 4 off-street parking spaces are provided. Again, the applicant fails to meet another necessary requirement for approval of the STR permit. Of note, during the STR application process the applicant has rented the 790 NW 21st ST property. These tenets have parked numerous cars on their driveway, its adjacent gravel pad and on both side of the adjacent street (up to 10 cars).

The applicant has had opportunities to correct their deficient STR application, that was then subsequently denied by the Planning Commission. It is not reasonable to allow the applicant to yet provide further modifications or amendments to their application in hopes that the City Council will overrule its own Planning Commission's decision.

Instead, the City Council should reject the applicant's appeal and support the Planning Commission's considered decision to deny this STR permit.

Respectfully submitted,

Nick Grinich 708 NW 21st ST McMinnville, OR 97128

From:	Kathy Loving
To:	Heather Richards
Cc:	Claudia Cisneros
Subject:	Appeal of the Denial of the STR @ 790 NW 21st Street, McMinnville
Date:	Thursday, December 8, 2022 12:04:38 AM

This message originated outside of the City of McMinnville.

#### Planning Director Richards,

I am writing to express my strong support for the denial of the appeal of the Short Term Rental application from Emily (Joyce) LaGow for the property located at 790 NW 21<sup>st</sup> Street, McMinnville, Oregon 97128. I live 2 houses to the east of this property and have lived in this neighborhood for 31 years, and have major concerns about what we, as neighbors, have witnessed in a house that was denied a STR permit. Within the last month, there has been a couple instances where 11 cars were parked in the driveway and on the street in front of this house. Why, if ever, in a house advertised as a 4 bedroom should that number of vehicles be parked in the driveway and on the street? What is happening at this house that would warrant that many vehicles, and who is policing it? Does the owner of this house, Ms LaGow know of this? Do her representatives? It is my understanding she lives out of state. Why should she care, these cars are not parked in front of her house. If there is a problem whom do we call, the McMinnville Police Department? We can't call a local contact person because there is not a local contact person to call.

The problems we addressed when this application was in the original permit process appear to be the same. There is not a local contact in the event there are problems such as and not limited to; noise, garbage, parking, alcohol. You have a property owner who does not live in the State of Oregon who chose to rent this property without proper permit approval. This action showed complete disregard for McMinnville's STR application policy. And now she has chosen to appeal the denial by the Planning Commission to the City Council.

Ms. LaGow should not be rewarded by a reversal of the denial because she had adequate time to address the issues brought forth by the families of this neighborhood. We are the families. We live here. We care about our neighborhood. The only people who will fight for the livability of our neighborhood are those of us who live here. The City Council should not usurp the decision made by the Planning Commission. The City of McMinnville has a Planning Department for a reason. You are our line of defense. There are rules and regulations to follow. Ms. LaGow and her representatives chose to not follow the rules and regulations set forth by the City of McMinnville. If the decisions of the Planning Department can be overruled by City Council then there is no reason for a Planning Department.

My hope is that City Council will respect the decision by the Planning Department and the families who live in this neighborhood and deny the appeal from Ms. LaGow.

Thank you for your time and consideration.

Kathy Loving

1100 27, 2022

City of me Minrwille Planning Department - my name is Sinda Stoke, I live at 2151 Nu Chriptal Dr. - directly across the street sfrom intended STR 790 NW 2121 Just FYI - shart approx timeline: Vuna 8 - move in of furniture by 2 black cars - ut Georgia plates & blue + white cars (Nonda/Sayota) and an unmarked white large van Dury 4th - Unallowed questowno bought three abob property rental. Parked 2 cais in driveway I can in streat the antire stay, Aug 2012 - I black Cars return ( both with Leargia plates - sume can as before ) Strey stayed - for 30+ days (also Lextra car snowed up) They parked those cars over sidewalks many times - blocking use of walks also left overflowing trach outside for 37 week. - Sipt - mostly empty - trach left on gravel drive! Oct 2022 - next blue & white cars returns along W12 pickings & another blue car. They there had 9-11 cars m street + even in front of - mail bor several evenings a week. Only single lane access dround corner. One pick up started the wehicle at 3/3:30am & let run (loudly ) for 15 minutes? after they left the leaves were finally cleaned up & reef cleaned - some pringress.

I have been here for almost 8 yrs · V love this neighborhood & people. This year my property values were raised over #64,000, tauxs jumped, escrow was shart (which Some) and norese payment will rese. Then next \$13 on Jon 2013 lice unice start. Das - groceries, TV, car/ house insurance + more all higher, I want pay all to stay in my home (+ husband cost to stay in assisted living) But is it Mucreh it far me to stay with a. 3. 43 wooden sign indicating an abob or STR. Seems it will not be to my benefit if Quee Tuled to sell Second no one woodches the home - now - what La neut " no matter how this ends I'm not sure it will be a good butoome Shank you binda Stohr

Amended on 12.14.2022

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Added on 12.12.2022 14 of 14

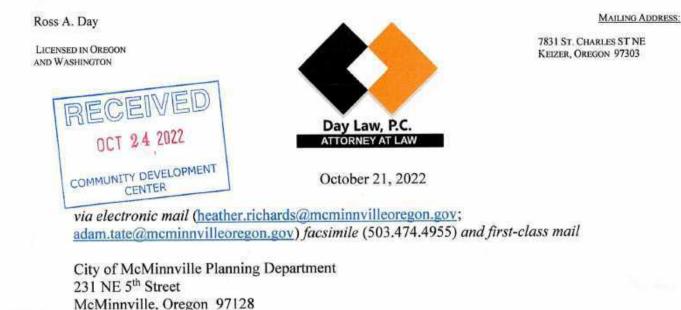


COMMUNITY DEVELOPMENT 231 NE Fifth Street McMinnville, OR 97128 (503) 434-7311 www.mcminnvilleoregon.gov

# ATTACHMENT 3 – APPEAL APPLICATION (STR 7-22)

Consisting of:

• Appeal Application



#### RE: Appeal of planning commission decision STR 7-22

To whom it may concern:

I represent Emily (Joyce) LaGow (herein "Applicant"), the applicant on Short-Term Rental application STR 7-22 (herein "Application"). Enclosed please find an appeal form, appealing the decision of the city of McMinnville's (herein "City") planning commission's decision on the Application (herein "Decision").

In addition to the completed appeal form, I have also attached a copy of the transmittal letter from your office and a copy of the actual decision.

Undoubtedly your office will note the absence of an appeal fee with the electronic submission of the appeal. Included with this letter is check number 10001 in the amount of \$1,095.00 representing the appeal fee.

There is nothing in the McMinnville Zoning Ordinance (herein "MZO") that requires the payment of an appeal fee to perfect an appeal. In fact, MZO §17.72.180 do not require the payment of an appeal fee in order to perfect an appeal. That section of the MZO only requires "written notice of the appeal" and requires the written notice to include the identification of the decision to be reviewed, the date of the decision to be reviewed, and a statement of interest from the person seeking review.

The payment of the appeal fee is <u>not</u> jurisdictional. The Oregon Land Use Board of Appeals has held that unless the zoning ordinance <u>specifically states</u> that payment of an appeal is jurisdictional, then payment of an appeal fee is <u>not</u> jurisdictional. *Ratzlaff v. Polk County*, 56 Or. LUBA 740, 745 (2008). In other words, as long as "written notice" is timely provided, the Applicant has perfected her appeal. The submission of this "written notice" constitutes timely filing of the Applicant's appeal.

Which brings me to a second point. MZO \$17.72.180 requires an appeal to the City Council be made within 15 (fifteen) calendar days of the date written notice of the decision is mailed. Nowhere on the Decision is there any indication of a date of mailing the Decision. The Decision

7831 ST. CHARLES ST. NE, KEIZER, OREGON 97303 TEL: 503.743.6460 • WEB: WWW.DAYLAWPC.COM itself was not signed by the chairperson of the planning commission until October 7<sup>th</sup>, 2022. Further, the Applicant received a letter accompanying the Decision which was dated October 7<sup>th</sup>, 2022. Presumably the date of mailing was October 7<sup>th</sup>, 2022, meaning the date the decision must be appealed is October 22<sup>nd</sup>, 2022. Because October 22<sup>nd</sup>, 2022, falls on a Saturday, the date of filing the appeal is adjusted to October 24<sup>th</sup>, 2022.

The October 7<sup>th</sup>, 2022, letter from your office, however, states the deadline for appealing the Decision is October 21<sup>st</sup>, 2022. The planning commission reached its decision on the Application on October 6<sup>th</sup>, 2022, but the Decision itself was not mailed – at the earliest – until October 7<sup>th</sup>, 2022. The deadline for the Applicant to appeal the Decision – as stated in your office's October 7<sup>th</sup>, 2022, letter is incorrect.

Nevertheless, the Applicant is submitting her appeal in advance of the October 24<sup>th</sup>, 2022, deadline.

Thank you for your attention to this matter. Please contact my office at your earliest convenience to discuss the hearing in front of the City Council.

ROSS DAY, Esc DAY LAW, PC

ross@daylawpc.com

cc: Adam Tate (email only) Client

10001 COMMUNITY DEVELOPMENT RECEIVED OCT 24 2022 COMMUNITY DEVELOPMENT CENTER RECEIVED iddi/22 Ruthily Labour Request To Shred One of upon arrival. OCT 24 2022 TOTAL City of McMinnville Planning Department 122.12:44 McMinnville, Oregon 97128 231 NE 5th Street 10/24 I PAYEE イント ved ded COMMUNITY DEVELOPMENT RECEIVED HMANCA W OCT 24 2022 Day Law, P.C. 7831 St. Charles Street N.E. Keizer, Oregon 97303 CENTER INESSES: ANN A Day Law, P.C. DATE

Amended on 12.14.2022 107 of 515

City Of MCMDINUE Planning Department 21 NE Fifth Street • McMinnville, OR 97128 (503) 434-7311 Office • (503) 474-4955 Fax www.mcminnvilleoregon.gov Mappeal A	Office Use Only: File No. AP. 1-22 Date Received 0/21/22 Fee 1095.00 Receipt No. 207015 Received by 0/4 Stog-22-000412-PING Stog-22-000412-PING
Applicant Information	Emailed TO Emily LaGOW BROSSDay 10/21/224:32 PM
Applicant is: I Property Owner Contract Buyer	Option Holder Agent Other
Applicant Name_Emily (Joyce) LaGow	Phone 206-714-3791
Contact NameRoss Day, Esq. (If different than above) Address 7831 St. Charles Street NE	Phone_503-743-6460
City, State, Zip_Keizer, Oregon 97303	
Contact Email_ross@daylawpc.com	
Original Application Information	
File No.: STR 7-22	Review Body: Planning Commission
Decision: Deny	Date of Decision: October 6th, 2022
Date Decision Mailed Unknown - Possibly October 71 Description of Original Application Request: Appli	th, 2022 Appeal Date Deadline: October 24th, 2022

PLANNING DIRECTOR (See Section 17.72.170 (Appeal from Ruling of Planning Director) of the Zoning Ordinance for further information.)

PLANNING COMMISSION (See Section 17.72.180 (Appeal from Ruling of Planning Commission) of the Zoning Ordinance for further information.) Please state in detail the basis for and issues raised in this appeal. You must identify the criteria and findings that you are appealing. Attach additional sheets as necessary.

As an initial matter, there is nothing in the City's ordinances that requires an appellant to "identify the criteria and findings you are appealing. McMinnville ordinance 3380, Section 17.72.180 does not require any such identification, as is required in Section 17.72.170.

Next, the transmittal letter that accompanied the planning commission's incorrectly states that the appeal is due on October 21st, 2022. The decision being appealed was signed by the chair of the planning commission on October 7th, 2022. Fifteen (15) days from October 7th, 2022 is October 22nd - not October 21st - which makes the appeal due by October 24th, 2022. The decision is not accompanied by a certificate of mailing, so the actual date of mailing is unknown - one of many procedural errors of the challenged decision.

\_\_\_\_\_\_\_ Third, the decision being appealed does not make factual finding sufficient to support the planning \_\_\_\_\_\_\_\_ commission's decision - yet another procedural error in the decision.

Finally, as a substantive matter, the decision being appealed is not supported by substantial evidence in the record. The applicant met her burden of proof with respect to the applicable criteria. The decision appears to be based not on the facts as presented, but rather on general opposition by neighbors who do not want a short-term rental property in their neighborhood.

The applicant/appellant reserves the right to raise additional challenges to the planning commission's decision through additional argument and presentation of additional evidence.

In addition to this completed application, the applicant must provide the following:

Payment of the applicable review fee, which can be found on the Planning Department web page.

I certify the statements contained herein, along with the evidence submitted, are in all respects true and are correct to the best of my knowledge and belief.

Emily LaGow

Appellant's Signature

Oct 21, 2022

Date

# Completed Appeal Foirm

#### Final Audit Report

2022-10-21

Created:	2022-10-21
Ву:	Ross Day (ross@daylawpc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAU3KmmN3KumrDCNxjaviwWboquutlPkjU

### "Completed Appeal Foirm" History

- Document created by Ross Day (ross@daylawpc.com) 2022-10-21 - 7:04:46 PM GMT- IP address: 24.22.32.40
- Document emailed to lagowj@amazon.com for signature 2022-10-21 - 7:05:11 PM GMT
- Email viewed by lagowj@amazon.com 2022-10-21 - 7:13:14 PM GMT- IP address: 71.135.214.119
- Signer lagowj@amazon.com entered name at signing as Emily LaGow 2022-10-21 - 7:13:34 PM GMT- IP address: 71,135.214.119
- Document e-signed by Emily LaGow (lagowj@amazon.com) Signature Date: 2022-10-21 - 7:13:36 PM GMT - Time Source: server- IP address: 71.135.214.119
- Agreement completed. 2022-10-21 - 7:13:36 PM GMT

Adobe Acrobat Sign

# McMinnville

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CITY OF MCMINNVILLE PLANNING DEPARTMENT 231 NE FIFTH STREET MCMINNVILLE, OR 97128

503-434-7311 www.mcminnvilleoregon.gov

DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A SHORT-TERM RENTAL AT 790 NW 21st STREET

DOCKET: STR 7-22

REQUEST: Application to permit a short-term rental.

LOCATION: 790 NW 21st St. Tax Lot: R4417-AC-02344

ZONING: R-1 (Single-Family Residential)

1

- APPLICANT: Emily (Joyce) LaGow
- STAFF: Heather Richards, Community Development Director Adam Tate, Associate Planner

DATE DEEMED

COMPLETE: July 11, 2022

DECISION MAKING

BODY & ACTION: The McMinnville Planning Commission makes the final decision unless the Planning Commission's decision is appealed to the City Council.

DECISION DATE

& LOCATION: September 1, 2022, Hybrid Public Hearing. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 879 8953 9440

October 6, 2022, Hybrid Public Meeting. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 834 6597 3462

.....

PROCEDURE: The application is processed in accordance with the procedures in Section 17.72.120 of the Zoning Ordinance. This short-term rental was found to be operating without a permit and referred to code compliance. The application will now be heard before a public hearing and reviewed by the Planning Commission. in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the Zoning Ordinance.

CRITERIA: The applicable criteria and standards for a Short-Term Rental are specified in Section 17.12.010(P) of the Zoning Ordinance.

APPEAL: As specified in Section 17.72.180 of the Zoning Ordinance, the Planning Commission's decision may be appealed to the City Council within 15 calendar days of the date the written notice of decision is mailed. The City's final decision

Attachments:

Attachment 1 - Application and Attachments

is subject to the 120-day processing timeline, including the resolution of any local appeal.

#### DECISION

Based on the findings and conclusionary findings, the Planning Commission finds the applicable criteria are **NOT SATISFIED** and **DENIES** the Short-Term Rental permit for the property at 790 NW 21<sup>st</sup> Street (STR 7-22).

 $\otimes 5$ 

DECISION: DENIAL

Planning Commission: ~

Date:

Sidonie Winfield, Chair of the McMinnville Planning Commission

22 Planning Department:

Heather Richards, Planning Director

Date: October 6, 2022

Attachments:

Attachment 1 - Application and Attachments

Attachment 2 - Email from Mark Pitts (Operating w/out a Permit)

Attachment 3 - Public Testimony Received



COMMUNITY DEVELOPMENT DEPT. 231 NE Fifth Street McMinnville, OR 97128 (503) 434-7311

www.mcminnvilleoregon.gov

SENT VIA EMAIL

October 7, 2022

Emily (Joyce) LaGow 3201 Esperanza Crossing 453 Austin, TX 78758

#### RE: Docket STR 7-22, a Short-Term Rental application for 790 NW 21st Street

Dear Ms. LaGow:

This letter is to advise you that, at a meeting of the McMinnville Planning Commission on Thursday, October 6, 2022, your application, for approval of a short-term rental at 790 NW 21st Street was considered by the McMinnville Planning Commission.

Based on the material submitted by the applicant, the testimony received, and material provided by the Planning Department, the Planning Commission voted 7 to 1 to DENY your request

(STR 7-22).

The Planning Commission determined that your application failed to meet the criteria for short-term rentals in Section 17.12.010(P) of the McMinnville Municipal Code.

Pursuant to the Zoning Ordinance of the City of McMinnville, Section 17.72.130(C)(4), the decision of the Planning Commission shall be final unless an appeal is filed.

Per Section 17.72.180 of the Zoning Ordinance of the City of McMinnville, "an action or ruling of the Planning Commission may be appealed to the City Council within 15 calendar days of the date the written notice is mailed. The appeal shall be filed with the Planning Department and shall identify the decision sought to be reviewed, including the date of the decision and a statement of interest from the person seeking review specifying that they were party to the initial proceedings."

If no appeal is filed with the Planning Department on or before October 21, 2022, the Planning Commission's decision is final.

Our Mission: Providing excellent customer service, public engagement, and proactive planning programs to promote McMinnville as the most livable and prosperous city in the state of Oregon now and into the future.

Amended on 12.14.2022 113 of 515 Letter Re: STR 7-22 Date: October 7, 2022

Page 2

If you have any questions or comments, you may reach me at (503) 434-7311.

Sincerely,

Hand RZ

Heather Richards, PCED Planning Director

HR

c: Mark Pitts (sent via email) Kelli Grinch (sent via email) Jay Post (sent via email) Kathy Loving (sent via email)



City Of		Clarker and		
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Planning Departm 231 NE Fifth Street • N (503) 434-7311 Office www.mcminnvilleore	o (503)	474-4955	7128 Fax	

ar.

Office Use Only:	
File No	
Date Received	
Fee	
Receipt No	
Received by	

### **Short Term Rental Application**

Applicant is: 🗯 Property Owner 🗆 Contract Buyer 🗆 Option H	older D Agent D Other
Applicant is: A Property Owner Li Contract Buyer Li Option P	
Applicant Name Emily (Joyce) LaGow	Phone_206-714-3791
Contact Name	Phone
(If different than above) Address3201 Esperanza Crossing 453	
City, State, Zip_Austin, TX 78758	
Contact Email joycelagow@hotmail.com	
Property Owner Information	
Property Owner Information Property Owner Name	Phone
Property Owner Name	Phone
Property Owner Name	Phone
Property Owner Name	Phone

(If metes and bounds description, indicate on separate sheet)

Property Address 790 N	790 NW 21ST ST, MCMINNVILLE, OR 97128		
Assessor Map No. R4	R4417AC02344	Total Site Are	a_Lot size: 0.25 Acres
Subdivision Compto	n Addition	Block	Lot
Comprehensive Plan Desig	gnation	Zoning Designation R-1	



The Director may approve, approve with conditions, or deny the application, based on the following criteria:

- 1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.
- Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.
- That a minimum of one off-street parking space be provided for each guest room.
- That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.
- That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.
- That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.
- 7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.
- 8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:
  - a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
  - b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.
- Permits must be renewed annually. Failure to renew the short term rental permit annually will
  result in the permit becoming void, and the use of the subject property as a short term rental
  will again be subject to the application and review procedures in Section 17.72.110.
- Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a
  public hearing. The Planning Commission will review complaints based on the criteria listed in
  Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the short term rental is found to
  be in violation of the criteria, the Planning Commission may terminate the use.

PI	3	DV
6	U	PY

1	Please describe the residence and its proposed use. I he homeowner intends to rent their		
19.51	four (4) bedroom, three (3) bath home on a short-term basis. The rental will be made		
	available for guest use year round and will be professional managed and maintained by		
	iTrip Vacations management company.		

2.	How many guest rooms will be provided?	
	What is the maximum number of guests that can be accommodat	ed?_8
3.	How many off-street parking spaces are available? 4	
	Are the parking spaces paved? Yes Ø No D	
4.	Are there smoke detectors in the residence? Yes Ø No 🗆	
	If so, where are they located?	
	Smoke detectors are provided in each bedroom and hall	way, and carbon monoxide
	detectors are provided on each floor where a carbon mono	oxide source is located.
	2	
5.		
	If no, please provide contact information of a person living within the to respond immediately to any emergency or complaint related to	e city limits who shall be available the vacation home rental:
	Contact Name Erika Correa	Phone 971-983-9324
	Address 540 NE 26th Ct	Phone
	City, State, Zip McMinnville, OR 97128	

Contact Email mariaponce352@yahoo.com

6. Has the applicant registered as a Transient Lodging Provider in order to collect, and pay, the Transient Lodging Tax imposed by the City of McMinnville on the rent charged to an occupant who occupies a provider's lodging for 30 successive days or less? Yes ☑ No □

In addition to this completed application, the applicant must provide the following:

- A site plan (drawn to scale, a north arrow, legible, and of a reproducible size), clearly showing the location of the residence; and existing and proposed features within and adjacent to the subject site, such as: lot and street lines with dimensions; driveway(s); parking; distances from property lines to structures; improvements; and significant features. Please note that all parking must be off-street and of a hardscaped surface. Cleary identify that the off-street parking requirements are met.
- Digital photographs of the subject residence's exterior.
- A Floor plan showing the size, function, and arrangement of interior rooms.
- Compliance of Neighborhood Meeting Requirements.
- Other information deemed necessary by the Planning Director to allow review of the applicant's proposal.
- Payment of the applicable review fee, which can be found on the Planning Department web page.



### Short Term Rental Information & Submittal Requirements



#### Overview

In order to operate a vacation home rental in any of the residential zones of the City of McMinnville, a property owner must first submit an application and meet a specific set of standards as set forth in Section 17.12.010(O) (Permitted Uses) of the Zoning Ordinance, and also listed below. [Vacation home rentals located in commercial zones are exempt from these requirements; however, *all* such establishments are subject to the requirements of the *Transient Lodging Tax* program, which is administered by the City's Finance Department.]

Please note that occupancy of a vacation home rental in McMinnville is limited to a single family, as that term is defined by the McMinnville Zoning Ordinance.

#### Application Submittal

The following materials must be provided at the time of submittal, or the application will not be accepted tor processing.

- A completed Short Term Rental application form.
- A site plan (drawn to scale, with a north arrow, legible, and of a reproducible size), clearly showing the location of the residence; and existing and proposed features within and adjacent to the subject site, such as: lot and street lines with dimensions; driveway(s); parking; distances from property lines to structures; improvements; and significant features. Please note that all parking must be off-street and of a hardscaped surface. Cleary identify that the off-street parking requirements are met.
- Digital photographs of the subject residence's exterior.
- Floor plan showing the size, function, and arrangement of interior rooms.
- Compliance of Neighborhood Meeting Requirements
- Payment of the applicable review fee.

#### **Review Process**

An application for a vacation home rental permit is subject to review by the Planning Director as stated in Section 17.72.110 (Director's Review with Notification) of the Zoning Ordinance, after notification of the application has been provided to property owners within 100-feet of the subject site. The decision made by the Planning Director may be appealed to the Planning Commission as outlined in Section 17.72.170 (Appeal from Ruling of Planning Director) of the Zoning Ordinance.

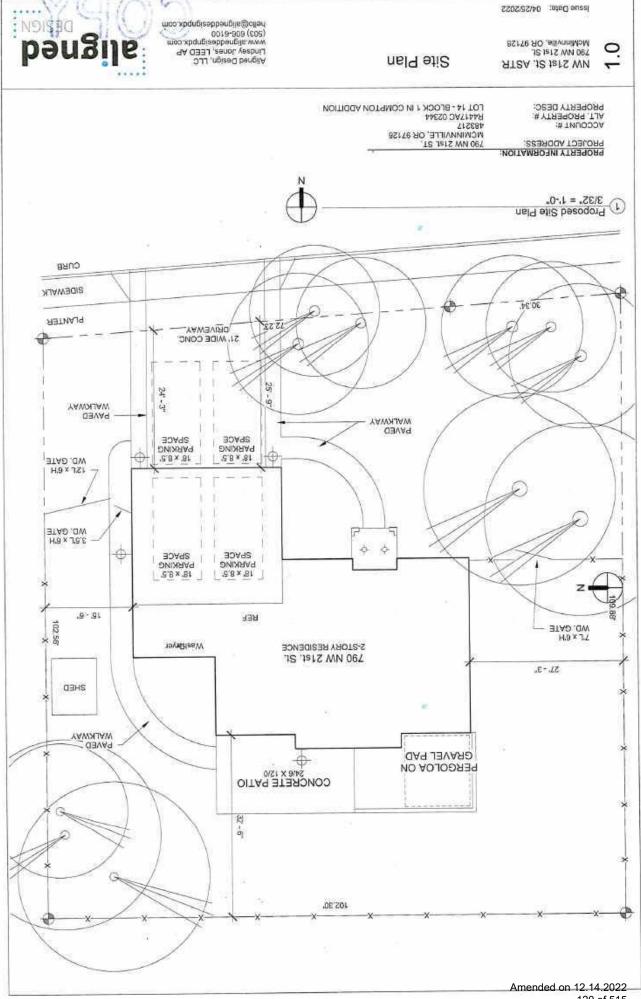


I hereby certify that the statements contained herein are in all respects true and correct to the best of my knowledge and belief.

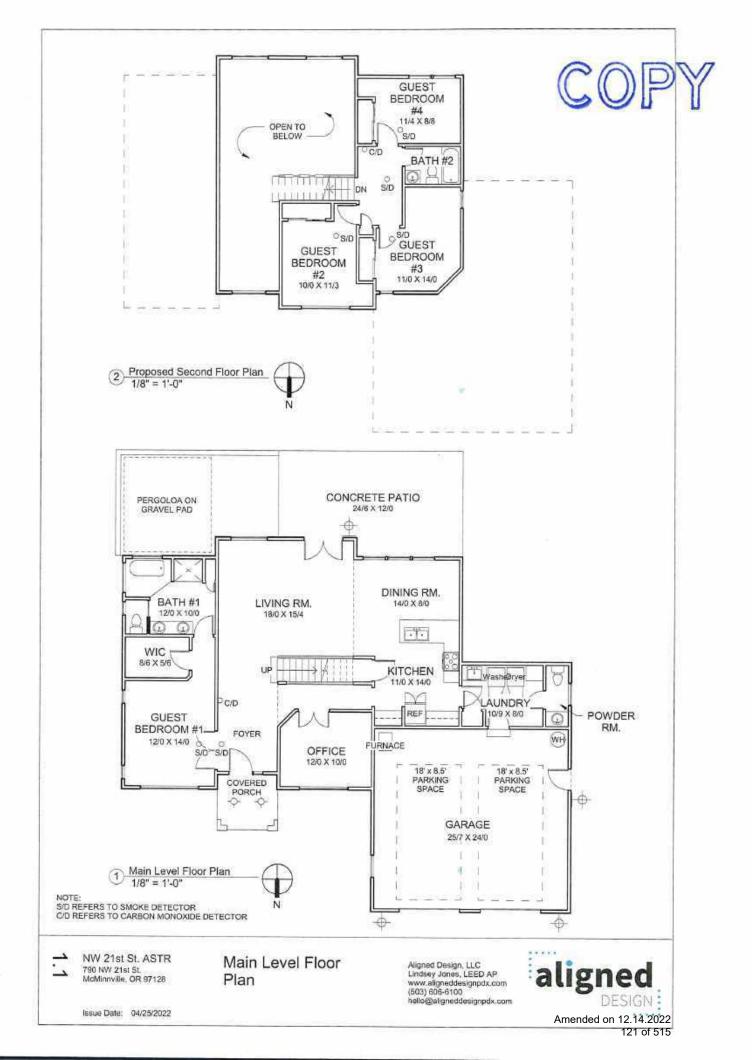
Applicant's Signature Property Owner's Signature

.8

5/22/22 5/22/22



120 of 515



#### 4522/4526 SE 41st Ave. - Type-B ASTR

#### HOUSE RULES

Check in time: 4pm.

Check out time: 11am.

We cannot accommodate early check-ins nor late check outs. Should any unauthorized persons occupy or use the Premises, Tenant shall vacate the premises immediately without any refund. No key will be issued to anyone who is not an adult.

#### HAZARDOUS PRACTICES

Do not dismantle smoke detectors as they are there for your protection. Use the overhead stove fan when cooking to avoid accidental, activation of smoke detector alarm.

#### FAMILY RENTAL ONLY

Reservations made for teenagers or young single groups will not be honored without any accompanying adult staying in the unit at ALL times. We require at least one member of the party to be 25 (twenty-five) years of age! Any violators will be evicted according to local statutes with forfeiture of all monies.

#### FALSIFIED RESERVATION

Any reservation obtained under false pretense will be subject to forfeiture of reservation deposit, damage deposit, and/or balance of rental payment.

#### HOUSEKEEPING

There is **no daily maid service**. Linens and towels are included and not to be taken from the unit. An initial setup of trash liners, bathroom paper, soap is provided.

#### NONSMOKING UNIT

Smoking is strictly prohibited. Your damage deposit will be forfeited and you will incur an additional charge for carpet cleaning and deodorizing if any evidence of smoking is found.

Amended on 12.14.2022 122 of 515

1

#### RULES AND REGULATIONS

- Tenant agrees to leave the premises and its contents in the same condition, neat and tidy, as Tenant found the premises to be upon move-in, normal wear and tear expected. Beds should be stripped of linens and placed in a pile in each bedroom for housekeeping.
- All dishes are to be washed and all garbage removed from the premises and placed in outside receptacles. Please place trash bins in front of house for pickup.
- 3. The maximum number of occupants shall not exceed eight (8) people.
- Furnishings are not to be removed from the premises for use outside or in other properties.
- 5. "No pets" policy must be observed. Pets are not allowed on premises.
- 6. Smoking is not allowed in the unit.
- Reservations are not made by or for a minor, defined as any person under the age of twenty-five.
- 8. Tenant and any guest of Tenant shall obey all laws of the state of the rental resides in, as well as local laws, at all times while they are on the premises. Failure to abide by the these laws, or the above rules, may cause tenant to be asked to vacate the premises and forfeit all rents and security/damage deposits.
- 9. Quiet Hours: 10pm-7am. There shall be no noise that can be heard outside the home between the hours of 10pm - 7am. If noise is an issue, you will get a written warning text message to the number that booked the reservation and/or a phone call. If noise does not stop, you will be fined or possibly evicted immediately.

#### SLEEPING CAPACITY/DISTURBANCES

Tenant and all other occupants will be required to vacate the premises and forfeit the rental fee and security deposit for any of the following: Occupancy exceeding the sleeping capacity of eight (8), using the premises for any illegal activity, causing damage to the premises rented or to any of the neighboring properties and **any other acts which interferes with neighbors' right to quiet enjoyment of their premises**.

Violations of our noise or maximum number of guests agreed to at the time of booking will result in possible fines or immediate eviction with all loss of all rents. Depending on severity if there is a noise situation we may call and issue a warning or proceed with a \$300 fine. If we cannot reach the guest that booked the property someone will show up to at a minimum issue a \$300 fine and/or evict the entire group immediately. Any delay will result in us involving the authorities and trespassing every person on the property as well as the loss of all rents. Additional fines or damages may be assessed after removal.

#### PARKING

A parking plan will be emailed to you 2 days before arrival. You can park in the garage and in the driveway. You may not park in front of other neighbors' homes.

Please remember that you are renting a private home. Please treat it with the same respect you would like shown in your own home.



790 NW 21st St.

McMinnville OR 97128





City of McMinnville Phone: 503-434-7301 www.mcminnvilleoregon.gov



City of McMinnville

Transient Lodging Tax Registration Form

Date: 4-20-2022
Business Type:
Establishment Name: BEVAL CREEK RETREAT
Establishment Address: 790 NW 21st Street, McMinnville, OR 98128
Mailing Address, if different: 3201 Esperanza Crossing 453, Austin, TX 78758
Manager / Operator Name: iTrip Vacations
Owner, Corporation or Partnership Name, if different: Joyce CA-Gow
Email Address: joycelagow@hotmail.com BECKETT PROPERTES
Phone: 206-714-3791
Number of Rooms:

I declare. under penalty of making a false statement, that to the best of my knowledge, and belief, the statements herein are correct and true.

Signature	AP	-
Title		÷
Date	5/22/22	-

Mail your completed registration form to:

City of McMinnville Finance Department 230 NE Second Street McMinnville, OR 97128 Or fax to: 503/435-5860



COMMUNITY DEVELOPMENT DEPT. 231 NE Fifth Street McMinnville, OR 97128 (503) 434-7311

www.mcminnvilleoregon.gov

#### SENT VIA EMAIL

October 7, 2022

Emily (Joyce) LaGow 3201 Esperanza Crossing 453 Austin, TX 78758

#### RE: Docket STR 7-22, a Short-Term Rental application for 790 NW 21st Street

Dear Ms. LaGow:

This letter is to advise you that, at a meeting of the McMinnville Planning Commission on Thursday, October 6, 2022, your application, for approval of a short-term rental at 790 NW 21<sup>st</sup> Street was considered by the McMinnville Planning Commission.

Based on the material submitted by the applicant, the testimony received, and material provided by the Planning Department, the Planning Commission voted 7 to 1 to **DENY** your request

(STR 7-22).

The Planning Commission determined that your application failed to meet the criteria for short-term rentals in Section 17.12.010(P) of the McMinnville Municipal Code.

Pursuant to the Zoning Ordinance of the City of McMinnville, Section 17.72.130(C)(4), the decision of the Planning Commission shall be final unless an appeal is filed.

Per Section 17.72.180 of the Zoning Ordinance of the City of McMinnville, "an action or ruling of the Planning Commission may be appealed to the City Council within 15 calendar days of the date the written notice is mailed. The appeal shall be filed with the Planning Department and shall identify the decision sought to be reviewed, including the date of the decision and a statement of interest from the person seeking review specifying that they were party to the initial proceedings."

If no appeal is filed with the Planning Department on or before October 21, 2022, the Planning Commission's decision is final.

Letter Re: STR 7-22 Date: October 7, 2022

Page 2

If you have any questions or comments, you may reach me at (503) 434-7311.

Sincerely,

Amon p2

Heather Richards, PCED Planning Director

HR

c: Mark Pitts (sent via email) Kelli Grinch (sent via email) Jay Post (sent via email) Kathy Loving (sent via email)



503-434-7311 www.mcminnvilleoregon.gov

# DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A SHORT-TERM RENTAL AT 790 NW 21st STREET

DOCKET:	STR 7-22

**REQUEST:** Application to permit a short-term rental.

- LOCATION: 790 NW 21st St. Tax Lot: R4417-AC-02344
- **ZONING:** R-1 (Single-Family Residential)
- APPLICANT: Emily (Joyce) LaGow
- **STAFF:** Heather Richards, Community Development Director Adam Tate, Associate Planner

#### DATE DEEMED

**COMPLETE:** July 11, 2022

#### **DECISION MAKING**

**BODY & ACTION:** The McMinnville Planning Commission makes the final decision unless the Planning Commission's decision is appealed to the City Council.

#### DECISION DATE

**& LOCATION:** September 1, 2022, Hybrid Public Hearing. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 879 8953 9440

October 6, 2022, Hybrid Public Meeting. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 834 6597 3462

- **PROCEDURE:** The application is processed in accordance with the procedures in Section 17.72.120 of the Zoning Ordinance. This short-term rental was found to be operating without a permit and referred to code compliance. The application will now be heard before a public hearing and reviewed by the Planning Commission. in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the Zoning Ordinance.
- **CRITERIA:** The applicable criteria and standards for a Short-Term Rental are specified in Section 17.12.010(P) of the Zoning Ordinance.
- APPEAL: As specified in Section 17.72.180 of the Zoning Ordinance, the Planning Commission's decision may be appealed to the City Council within 15 calendar days of the date the written notice of decision is mailed. The City's final decision

is subject to the 120-day processing timeline, including the resolution of any local appeal.

#### **DECISION**

Based on the findings and conclusionary findings, the Planning Commission finds the applicable criteria are **NOT SATISFIED** and **DENIES** the Short-Term Rental permit for the property at 790 NW 21<sup>st</sup> Street (STR 7-22).

Planning Commission:	Date:
Sidonie Winfield, Chair of the McMinnville Planning Commission	

Date:\_\_\_\_\_

for he Planning Department: Heather Richards, Planning Director

Date: October 6, 2022

#### I. APPLICATION SUMMARY:

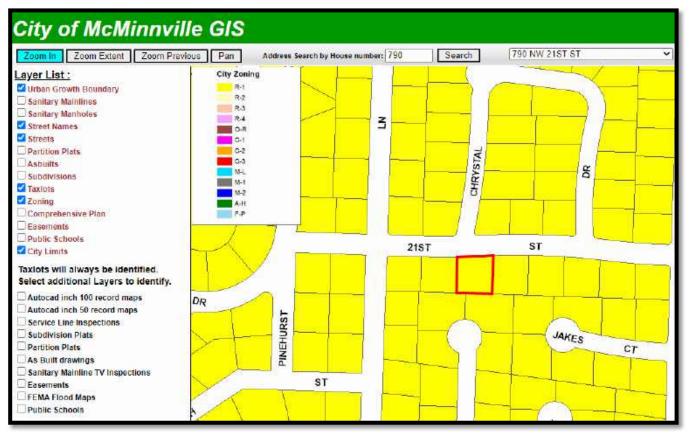
#### Subject Property & Request

The subject property is located at 790 NW 21st Street. The property is zoned R-1. A Short-Term Rental is a permitted use in the R-1 zone as specified in Section 17.15.010(P), subject to compliance with the referenced standards in Section 17.12.010(P), and subject to the procedures specified in Section 17.72 of the Zoning Ordinance. See Figure 1 for Vicinity Map, Figure 2 for Zoning Map, Figure 3 for Applicant's Site Plan. See Figure 4 for map of Short-Term Rentals with 200' buffer shown. The application submittal includes additional materials including a floorplan diagram, photos, and information from the neighborhood meeting. Those additional materials are included in Attachment 1.

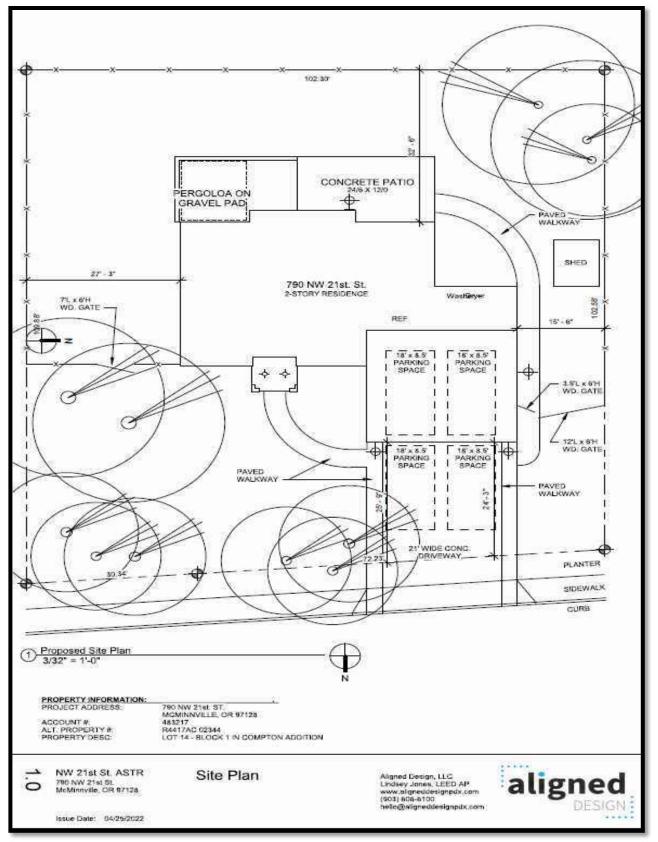
#### Figure 1. Vicinity Map



#### Figure 2. Zoning Map



#### Figure 3. Applicant's Site Plan



#### Attachments:

- Attachment 1 Application and Attachments
- Attachment 2 Email from Mark Pitts (Operating w/out a Permit)
- Attachment 3 Public Testimony Received

Figure 4. Map of Short-Term Rentals with 200-Foot Buffer



#### Summary of Applicable Standards and Issues

Use and development of properties in the R-1 zone are subject to the applicable standards of the zone and general provisions of the Zoning Ordinance. No modifications to the site or existing single-family dwelling are proposed at this time, so the only applicable standards for the proposed short-term rental are those listed in Section 17.12.010(P) for use of the property for a Short-Term Rental.

The standards and associated findings are summarized below. The specific findings regarding the applicable standards are addressed in Section VII of this Decision Document. As a Type II land-use application, the criteria need to be clear and objective.

The table below illustrates how the application either complies or does not comply with applicable criteria.

# Summary of Findings Regarding Consistency with Applicable Standards (Table on next page)

Standard	Summary of Findings		
17.12.010. Permitted Uses:			
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	<b>Satisfied.</b> The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.		
17.12.010(P)			
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	<b>Satisfied.</b> The map provided as <i>Figure 4</i> shows no other short-term rental within 200 feet.		
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	<b>Satisfied with Conditions.</b> The application complies with this requirement at the time of application. The existing structure is a single-family dwelling.		
	As an ongoing condition of approval, the structure shall retain the characteristics of a residence.		
3. That a minimum of one off-street parking space be provided for each guest room.	<b>Not Satisfied.</b> The application stated that there were four guest rooms and four off-street parking spaces. During the due diligence of the public hearing it was learned that there are five guest rooms. The applicant does not have a provision for five off-street parking spaces. Advertisements online show the house furnished and advertised as five guest rooms.		
4. That signage is limited to only one non- illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	<b>Satisfied with Conditions.</b> No signage is proposed at this time.		
	As an ongoing condition of approval, any signage shall comply with this standard.		
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	<b>Satisfied with Conditions.</b> As an ongoing condition of approval, the short-term rental use shall comply with this requirement.		
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	<b>Satisfied with Conditions.</b> The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application.		
	As an ongoing condition of approval, the structure shall remain in compliance with this standard.		

Attachments:

Attachment 1 – Application and Attachments

Attachment 2 – Email from Mark Pitts (Operating w/out a Permit)

Attachment 3 – Public Testimony Received

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	<b>Not Clear.</b> The property owner in their rebuttal provided conflicting information. One response states that Erika Correa will be available 24 hours per day seven days a week, and another response indicates that the short term rental will be managed with a call service from 11 PM to 7 AM.	
<ul> <li>8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:</li> <li>a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or</li> <li>b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.</li> </ul>	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.	
9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	<b>Satisfied with Conditions.</b> This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.	
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	Not Applicable. Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above. If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints, and will be listed as a condition of approval for this application.	

# II. CONDITIONS: (If the Planning Commission elects to approve the application, these conditions of approval will apply.)

- 1. That five (5) off-street parking spaces (paved or of a hardscape surface) are required for the use of the Short Term Rental, per the five (5) guest rooms provided.
- 2. That 10-year Lithium battery-powered smoke alarms and CO2 alarms must be installed in accordance with Sections R314 and R315 of the Building Code. For this one-story building, smoke alarms shall be installed in each sleeping room and outside each separate sleeping area within 21 feet of any door to a sleeping room, measured along a path of travel. On CO2 alarm is required.
- 3. That prior to use of the subject property for vacation home rental purposes, the applicant shall register with the McMinnville Finance Department as a transient lodging provider. Local Transient Lodging Tax shall be collected and remitted to the City as provided in McMinnville Ordinance No. 4974.
- 4. That, as this use is required to be occupied as a single-family residence, occupancy of the vacation home rental shall be limited at all times to no more than five unrelated persons, or one or more individuals related by blood, marriage, adoption, or legal guardianship, or other duly authorized custodial relationship.
- 5. That all other requirements of Section 17.12.010(P) of the Zoning Ordinance referencing vacation home rental use shall be complied with throughout the time this property is used for such purpose, which are outlined below.
  - A. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.
  - B. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.
  - C. That a minimum of one off-street parking space be provided for each guest room.
  - D. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.
  - E. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.
  - F. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.
  - G. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.
  - H. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject

Attachments :

Attachment 1 – Application and Attachments

Attachment 2 – Email from Mark Pitts (Operating w/out a Permit)

Attachment 3 – Public Testimony Received

property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:

- a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
- b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.
- I. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.
- J. Complaints on conditions "A" through "I" above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

#### III. ATTACHMENTS:

- 1. STR 7-22 Application and Attachments (on file with the Planning Department)
- 2. Public Testimony (on file with the Planning Department)

#### IV. COMMENTS:

#### Public Comments

- 1. Email received July 4, 2022, from Mark Pitts, notifying the Planning Director that the short-term rental was operating before their permit was approved.
- 2. Email received on August 29, 2022, from Mark Pitts
- 3. Email received on August 30, 2022 from Kelli Grinch
- 4. Email received from Jay Post on August 30, 2022
- 5. Email received from Kathy Loving on September 1, 2022

#### V. FINDINGS OF FACT - PROCEDURAL FINDINGS

- 1. The applicant mailed notice of a neighborhood meeting dated April 27, 2022, and held a neighborhood meeting on May 25, 2022.
- 2. The applicant submitted the Short-Term Rental application (STR 7-22) on June 10, 2022.
- 3. On July 4, 2022, a local resident reported to the Planning Director that the property was operating as a short-term rental before their application was approved, and provided an Airbnb listing showing the property for rent.

Attachments:

Attachment 3 – Public Testimony Received

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- 4. On July 5, 2022, the property was put into code compliance and the property owner was notified that they must stop current short-term rental operations and given the option to either withdraw their permit or have it go before a public hearing of the Planning Commission.
- 5. On July 11, 2022, the applicant informed the Planning Director that they wanted to move forward with the application and the application was deemed complete.
- 6. The hearing date was set for September 1, 2022. On August 3, 2022, notice of the application and the September 1, 2022, Planning Commission public hearing was mailed to property owners within 300 feet of the subject property in accordance with Section 17.72.120 of the Zoning Ordinance.
- 7. Notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.120 of the Zoning Ordinance: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas.

No comments were received from any agencies.

- 8. Notice of the application and the September 1, 2022, Planning Commission public hearing was published in the News Register on Friday, August 26, in accordance with Section 17.72.120 of the Zoning Ordinance.
- 9. On September 1, 2022, the Planning Commission held a duly noticed public hearing to consider the application. The public hearing was closed after hearing testimony on September 1, 2022.
- 10. On September 9, 2022, the applicant provided a written rebuttal to the public hearing testimony of September 1, 2022.
- 11. On October 6, 2022, the Planning Commission deliberated and rendered a decision.

#### VI. FINDINGS OF FACT - GENERAL FINDINGS

- 1. Location: 790 NW 21<sup>st</sup> St. Tax Lot R4417-AC-02344
- 2. **Size:** Approximately 0.2489 acres
- 3. Comprehensive Plan Map Designation: Residential
- 4. **Zoning:** R-1 (Single-Family Residential)
- 5. Overlay Zones/Special Districts: None
- 6. **Current Use:** Single-family dwelling
- 7. Inventoried Significant Resources:
  - a. Historic Resources: None
  - b. **Other:** None identified

Attachments:

Attachment 3 – Public Testimony Received

Attachment 1 – Application and Attachments

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- 8. Other Features:
  - a. **Slopes:** The site is generally flat.
  - b. Easements: No public easements identified
- 9. **Utilities:** The property is served with basic municipal services, including water, sewer, power, and franchise utilities.
- 10. **Transportation:** NW 21<sup>st</sup> Street is classified as a local residential street in the McMinnville TSP. Local streets have a 50-foot right-of-way.

#### VII. CONCLUSIONARY FINDINGS:

The Conclusionary Findings are the findings regarding consistency with the applicable criteria and standards for the application.

The applicable standards for a Short-Term Rental are specified in Section 17.12.010 (O) of the Zoning Ordinance. Development standards for the R-1 Zone are provided in Chapter 17.12 of the Zoning Ordinance; however, the proposed short-term rental will be located within the existing single-family dwelling, and no new development is proposed at this time.

#### McMinnville Zoning Ordinance

The following Sections of Title 17, Zoning Ordinance, of the McMinnville Municipal Code provide criteria and standards applicable to the request:

Section 17.12.010 lists permitted uses in the R-1 Zone. Subsection (P) provides the following:

P. Short-term rental, subject to the provisions of Section 17.72.110

**FINDING: SATISFIED WITH CONDITIONS.** The proposed use described in the application is single-family home used for a short-term rental. These are both permitted uses.

Section 17.12.010(P) provides the following:

P. Short-term rental, subject to the provisions of Section 17.72.110 and the following standards.

Section 17.72.110. Applications – Director's Review with Notification.

**FINDING: SATISFIED.** Section 17.72.110 provides the applicable procedural requirements. As addressed in Section V of this Decision Document, the application has been processed in accordance with the applicable procedures.

*Standards in 17.12.010(P):* 

1. Short-term rentals shall not be located within 200 feet of another short-term rental, or on the same property as another short-term rental.

**FINDING: SATISFIED.** There is no other short-term rental within 200 feet of another short-term rental. There is not another short-term rental on the subject property. See *Figure 4* for a map of short-term rentals.

Attachment 1 – Application and Attachments

Attachment 2 – Email from Mark Pitts (Operating w/out a Permit)

Attachment 3 – Public Testimony Received

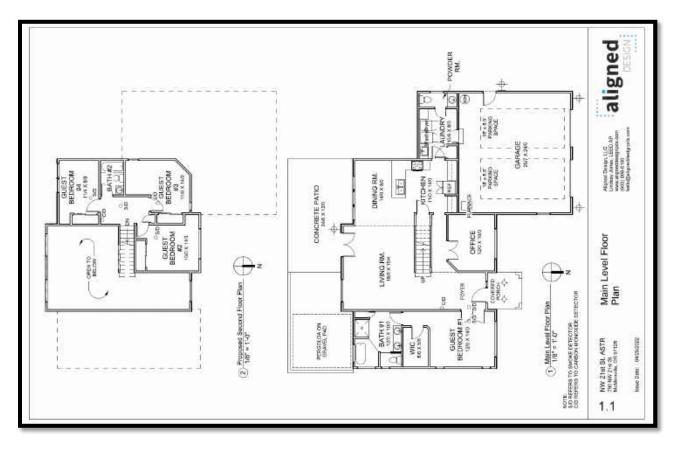
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.

**FINDING: SATISFIED WITH CONDITIONS.** The existing use in which the proposed short-term rental is proposed is a single-family dwelling. No outward modifications to the residence are proposed at this time.

3. That a minimum of one off-street parking space be provided for each guest room.

**FINDING: NOT SATISFIED.** The application indicated that the home was a *"four (4) bedroom, three (3) bath home"*, and provided a floor plan that indicated the same. Please see below. As such, the applicant provided a site plan with four off-street parking spaces. Based on testimony at the public hearing and more research it has been determined that the property has five guestrooms and the applicant does not have room for five off-street parking spaces on the site plan.

#### Floor plan provided with the application illustrating four bedrooms:



it was disclosed at the public hearing that there are actually five guest rooms in the house offered in the rental listing. Below is a screenshot of the listing with an infographic that indicates four bedrooms, but the narrative states that *"this incredible five-bedroom retreat"*, and further detail in the listing describes two bedrooms on the main floor and three bedrooms on the second floor.

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- Attachment 2 Email from Mark Pitts (Operating w/out a Permit)
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Exquisite Wine Country Escape, New Décor Throughout, Patio & Fire Table, 1.5 Miles to McMinnville Baker Creek Retreat	4 Bedrooms 2.5 Bath	Barrow Sheeps 20
\$4,256 - \$11,032 / month in McMinnville carwoolinp.net	🗢 Favorite 🛛 🙆 Sh	are Availability
Nestled in the heart of wine country within the Willamette Valley, this incredible five bedroom retreat is the perfect option for your family or small group visiting the area. Sitting a couple blocks away from Michelbook Country Club and just over a mile to downtown McMinrville, The Baker Creek Retreat is a fantastic option for you to explore everything that this area of the Pacific Northwest has to offer. As you enter, the fover opens up to the entire home. You will find the open floor plan combining the living, dining, and kitchen layout, making it perfect for groups to enjoy together. One of the many great features is the two main sevel bodrooms and laundry on this floor.		Sleeping Arrangements Bedroom 1 (main floor): King
		Bedroom 2 (main floor): Queen Bedroom 3 (Second floor): Queen Bedroom 4 (Second floor): Queen
Ascending upstairs you will find another three exquisitely finished bedrooms including the a mounted big screen TV and gaming console. Another full bath accompanies these bedr	100 P. 110	Bedroom 5 (Second floor): Bunk Twin (2)
In the backyard, you will find a gazebo that covers some plush outdoor seating and a fire more Adirondack chairs, some giant Jenga, and a treehouse overlooking the manicured i		
Every bit of the decor and furnishing was procured to create that perfect blend of style an	d comfort for your stay.	
Please don't hesitaté to reach out if you have any questions at ail.		

Every bit of the décor and furnishing was procured to create that perfect blend of style and comfort for your stay.

Please don't hesitate to reach out if you have any questions at all.

Sleeping Arrangements:

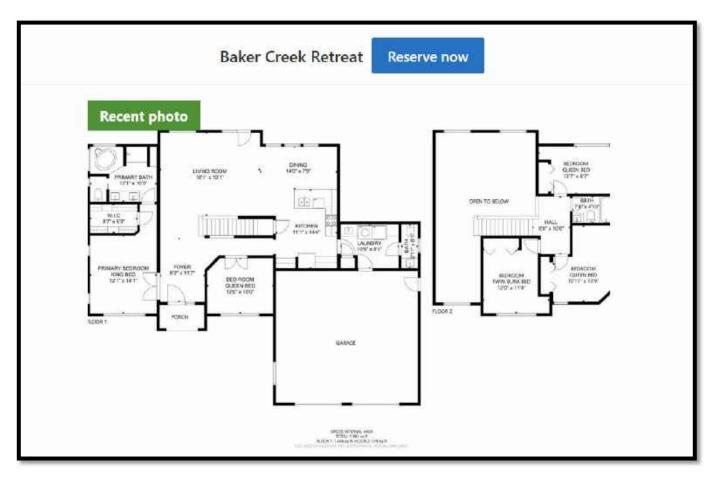
Bedroom 1 (main floor): King bed

Bedroom 2 (main floor): Queen bed

Bedroom 3 (Second floor): Queen bed

Bedroom 4 (Second floor): Queen bed

Bedroom 5 (Second floor): Twin bunk bed



#### A floorplan on Booking.com shows five bedrooms. (Screenshot, September 30, 2022):

Photos of five bedrooms on booking.com (Screenshot, September 30, 2022):



4. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.

**FINDING: SATISFIED WITH CONDITIONS.** The application doesn't indicate any proposed signage at this time. As an ongoing condition of approval, any future signage shall comply with this requirement.

5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.

**FINDING: SATISFIED WITH CONDITIONS.** This provision is an on-going requirement for the operation of the short-term rental and is included as a condition of approval.

6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.

**FINDING: SATISFIED WITH CONDITIONS.** Subsection (2)(d) of Ordinance No. 3997 specifies that, for a lodging house, that smoke detectors are required "in all corridors or areas giving access to rooms used for sleeping purposes, and in all sleeping rooms. Where sleeping rooms are on an upper level, an additional detector shall be placed at the center of the ceiling directly above the stairway."

The application identifies the location of smoke detectors consistent with this requirement, with a smoke detector in each guest room and the hallway, for a total of six smoke detectors and carbon monoxide detectors. This is a two-story single-family dwelling.

The application demonstrates compliance with this standard. As an ongoing condition of approval, the structure shall remain in compliance with this standard.

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental.

**FINDING: NOT SATISFIED.** The property owner does not live within the geographic area of the 97128 zip code. On the application, the applicant provided the contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental. The contact information and residence location are provided in Section 5 of the application form submitted by the applicant. The location of the residence is within the City of McMinnville and the geographic area of the 97128 zip code.

However, at the public hearing, it was disclosed that the number provided went to a call service from 11 PM to 7 AM. The applicant was asked to respond to that issue in a rebuttal report. A response was provided via email from Emily LaGow on September 9, 2022. The response from the applicant provided conflicting information.

Response from the applicant:

Q. Has the applicant come up with a responsible person? Who is available at 11:00 at night? Was Erika alerted that she is the contact? Prove to us that someone is available. Why the two different names/email address for Erika?

Attachments :

Attachment 3 – Public Testimony Received

Attachment 1 – Application and Attachments

Attachment 2 – Email from Mark Pitts (Operating w/out a Permit)

R. The code states: "That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to an emergency or complaint related to the vacation home rental." This statement does not specify whether the contact be a property manager, someone who can make "executive decisions," or a housecleaner. The spirit of the discussion on 9/1/22 indicates that the city would like a property manager, or business owner, or the property owner, to be available, but with respect, this seems like a discussion suited toward a change to the code, vs. a debate over the qualifications of the person that has been identified in this application to be the contact.

Therefore, our responsible person is Erika Correa. She lives within the geographic area of 97128, works for the property manager, iTrip, and has agreed to this responsibility. She does provide cleaning and inspection services of the home. The phone number and email listed on the application are hers. In addition, iTrip has provided her with an Avachato number (<u>www.avachato.com</u>) that we will also list in the House Rules. An Avachato number allows us to automatically forward any call via text to her number to someone else in McMinnville in a pinch if she sick, travelling or unavailable for some other temporary reason. Her number will be dedicated to this property, so she knows when it rings, there is a complaint or an emergency. She also knows that if she gets a call or text and cannot resolve it immediately, she will contact upper management immediately for resolution. We kindly ask that the neighbors not test her so she can give her attention to emergencies only. We will make her available to the Planning Commission if they'd like to call and speak with her.

In addition, again within the spirit of the 9/1/22 discussion to have a "more responsible person be available," the applicant found a property manager: Wild Haven at 619 NE 3rd St, McMinnville, OR 97128. Michele Bertagna is identified as a Property Manager. Wild Haven would make Ms. Bertagna available for emergencies. However:

- Applicant is under contract with iTrip with termination allowed with 60 days' notice. Applicant is unable to switch to the new property manager in time for the 9/9 deadline for written feedback to the Commission.
- There is no guarantee that Ms. Bertagna will be available 24/7 either as she has other clients, sleeps, gets sick, and presumably takes vacations periodically. The solution we have provided above ensures that Erika (or her phone, set to forward to an iTrip contact in McMinnville) will be available for calls at any time day or night to a local contact.
- Per a brief discussion with Ms. Bertagna on Thursday, 9/8, it is the applicant's understanding that this alternative property management company does not immediately offer the call forwarding or monitoring services offered by iTrip (i.e., a decibel meter; likely these services could be added in time). However, iTrip offers a more comprehensive set of services now to manage the STR to code overall, help ensure the neighbors aren't disturbed and that issues get resolved quickly.

Additional response from the applicant:

- Q. Testimony that came in that no one answered the 24/7 hotline and that it ends at 11PM. Opportunity to respond to that?
- *R.* From 11:00 pm to 7:00 AM the calls go to a call center. Depending on the region, the call center contacts the appropriate manager or whomever else depending on the issue. If for any reason the person they try to reach can't be reached, it escalates up to the next person all the way to the two owners of the company.
  - 8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short-term rental permit for the subject property will become void. The use of the subject property as a short-term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:
    - a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
    - b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.

**FINDING: SATISFIED WITH CONDITIONS.** The applicant is the current property owner at the time of application.

This code provision is an ongoing requirement for the operation of the short-term rental and is included as a condition of approval.

9. Permits must be renewed annually. Failure to renew the short-term rental permit annually will result in the permit becoming void, and the use of the subject property as a short-term rental will again be subject to the application and review procedures in Section 17.72.110.

**FINDING: SATISFIED WITH CONDITIONS.** This code provision is an ongoing requirement for the operation of the short-term rental, included as a condition of approval.

10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinances. If the short-term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

**FINDING: NOT APPLICABLE:** Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above.

AT



COMMUNITY DEVELOPMENT 231 NE Fifth Street McMinnville, OR 97128 (503) 434-7311 www.mcminnvilleoregon.gov

# ATTACHMENT 4 – (Amended 12.12.22) Planning Commission Public Record (STR 7-22)

Consisting of:

- Minutes October 6, 2022 Planning Commission Meeting
- Staff Report to Planning Commission, October 6, 2022
- Draft Decision Document for Planning Commission, October 6, 2022
- Applicant Rebuttal, September 9, 2022
- Minutes September 1, 2022 Planning Commission Meeting
- Staff Presentation, Planning Commission, September 1, 2022
- Staff Report to Planning Commission, September 1, 2022
- Draft Decision Document for Planning Commission, September 1, 2022
- Public Testimony Received (08.29.22 09.01.22)
- Email from Mark Pitts, (07.04.22 Operating without a Permit)
- Original Application and Attachments

Please note that video recordings of the September 1, 2022 Planning Commission public hearing and the October 6, 2022 Planning Commission meeting can be found on the project website at:

https://www.mcminnvilleoregon.gov/meetings?field\_microsite\_tid\_1=28



# **DRAFT MINUTES**

October 6, 2022<br/>Planning Commission<br/>Regular Meeting6:30 pm<br/>Hybrid Meeting<br/>McMinnville, OregonMembers Present:Brian Randall, Beth Rankin, Sidonie Winfield, Sylla McClellan, Dan<br/>Tucholsky, Matt Deppe, Gary Langenwalter, and Lori SchancheMembers Absent:Heather Richards – Planning Director

# 1. Call to Order

Chair Winfield called the meeting to order at 6:30 p.m.

# 2. Citizen Comments

None

## 3. Minutes

• July 7, 2022

Commissioner McClellan moved to approve the July 7, 2022 minutes. The motion was seconded by Commissioner Tucholsky and passed 7-0-1 with Commissioner Schanche abstaining.

## 4. Action Items:

# A. Short-Term Rental (STR 7-22)

- Request: Request for approval of a permit to use the existing dwelling as a Short-Term Rental
- Location: 790 NW 21st Street Tax Lot R4417AC 02344

Applicant: Emily (Joyce) LaGow

Planning Director Richards said this hearing was continued from September with the oral testimony closed and written record open for seven days to allow the applicant to provide written rebuttal, which the applicant did submit. Staff recommended denial of the application based on the criteria for parking for five guest rooms and availability of the emergency contact.

There was discussion regarding definition of a guest room, parking requirement, and criteria that were not met.

Commissioner Langenwalter suggested adding two conditions, that the applicant provide a contact that was available 24 hours before the permit was issued and the permit would be revoked if more than four cars were parked at the house at any time.

Commissioner Deppe did not think they should assign intentions, and was inclined to take the applicant at their word. He did not think the applicant had time to comply.

There was discussion regarding staff capacity, compliance with the rules, and how the applicant did not correct the application after the hearing was continued.

Based on the findings of fact and conclusionary findings, Commissioner McClellan MOVED to DENY short-term rental (STR 7-22); SECONDED by Commissioner Langenwalter. The motion PASSED 7-1 with Commissioner Deppe opposed.

City Attorney Kabeiseman gave options for denial of short term rental applications that were doing business without a permit.

## 5. Work Session Discussion

Long Range Planning Project Advisory Committees

- Fox Ridge Road Area Plan
- Transportation System Plan Update
- Housing Needs Analysis / Economic Opportunity Analysis Update

Planning Director Richards said staff was working on long range planning and as part of the process had created project advisory committees. She asked for Planning Commissioner volunteers to be on these committees.

Chair Winfield and Commissioner Langenwalter volunteered for the Fox Ridge Road Area Plan, Commissioner Rankin and Schanche volunteered for the Transportation System Plan update, and Commissioner Deppe volunteered for the Housing Needs Analysis

## 6. Commissioner Comments

None

## 7. Staff Comments

Planning Director Richards discussed staff vacancies.

City Attorney Kabeiseman reviewed what constituted ex parte contacts.

# 8. Adjournment

Chair Winfield adjourned the meeting at 7:19 p.m.

# **EXHIBIT 2 - STAFF REPORT**

DATE:	October 6, 2022	

TO: Planning Commission

**FROM:** Heather Richards, Community Development Director and

Adam Tate, Associate Planner

SUBJECT: Short-Term Rental STR 7-22, 790 NW 21st Street, Tax Lot R4417-AC-02344

# STRATEGIC PRIORITY & GOAL:



# **GROWTH & DEVELOPMENT CHARACTER**

Guide growth & development strategically, responsively & responsibly to enhance our unique character.

# OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community

# Report in Brief:

This is a continuation of the Planning Commission decision regarding an application for a Short-Term Rental (STR 7-22) to operate a short-term rental at 790 NW 21st Street.

On September 1, 2022, the Planning Commission hosted a public hearing on STR 7-22. At that meeting, the Planning Commission voted to close the public hearing and the applicant requested that the record remain open for seven days for their response to the public testimony. The Planning Commission elected to keep the record open to 5:00 PM, September 9, 2022.

Emily LaGow, the applicant for STR 7-22, provided a response to the Planning Commission questions on September 9, 2022, which is attached to this staff report.

## Background:

## Subject Property & Request

The subject property is located at 790 NW 21st Street. The property is zoned R-1. A Short-Term Rental is a permitted use in the R-1 zone as specified in Section 17.15.010(P), subject to compliance with the referenced standards in Section 17.12.010(P), and subject to the procedures in specified in Section 17.72 of the Zoning Ordinance. See Figure 1 for Vicinity Map, Figure 2 for Zoning Map, Figure 3 for Applicant's Site Plan. See Figure 4 for map of Short-Term Rentals with 200' buffer shown. The application submittal includes additional materials including a floorplan diagram, photos, and information from the neighborhood meeting. Those additional materials are included in Attachment 1.

The application states that "the homeowner intends to rent their four (4) bedroom, three (3) bath home on a short-term basis. The rental will be made available for guest use year-round and will be professionally managed and maintained by iTrip Vacations management company."

**Procedural Facts:** Applications for Short-Term Rentals are processed according to the procedures for a "Director's Review with Notification" as specified in Sections 17.72.090 and 17.72.110 of the Zoning Ordinance. This process includes mailed notice to surrounding property owners and provides a 14-day comment period from the date the notice is mailed during which comments may be submitted, and during which a person who has received notice may request a public hearing. If a public hearing is requested, the Planning Commission becomes the decision-maker, and the public hearing is held by the Planning Commission following the procedures in Section 17.72.120 of the Zoning Ordinance.

The procedures for a Short-Term Rental application require the property owner to hold a neighborhood meeting prior to the submittal of an application, consistent with the requirements of Section 17.72.095 of the Zoning Ordinance. At the time an application is submitted, the application submittal must include the items specified in Section 17.72.085(G), providing evidence of compliance with the requirements for the Neighborhood Meeting.

This application (STR 7-22) was received on June 10, 2022, reviewed for completeness, and deemed complete on June 28, 2022. On July 4, 2022, a nearby property owner and resident notified the Planning Department that the property was operating as a short-term rental without a permit. The applicant was notified and requested to have a public hearing before the Planning Commission. The request for a hearing makes the Planning Commission, rather than the Planning Director, the decision-maker. However, the same standards and criteria apply to the application. The matter is now before the Planning Commission. A request for a public hearing is different from an appeal of a Planning Director's decision since a hearing is requested before a decision is issued by the Planning Director. The Planning Commission hearing date was set for September 1, 2022, and notice of the Planning Commission hearing was mailed to property owners on August 3, 2022, in accordance with Section 17.72.120 of the Zoning Ordinance.

The application went to a public hearing of the Planning Commission because it was found to be operating as a short-term rental before its application was approved. A neighbor emailed the Planning Director about the situation, and the matter was put into compliance by code enforcement. The applicant was made aware of the situation and given two options; to either withdraw the application or come before a public hearing of the Planning Commission to make their case. The applicant chose the latter option which will be reviewed at the September 1<sup>st</sup> public hearing.

The applicant stated that this issue arose due to the property management company accidentally listing the property for a short-term rental basis after it had to move guests from another nearby short-term rental to this property due to an emergency situation.

The decision of the Planning Commission is the final decision unless appealed to City Council. If appealed, the City Council would then be the final local decision-maker, and the same criteria and standards would continue to apply. The City Council's decision can also be appealed to the Oregon Land Use Board of Appeals (LUBA).

The Planning Commission public hearing is conducted in accordance with quasi-judicial hearing procedures specified in Section 17.72.130 of the Zoning Ordinance, and the application is subject to the 120-day processing timeline.

Quasi-judicial procedures and decision-making are conducted in accordance with the procedures specified in Chapter 17.72 of the Zoning Ordinance.

If the application meets the applicable standards, it must be approved. If the application would comply with the criteria and standards with conditions of approval, it may only include those conditions which are necessary to comply with the applicable criteria and standards. If it doesn't meet the applicable criteria and standards, it must be denied. The Planning Commission is required to make findings regarding how the application does or doesn't meet the applicable standards. The burden of proof is on the applicant.

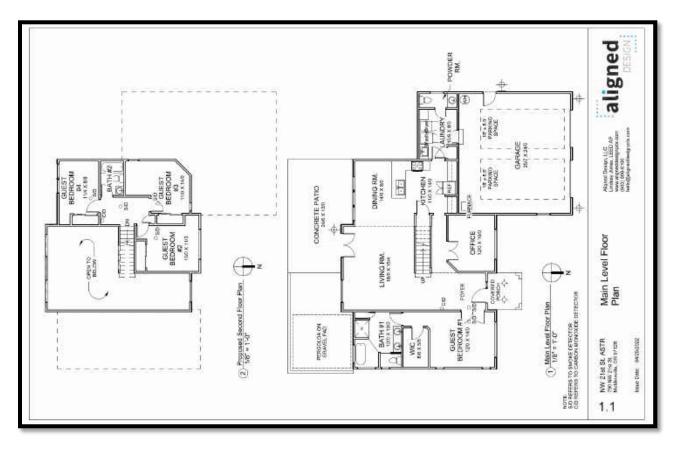
In accordance with state law, the application must be reviewed based on the standards in effect at the time of application.

The Planning Commission hosted the public hearing on September 1, 2022. The purpose of the hearing was to hear testimony to determine whether the Short-Term Rental application complied with the applicable standards specified in the Zoning Ordinance.

#### **Discussion**

During the course of the public hearing the Planning Commission had questions about the following items. The applicant chose to exercise their right for a seven-day period to respond to the concerns and provided an email response on September 9, 2022.

Section 17.12.010(P)(3) – One parking space is required for each guest room of the short-term rental to ensure on-street parking is not unduly impacted. The application indicated that the home was a "four (4) bedroom, three (3) bath home", and provided a floor plan that indicated the same. Please see below.



However it was disclosed at the public hearing that there are actually five guest rooms in the house offered in the rental listing. Below is a screenshot of the listing with an infographic that indicates four bedrooms, but the narrative states that *"this incredible five-bedroom retreat"*, and further detail in the listing describes two bedrooms on the main floor and three bedrooms on the second floor.

#### Screenshot from ITrip Vacations, Baker Creek Retreat, September 30, 2022:

Exquisite Wine Country Escape, New Décor Throughout, Patio & Fire Table, 1.5 Miles to McMinnville	ALL I	2.5 Bath	trauma Slates 10
Baker Creek Retreat	4 pedicoms	C. C. C.	invation Support 187
\$4,256 - \$11,032 / month in McMinnville canwoolinp.set	() Favorite	ê Sh	hare 🔲 Availability
Nestled in the heart of wine country within the Williamette Valley, this incredible five bedroom option for your family or small group visiting the area. Sitting a couple blocks away from Miche	-01 110.5 CM/DEC		Sleeping Arrangements
ust over a mile to downtown McMinnville, The Baker Creek Retreat is a fantastic option for yo	한 것이 없는 것이 다 가지 않는다.		Bedroom 1 (main floor): King
that this area of the Pacific Northwest has to offer.		Bedroom 2 (main floor): Queen	
As you enter, the foyer opens up to the entire home. You will find the open floor plan combinin clichen tayout, making it perfect for groups to enjoy logether. One of the many great features			Bedroom 3 (Second floor): Queen
accient agout, making it period; to groups to onjoy together, one of the many grout readings accrooms and laundry on this floor.	IS-UNCONCINENT N	WW1:	Bedroom 4 (Second floor): Queen
Ascending upstairs you will find another three exquisitely finished bedrooms including the bui a mounted big screen TV and gaming console. Another full bath accompanies these bedroom		d with	Bedroom 5 (Second floor): Bunk Twin (2)
n the backyard, you will find a gazebo that covers some plush outdoor seating and a fire table nore Adirondack chairs, some giant Jenga, and a treehouse overlooking the manicured lawn.		016 0	
every bit of the decor and furnishing was procured to create that perfect blend of style and co	mfort for your sta	у.	
Please don't hesitate to reach out if you have any questions at all.			

Every bit of the décor and furnishing was procured to create that perfect blend of style and comfort for your stay.

Please don't hesitate to reach out if you have any questions at all.

Sleeping Arrangements:

Bedroom 1 (main floor): King bed

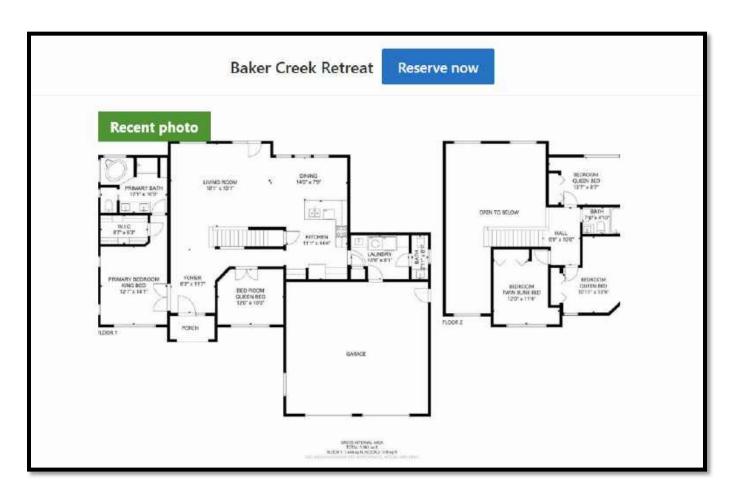
Bedroom 2 (main floor): Queen bed

Bedroom 3 (Second floor): Queen bed

Bedroom 4 (Second floor): Queen bed

Bedroom 5 (Second floor): Twin bunk bed

A floorplan on Booking.com shows five bedrooms. (Screenshot, September 30, 2022):



Photos of five bedrooms on booking.com (Screenshot, September 30, 2022):



The Planning Commission wanted clarification on how many bedrooms there were in the property and why there was a discrepancy.

Response from the applicant:

- Q. One parking spot per advertised bedroom?
- *R.* We will reduce the number of available bedrooms across all listings and house rules to 4 bedrooms/8 people maximum. We will ask that cars be parked in the garage as well as the driveway so that we don't have cars blocking the sidewalk. The House Rules and Listings will reflect this consistently.

Section 17.12.010(P)(7) – A person living within the 97128 zip code needs to be available to respond to issues at the property. It was not clear to the Planning Commission if the person listed on the application was that person or if it was the management company which is based in Portland.

Response from the applicant:

- Q. Has the applicant come up with a responsible person? Who is available at 11:00 at night? Was Erika alerted that she is the contact? Prove to us that someone is available. Why the two different names/email address for Erika?
- *R.* The code states: "That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to an emergency or complaint related to the vacation home rental." This statement does not specify whether the contact be a property manager, someone who can make "executive decisions," or a housecleaner. The spirit of the discussion on 9/1/22 indicates that the city would like a property manager, or business owner, or the property owner, to be available, but with respect, this seems like a discussion suited toward a change to the code, vs. a debate over the qualifications of the person that has been identified in this application to be the contact.

Therefore, our responsible person is Erika Correa. She lives within the geographic area of 97128, works for the property manager, iTrip, and has agreed to this responsibility. She does provide cleaning and inspection services of the home. The phone number and email listed on the application are hers. In addition, iTrip has provided her with an Avachato number (<u>www.avachato.com</u>) that we will also list in the House Rules. An Avachato number (<u>www.avachato.com</u>) that we will also list in the House Rules. An Avachato number allows us to automatically forward any call via text to her number to someone else in McMinnville in a pinch if she sick, travelling or unavailable for some other temporary reason. Her number will be dedicated to this property, so she knows when it rings, there is a complaint or an emergency. She also knows that if she gets a call or text and cannot resolve it immediately, she will contact upper management immediately for resolution. We kindly ask that the neighbors not test her so she can give her attention to emergencies only. We will make her available to the Planning Commission if they'd like to call and speak with her.

In addition, again within the spirit of the 9/1/22 discussion to have a "more responsible person be available," the applicant found a property manager: Wild Haven at 619 NE 3rd St, McMinnville, OR 97128. Michele Bertagna is identified as a Property Manager. Wild Haven would make Ms. Bertagna available for emergencies. However:

- Applicant is under contract with iTrip with termination allowed with 60 days' notice. Applicant is unable to switch to the new property manager in time for the 9/9 deadline for written feedback to the Commission.
- There is no guarantee that Ms. Bertagna will be available 24/7 either as she has other clients, sleeps, gets sick, and presumably takes vacations periodically. The solution we have provided above ensures that Erika (or her phone, set to forward to an iTrip contact in McMinnville) will be available for calls at any time day or night to a local contact.
- Per a brief discussion with Ms. Bertagna on Thursday, 9/8, it is the applicant's understanding that this alternative property management company does not immediately offer the call forwarding or monitoring services offered by iTrip (i.e., a decibel meter; likely these services could be added in time). However,

iTrip offers a more comprehensive set of services now to manage the STR to code overall, help ensure the neighbors aren't disturbed and that issues get resolved quickly.

Additional response from the applicant:

- Q. Testimony that came in that no one answered the 24/7 hotline and that it ends at 11PM. Opportunity to respond to that?
- *R.* From 11:00 pm to 7:00 AM the calls go to a call center. Depending on the region, the call center contacts the appropriate manager or whomever else depending on the issue. If for any reason the person they try to reach can't be reached, it escalates up to the next person all the way to the two owners of the company.

## Applicable Standards and Issues – Staff Review

Use and development of properties in the R-1 zone are subject to the applicable standards of the zone and general provisions of the Zoning Ordinance. No modifications to the site or the exterior of the existing single-family dwelling are proposed at this time, so the only applicable standards for the proposed short-term rental are those listed in Section 17.12.010(P) for use of the property for a Short-Term Rental.

These standards and associated staff review are summarized below. The specific findings regarding the applicable standards are addressed in the Decision Document.

Standard	Summary of Findings
17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	<b>Satisfied.</b> The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	<b>Satisfied.</b> The map provided as <i>Figure 4</i> shows no other short-term rental within 200 feet.
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	<ul> <li>Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling.</li> <li>As an ongoing condition of approval, the structure shall retain the characteristics of a residence.</li> </ul>

#### Summary of Findings Regarding Consistency with Applicable Standards

3. That a minimum of one off-street parking space be provided for each guest room.	<b>Not Satisfied.</b> The application stated that there were four guest rooms and four off-street parking spaces. During the due diligence of the public hearing it was learned that there are five guest rooms. The applicant does not have a provision for five off-street parking spaces. Advertisements online show the house furnished and advertised as five guest rooms.
4. That signage is limited to only one non- illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	<ul><li>Satisfied with Conditions. No signage is proposed at this time.</li><li>As an ongoing condition of approval, any signage shall comply with this standard.</li></ul>
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	<b>Satisfied with Conditions.</b> As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	<ul> <li>Satisfied with Conditions. The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application.</li> <li>As an ongoing condition of approval, the structure shall remain in compliance with this standard.</li> </ul>
7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	<b>Not Clear.</b> The property owner in their rebuttal provided conflicting information. One response states that Erika Correa will be available 24 hours per day seven days a week, and another response indicates that the short term rental will be managed with a call service from 11 PM to 7 AM.

<ul> <li>8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:</li> <li>a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or</li> <li>b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.</li> </ul>	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	<b>Satisfied with Conditions.</b> This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	Not Applicable. Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above.

CONCLUSION & RECOMMENDATION:	<ul> <li>The proposed Short-Term Rental application is problematic in three primary ways:</li> <li>1) The property was operated as a short-term rental without a permit. The management company, ITrip placed a family from another rental into the property over the 4<sup>th</sup> of July weekend when the air conditioning went out on the other rental.</li> </ul>
	2) The application indicated that there were four guest rooms and the property had the required four off-street parking spaces. With due diligence, it was learned that there were five guest rooms and the applicant was going to rely on the management company to limit short-term rentals to four guest rooms and allow long-term rentals to be rented with five guest rooms.
	<ul> <li>3) Testimony was provided that the applicant's local contact was not available after 11 PM. The rebuttal from the applicant is confusing.</li> <li>The permit criteria are not met with the application. Staff recommends a denial.</li> </ul>

# **Staff Recommendation:**

Based on the new information that was uncovered at the public hearing, staff is recommending denial of the permit application.

# Figure 1. Vicinity Map

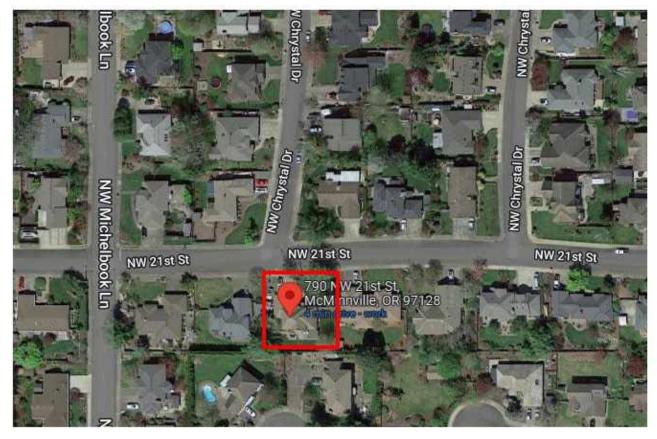


Figure 2. Zoning Map

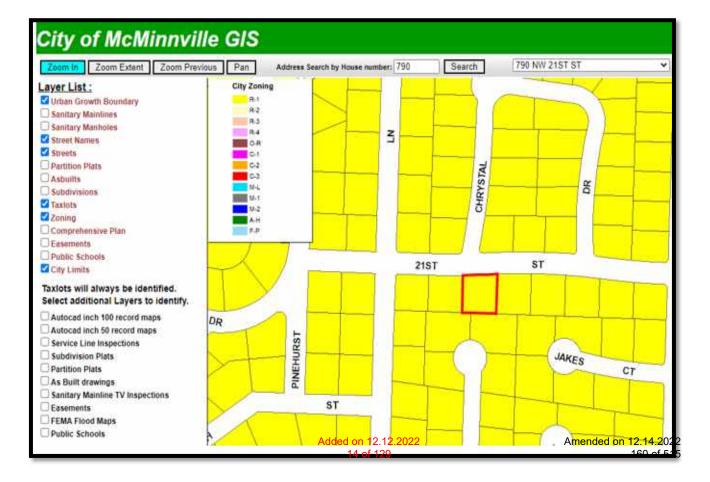
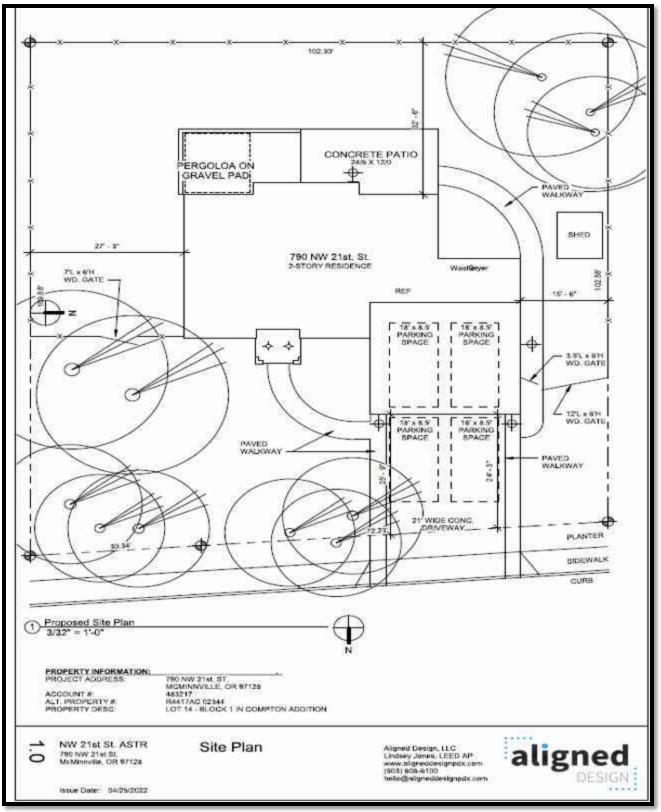


Figure 3. Applicant's Site Plan







AT



503-434-7311 www.mcminnvilleoregon.gov

# DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A SHORT-TERM RENTAL AT 790 NW 21st STREET

DOCKET:	STR 7-22

**REQUEST:** Application to permit a short-term rental.

- LOCATION: 790 NW 21st St. Tax Lot: R4417-AC-02344
- **ZONING:** R-1 (Single-Family Residential)
- APPLICANT: Emily (Joyce) LaGow
- **STAFF:** Heather Richards, Community Development Director Adam Tate, Associate Planner

# DATE DEEMED

**COMPLETE:** July 11, 2022

## **DECISION MAKING**

**BODY & ACTION:** The McMinnville Planning Commission makes the final decision unless the Planning Commission's decision is appealed to the City Council.

## DECISION DATE

**& LOCATION:** September 1, 2022, Hybrid Public Hearing. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 879 8953 9440

October 6, 2022, Hybrid Public Meeting. Kent Taylor Civic Hall, 200 NE Second Street. Zoom Meeting, Meeting ID: 834 6597 3462

- **PROCEDURE:** The application is processed in accordance with the procedures in Section 17.72.120 of the Zoning Ordinance. This short-term rental was found to be operating without a permit and referred to code compliance. The application will now be heard before a public hearing and reviewed by the Planning Commission. in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the Zoning Ordinance.
- **CRITERIA:** The applicable criteria and standards for a Short-Term Rental are specified in Section 17.12.010(P) of the Zoning Ordinance.
- APPEAL: As specified in Section 17.72.180 of the Zoning Ordinance, the Planning Commission's decision may be appealed to the City Council within 15 calendar days of the date the written notice of decision is mailed. The City's final decision

is subject to the 120-day processing timeline, including resolution of any local appeal.

## DECISION

Based on the findings and conclusionary findings, the Planning Commission finds the applicable criteria are **SATISFIED** / **NOT SATISFIED** and **APPROVES** / **APPROVES WITH CONDITIONS** / **DENIES** the Short-Term Rental permit for the property at 790 NW 21<sup>st</sup> Street (STR 7-22).

Planning Commission:\_\_\_\_\_\_ Sidonie Winfield, Chair of the McMinnville Planning Commission

Date:	

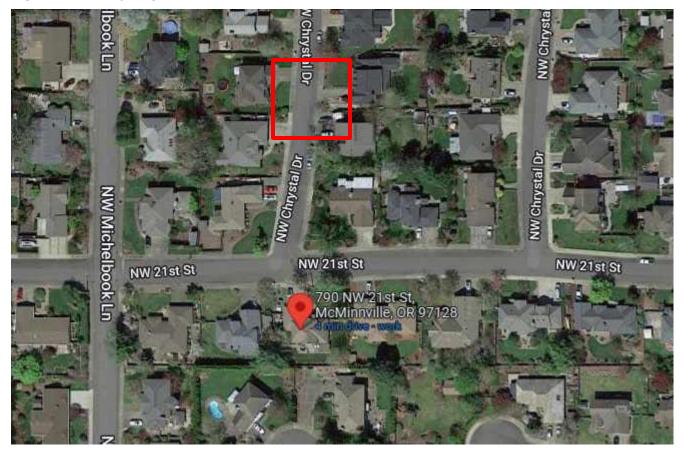
Planning Department: \_\_\_\_\_ Heather Richards, Planning Director Date:\_\_\_\_\_

# I. APPLICATION SUMMARY:

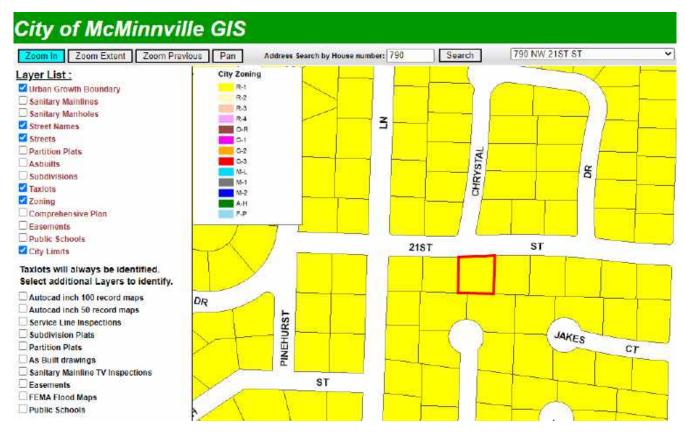
# Subject Property & Request

The subject property is located at 790 NW 21st Street. The property is zoned R-1. A Short-Term Rental is a permitted use in the R-1 zone as specified in Section 17.15.010(P), subject to compliance with the referenced standards in Section 17.12.010(P), and subject to the procedures specified in Section 17.72 of the Zoning Ordinance. See Figure 1 for Vicinity Map, Figure 2 for Zoning Map, Figure 3 for Applicant's Site Plan. See Figure 4 for map of Short-Term Rentals with 200' buffer shown. The application submittal includes additional materials including a floorplan diagram, photos, and information from the neighborhood meeting. Those additional materials are included in Attachment 1.

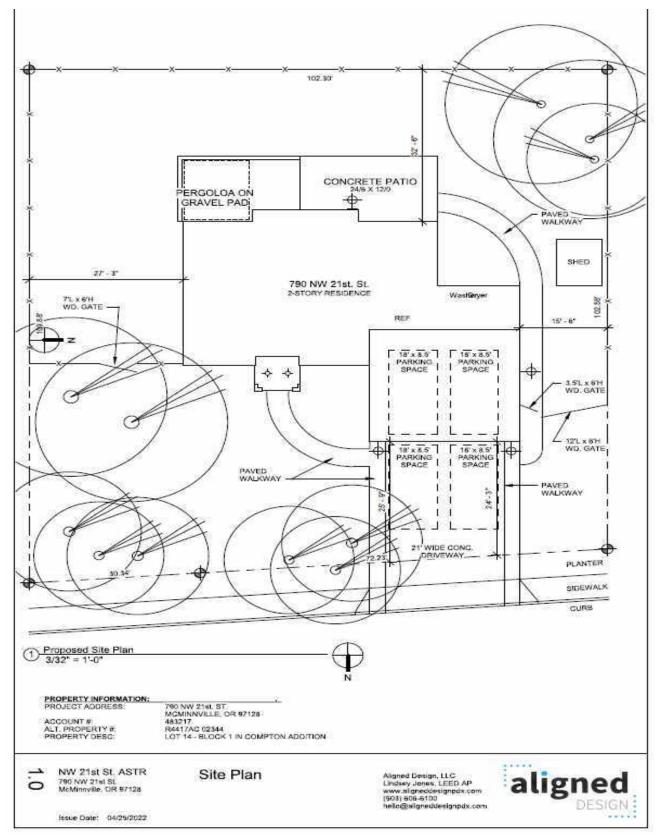
# Figure 1. Vicinity Map



# Figure 2. Zoning Map







# Figure 4. Map of Short-Term Rentals with 200-Foot Buffer



## Summary of Applicable Standards and Issues

Use and development of properties in the R-1 zone are subject to the applicable standards of the zone and general provisions of the Zoning Ordinance. No modifications to the site or existing single-family dwelling are proposed at this time, so the only applicable standards for the proposed short-term rental are those listed in Section 17.12.010(P) for use of the property for a Short-Term Rental.

The standards and associated findings are summarized below. The specific findings regarding the applicable standards are addressed in Section VII of this Decision Document. As a Type II land-use application, the criteria need to be clear and objective.

The table below illustrates how the application either complies or does not comply with applicable criteria.

# Summary of Findings Regarding Consistency with Applicable Standards Standard Summary of Findings

17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	<b>Satisfied.</b> The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	<b>Satisfied.</b> The map provided as <i>Figure 4</i> shows no other short-term rental within 200 feet.
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	<ul> <li>Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling.</li> <li>As an ongoing condition of approval, the structure shall retain the characteristics of a residence.</li> </ul>
3. That a minimum of one off-street parking space be provided for each guest room.	<b>Not Satisfied.</b> The application stated that there were four guest rooms and four off-street parking spaces. During the due diligence of the public hearing it was learned that there are five guest rooms. The applicant does not have a provision for five off-street parking spaces. Advertisements online show the house furnished and advertised as five guest rooms.
4. That signage is limited to only one non- illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	<ul><li>Satisfied with Conditions. No signage is proposed at this time.</li><li>As an ongoing condition of approval, any signage shall comply with this standard.</li></ul>
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	<b>Satisfied with Conditions.</b> As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	<b>Satisfied with Conditions.</b> The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application.
	As an ongoing condition of approval, the structure shall remain in compliance with this standard.

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	<b>Not Clear.</b> The property owner in their rebuttal provided conflicting information. One response states that Erika Correa will be available 24 hours per day seven days a week, and another response indicates that the short term rental will be managed with a call service from 11 PM to 7 AM.
<ul> <li>8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:</li> <li>a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or</li> <li>b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.</li> </ul>	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	Not Applicable. Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above. If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints, and will be listed as a condition of approval for this application.

# Summary of Findings Regarding Consistency with Applicable Standards (Table on next page)

Standard	Summary of Findings
17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	<b>Satisfied.</b> The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	<b>Satisfied.</b> The map provided as <i>Figure 4</i> shows no other short-term rental within 200 feet.
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	<ul> <li>Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling.</li> <li>As an ongoing condition of approval, the structure shall retain the characteristics of a residence.</li> </ul>
3. That a minimum of one off-street parking space be provided for each guest room.	<b>Not Satisfied.</b> The application stated that there were four guest rooms and four off-street parking spaces. During the due diligence of the public hearing it was learned that there are five guest rooms. The applicant does not have a provision for five off-street parking spaces. Advertisements online show the house furnished and advertised as five guest rooms.
4. That signage is limited to only one non- illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	Satisfied with Conditions. No signage is proposed at this time. As an ongoing condition of approval, any signage
	shall comply with this standard.
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	<b>Satisfied with Conditions.</b> As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	<b>Satisfied with Conditions.</b> The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application.
	As an ongoing condition of approval, the structure shall remain in compliance with this standard.

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	<b>Not Clear.</b> The property owner in their rebuttal provided conflicting information. One response states that Erika Correa will be available 24 hours per day seven days a week, and another response indicates that the short term rental will be managed with a call service from 11 PM to 7 AM.
<ul> <li>8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:</li> <li>a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or</li> <li>b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.</li> </ul>	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	<b>Satisfied with Conditions.</b> This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	Not Applicable. Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above. If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints, and will be listed as a condition of approval for this application.

# II. CONDITIONS: (If the Planning Commission elects to approve the application, these conditions of approval will apply.)

- 1. That five (5) off-street parking spaces (paved or of a hardscape surface) are required for the use of the Short Term Rental, per the five (5) guest rooms provided, as indicated on the application submitted June 10, 2022.
- 2. That 10-year Lithium battery-powered smoke alarms and CO2 alarms must be installed in accordance with Sections R314 and R315 of the Building Code. For this one-story building, smoke alarms shall be installed in each sleeping room and outside each separate sleeping area within 21 feet of any door to a sleeping room, measured along a path of travel. On CO2 alarm is required.
- 3. That prior to use of the subject property for vacation home rental purposes, the applicant shall register with the McMinnville Finance Department as a transient lodging provider. Local Transient Lodging Tax shall be collected and remitted to the City as provided in McMinnville Ordinance No. 4974.
- 4. That, as this use is required to be occupied as a single-family residence, occupancy of the vacation home rental shall be limited at all times to no more than five unrelated persons, or one or more individuals related by blood, marriage, adoption, or legal guardianship, or other duly authorized custodial relationship.
- 5. That all other requirements of Section 17.12.010(P) of the Zoning Ordinance referencing vacation home rental use shall be complied with throughout the time this property is used for such purpose, which are outlined below.
  - A. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.
  - B. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.
  - C. That a minimum of one off-street parking space be provided for each guest room.
  - D. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.
  - E. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.
  - F. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.
  - G. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.
  - H. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership,

the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:

- a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
- b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.
- I. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.
- J. Complaints on conditions "A" through "I" above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

# III. ATTACHMENTS:

- 1. STR 7-22 Application and Attachments (on file with the Planning Department)
- 2. Public Testimony:

# IV. COMMENTS:

## **Public Comments**

- 1. Email received July 4, 2022, from Mark Pitts, notifying the Planning Director that the short-term rental was operating before their permit was approved.
- 2. Email received on August 29, 2022, from Mark Pitts
- 3. Email received on August 30, 2022 from Kelli Grinch
- 4. Email received from Jay Post on August 30, 2022
- 5. Email received from Kathy Loving on September 1, 2022

# V. FINDINGS OF FACT - PROCEDURAL FINDINGS

- 1. The applicant mailed notice of a neighborhood meeting dated April 27, 2022, and held a neighborhood meeting on May 25, 2022.
- 2. The applicant submitted the Short-Term Rental application (STR 7-22) on June 10, 2022.
- 3. On July 4, 2022, a local resident reported to the Planning Director that the property was operating as a short-term rental before their application was approved, and provided an Airbnb listing showing the property for rent.

- 4. On July 5, 2022, the property was put into code compliance and the property owner was notified that they must stop current short-term rental operations and given the option to either withdraw their permit or have it go before a public hearing of the Planning Commission.
- 5. On July 11, 2022, the applicant informed the Planning Director that they wanted to move forward with the application and the application was deemed complete.
- 6. The hearing date was set for September 1, 2022. On August 3, 2022, notice of the application and the September 1, 2022, Planning Commission public hearing was mailed to property owners within 300 feet of the subject property in accordance with Section 17.72.120 of the Zoning Ordinance.
- 7. Notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.120 of the Zoning Ordinance: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas.

No comments were received from any agencies.

- 8. Notice of the application and the September 1, 2022, Planning Commission public hearing was published in the News Register on Friday, August 26, in accordance with Section 17.72.120 of the Zoning Ordinance.
- 9. On September 1, 2022, the Planning Commission held a duly noticed public hearing to consider the application. The public hearing was closed after hearing testimony on September 1, 2022.
- 10. On October 6, 2022, the Planning Commission deliberated and rendered a decision.

## VI. FINDINGS OF FACT - GENERAL FINDINGS

- 1. Location: 790 NW 21<sup>st</sup> St. Tax Lot R4417-AC-02344
- 2. **Size:** Approximately 0.2489 acres
- 3. Comprehensive Plan Map Designation: Residential
- 4. **Zoning:** R-1 (Single-Family Residential)
- 5. **Overlay Zones/Special Districts:** None
- 6. **Current Use:** Single-family dwelling
- 7. Inventoried Significant Resources:
  - a. Historic Resources: None
  - b. **Other:** None identified
- 8. Other Features:
  - a. **Slopes:** The site is generally flat.
  - b. **Easements:** No public easements identified

- 9. **Utilities:** The property is served with basic municipal services, including water, sewer, power, and franchise utilities.
- 10. **Transportation:** NW 21<sup>st</sup> Street is classified as a local residential street in the McMinnville TSP. Local streets have a 50-foot right-of-way.

#### VII. CONCLUSIONARY FINDINGS:

The Conclusionary Findings are the findings regarding consistency with the applicable criteria and standards for the application.

The applicable standards for a Short-Term Rental are specified in Section 17.12.010 (O) of the Zoning Ordinance. Development standards for the R-1 Zone are provided in Chapter 17.12 of the Zoning Ordinance; however, the proposed short-term rental will be located within the existing single-family dwelling, and no new development is proposed at this time.

#### McMinnville Zoning Ordinance

The following Sections of Title 17, Zoning Ordinance, of the McMinnville Municipal Code provide criteria and standards applicable to the request:

Section 17.12.010 lists permitted uses in the R-1 Zone. Subsection (P) provides the following:

P. Short-term rental, subject to the provisions of Section 17.72.110

**FINDING: SATISFIED WITH CONDITIONS.** The proposed use described in the application is single-family home used for a short-term rental. These are both permitted uses.

Section 17.12.010(P) provides the following:

P. Short-term rental, subject to the provisions of Section 17.72.110 and the following standards.

Section 17.72.110. Applications – Director's Review with Notification.

**FINDING: SATISFIED.** Section 17.72.110 provides the applicable procedural requirements. As addressed in Section V of this Decision Document, the application has been processed in accordance with the applicable procedures.

*Standards in 17.12.010(P):* 

1. Short-term rentals shall not be located within 200 feet of another short-term rental, or on the same property as another short-term rental.

**FINDING: SATISFIED.** There is no other short-term rental within 200 feet of another short-term rental. There is not another short-term rental on the subject property. See *Figure 4* for a map of short-term rentals.

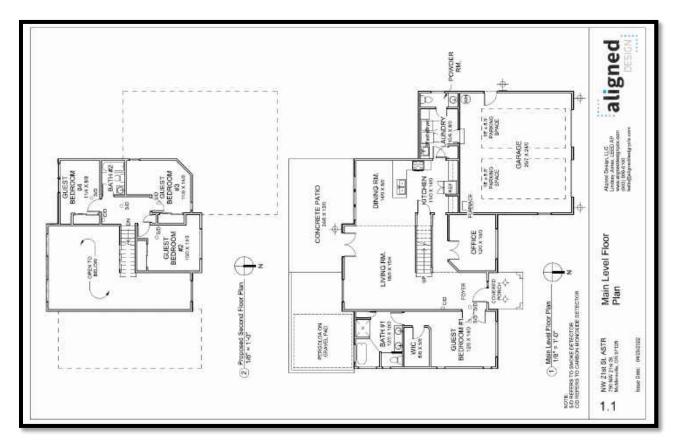
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.

**FINDING: SATISFIED WITH CONDITIONS.** The existing use in which the proposed short-term rental is proposed is a single-family dwelling. No outward modifications to the residence are proposed at this time.

3. That a minimum of one off-street parking space be provided for each guest room.

**FINDING: NOT SATISFIED.** The application indicated that the home was a *"four (4) bedroom, three (3) bath home"*, and provided a floor plan that indicated the same. Please see below. As such, the applicant provided a site plan with four off-street parking spaces. Based on testimony at the public hearing and more research it has been determined that the property has five guestrooms and the applicant does not have room for five off-street parking spaces on the site plan.

## Floor plan provided with the application illustrating four bedrooms:



However it was disclosed at the public hearing that there are actually five guest rooms in the house offered in the rental listing. Below is a screenshot of the listing with an infographic that indicates four bedrooms, but the narrative states that *"this incredible five-bedroom retreat"*, and further detail in the listing describes two bedrooms on the main floor and three bedrooms on the second floor.

# Screenshot from ITrip Vacations, Baker Creek Retreat, September 30, 2022:

Exquisite Wine Country Escape, New Décor Throughout, Patio & Fire Table, 1.5 Miles to McMinnville Baker Creek Retreat	4 Bedrooms	2.5 Batter	Sleeps 20
\$4,256 - \$11,032 / month in McMinnville carwolitrip.net	🗢 Favorite	🙆 Sha	re Availability
Nestled in the heart of wine country within the Williamette Valley, this incredible five bedroom retreat is the perfect option for your family or small group visiting the area. Sitting a couple blocks away from Michelbook Country Club and			Sleeping Arrangements
Just over a mile to downtown McMinrville, The Baker Creek Retreat is a fantastic option for you to explore everything that this area of the Pacific Northwest has to offer. As you enter, the foyer opens up to the entire home. You will find the open floor plan combining the living, dining, and kitchen tayour, making it perfect for groups to enjoy together. One of the many great features is the two main level bodrooms and laundry on this floor. Ascending upstairs you will find another three exquisitely finished bedrooms including the bunk room, equipped with a mounted big screen TV and gaming console. Another full bath accompanies these bedrooms as well.			Bedroom 1 (main floor): King
			Bedroom 2 (main floor): Queen
			Bedroom 3 (Second floor): Queen
		VOI .	Bedroom 4 (Second floor): Queen
		d with	Bedroom 5 (Second floor): Bunk Twin (2)
In the backyard, you will find a gazebo that covers some plush outdoor seating and a fire t more Adirondack chairs, some glant Jenga, and a treehouse overlooking the manicured la		e are	
Every bit of the decor and furnishing was procured to create that perfect blend of style and	d comfort for your sta	у.	
Please don't hesitate to reach out if you have any guestions at all.			

Every bit of the décor and furnishing was procured to create that perfect blend of style and comfort for your stay.

Please don't hesitate to reach out if you have any questions at all.

Sleeping Arrangements:

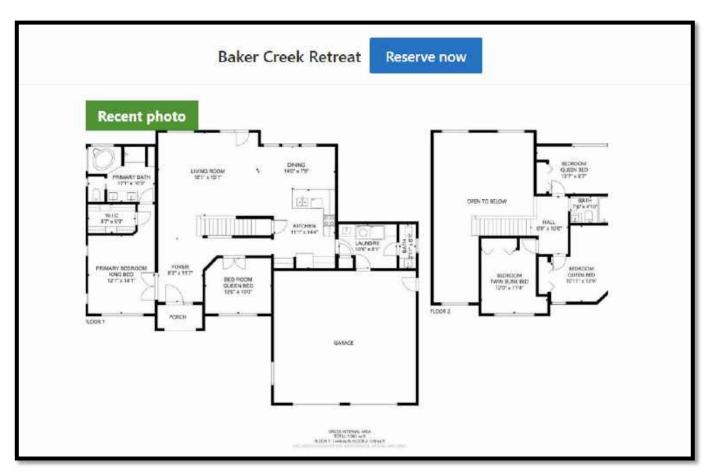
Bedroom 1 (main floor): King bed

Bedroom 2 (main floor): Queen bed

Bedroom 3 (Second floor): Queen bed

Bedroom 4 (Second floor): Queen bed

Bedroom 5 (Second floor): Twin bunk bed



A floorplan on Booking.com shows five bedrooms. (Screenshot, September 30, 2022):

Photos of five bedrooms on booking.com (Screenshot, September 30, 2022):



4. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.

**FINDING: SATISFIED WITH CONDITIONS.** The application doesn't indicate any proposed signage at this time. As an ongoing condition of approval, any future signage shall comply with this requirement.

5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.

**FINDING: SATISFIED WITH CONDITIONS.** This provision is an on-going requirement for the operation of the short-term rental and is included as a condition of approval.

6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.

**FINDING: SATISFIED WITH CONDITIONS.** Subsection (2)(d) of Ordinance No. 3997 specifies that, for a lodging house, that smoke detectors are required "in all corridors or areas giving access to rooms used for sleeping purposes, and in all sleeping rooms. Where sleeping rooms are on an upper level, an additional detector shall be placed at the center of the ceiling directly above the stairway."

The application identifies the location of smoke detectors consistent with this requirement, with a smoke detector in each guest room and the hallway, for a total of six smoke detectors and carbon monoxide detectors. This is a two-story single-family dwelling.

The application demonstrates compliance with this standard. As an ongoing condition of approval, the structure shall remain in compliance with this standard.

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental.

**FINDING: NOT SATISFIED.** The property owner does not live within the geographic area of the 97128 zip code. On the application, the applicant provided the contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental. The contact information and residence location are provided in Section 5 of the application form submitted by the applicant. The location of the residence is within the City of McMinnville and the geographic area of the 97128 zip code.

However, at the public hearing, it was disclosed that the number provided went to a call service from 11 PM to 7 AM. The applicant was asked to respond to that issue in a rebuttal report. A response was provided via email from Emily LaGow on September 9, 2022. The response from the applicant provided conflicting information.

Response from the applicant:

Q. Has the applicant come up with a responsible person? Who is available at 11:00 at night? Was Erika alerted that she is the contact? Prove to us that someone is available. Why the two different names/email address for Erika?

R. The code states: "That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to an emergency or complaint related to the vacation home rental." This statement does not specify whether the contact be a property manager, someone who can make "executive decisions," or a housecleaner. The spirit of the discussion on 9/1/22 indicates that the city would like a property manager, or business owner, or the property owner, to be available, but with respect, this seems like a discussion suited toward a change to the code, vs. a debate over the qualifications of the person that has been identified in this application to be the contact.

Therefore, our responsible person is Erika Correa. She lives within the geographic area of 97128, works for the property manager, iTrip, and has agreed to this responsibility. She does provide cleaning and inspection services of the home. The phone number and email listed on the application are hers. In addition, iTrip has provided her with an Avachato number (<u>www.avachato.com</u>) that we will also list in the House Rules. An Avachato number allows us to automatically forward any call via text to her number to someone else in McMinnville in a pinch if she sick, travelling or unavailable for some other temporary reason. Her number will be dedicated to this property, so she knows when it rings, there is a complaint or an emergency. She also knows that if she gets a call or text and cannot resolve it immediately, she will contact upper management immediately for resolution. We kindly ask that the neighbors not test her so she can give her attention to emergencies only. We will make her available to the Planning Commission if they'd like to call and speak with her.

In addition, again within the spirit of the 9/1/22 discussion to have a "more responsible person be available," the applicant found a property manager: Wild Haven at 619 NE 3rd St, McMinnville, OR 97128. Michele Bertagna is identified as a Property Manager. Wild Haven would make Ms. Bertagna available for emergencies. However:

- Applicant is under contract with iTrip with termination allowed with 60 days' notice. Applicant is unable to switch to the new property manager in time for the 9/9 deadline for written feedback to the Commission.
- There is no guarantee that Ms. Bertagna will be available 24/7 either as she has other clients, sleeps, gets sick, and presumably takes vacations periodically. The solution we have provided above ensures that Erika (or her phone, set to forward to an iTrip contact in McMinnville) will be available for calls at any time day or night to a local contact.
- Per a brief discussion with Ms. Bertagna on Thursday, 9/8, it is the applicant's understanding that this alternative property management company does not immediately offer the call forwarding or monitoring services offered by iTrip (i.e., a decibel meter; likely these services could be added in time). However, iTrip offers a more comprehensive set of services now to manage the STR to code overall, help ensure the neighbors aren't disturbed and that issues get resolved quickly.

Additional response from the applicant:

- Q. Testimony that came in that no one answered the 24/7 hotline and that it ends at 11PM. Opportunity to respond to that?
- *R.* From 11:00 pm to 7:00 AM the calls go to a call center. Depending on the region, the call center contacts the appropriate manager or whomever else depending on the issue. If for any reason the person they try to reach can't be reached, it escalates up to the next person all the way to the two owners of the company.
  - 8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short-term rental permit for the subject property will become void. The use of the subject property as a short-term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:
    - a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
    - b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.

**FINDING: SATISFIED WITH CONDITIONS.** The applicant is the current property owner at the time of application.

This code provision is an ongoing requirement for the operation of the short-term rental and is included as a condition of approval.

9. Permits must be renewed annually. Failure to renew the short-term rental permit annually will result in the permit becoming void, and the use of the subject property as a short-term rental will again be subject to the application and review procedures in Section 17.72.110.

**FINDING: SATISFIED WITH CONDITIONS.** This code provision is an ongoing requirement for the operation of the short-term rental, included as a condition of approval.

10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinances. If the short-term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

**FINDING: NOT APPLICABLE:** Although the applicant operated the short-term rental without a permit. This provision is for those short-term rentals that achieve a permit but violate one of the conditions above.

AT

From:	LaGow, Emily
То:	Heather Richards
Cc:	Melissa Wright; Corey Tigner; Ryan Tigner
Subject:	McMinnville Planning Commission, STR 7-22, Written Responses due 9/9
Date:	Friday, September 9, 2022 1:45:42 PM

#### This message originated outside of the City of McMinnville.

Hi Heather! See below for the responses to the Commission's & neighbors' questions from the Planning Commission meeting on 9/1/22. Please let me know if anything is unclear. Thank you!!

~\*~\*

Commissioners: Thank you for continued consideration for the application STR 7-22. Per your request from the 9/1/22 meeting, below are the written responses to your questions. I will be in attendance on 10/6 to provide any needed clarification.

Warm Regards, Emily LaGow

- Q. Once the permit is achieved, will applicant go to STR?
- R. Yes, but will give preference to LTR applications.
- Q. One parking spot per advertised bedroom?
- R. We will reduce the number of available bedrooms across all listings and house rules to 4 bedrooms/8 people maximum. We will ask that cars be parked in the garage as well as the driveway so that we don't have cars blocking the sidewalk. The House Rules and Listings will reflect this consistently.
- Q. Has the applicant come up with a responsible person? Who is available at 11:00 at night? Was Erika alerted that she is the contact? Prove to us that someone is available. Why the two different names/email address for Erika?
- R. The code states: "That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to an emergency or complaint related to the vacation home rental." This statement does not specify whether the contact be a property manager, someone who can make "executive decisions," or a housecleaner. The spirit of the discussion on 9/1/22 indicates that the city would like a property manager, or business owner, or the property owner, to be available, but with respect, this seems like a discussion suited toward a change to the code, vs. a debate over the qualifications of the person that has been identified in this application to be the contact.

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- Applicant is under contract with iTrip with termination allowed with 60 days' notice. Applicant is unable to switch to the new property manager in time for the 9/9 deadline for written feedback to the Commission.
- There is no guarantee that Ms. Bertagna will be available 24/7 either as she has other clients, sleeps, gets sick, and presumably takes vacations periodically. The solution we have provided above ensures that Erika (or her phone, set to forward to an iTrip contact in McMinnville) will be available for calls at any time day or night to a local contact.
- Per a brief discussion with Ms. Bertagna on Thursday, 9/8, it is the applicant's understanding that this alternative property management company does not immediately offer the call forwarding or monitoring services offered by iTrip (i.e., a decibel meter; likely these services could be added in time). However, iTrip offers a more comprehensive set of services now to manage the STR to code overall, help ensure the neighbors aren't disturbed and that issues get resolved quickly.
- Q. For July 4. Why didn't iTrip contact the property owner?
- R. The customer service rep was trying to place a guest that was having an a/c issue at a house. They saw that there was an opening at Emily's house but in their haste to help didn't realize it was 30+ day rental. The guest moved over on Saturday during the holiday weekend and we didn't realize what had happened until Sunday, and we worked with the City of McMinnville first thing Monday morning letting them know what happened and they verified that the listing was set back to 30+ days.
- Q. How long does it take to list a rental w/in your iTrip organization?
- R. Most of the time the fastest is 10 days to 2 weeks. In that time we'd make sure

paperwork is done, questionnaire filled out, get pictures scheduled which are about a week out. Wait for them to come back which is another five or so business days, build the listing and set it live. Within those two weeks we are putting together the guest book, doing final walkthroughs and addressing any final cleaning needs, and anything else that would be needed to be completed before the first guest arrives.

- Q. Why is this property in front of iTrip if we don't have the permit yet?
- R. Applicant wanted to have all administrative & prep work done with iTrip so that they would be ready to go live once the permit was approved. In addition, permits can take weeks and months at times to be approved, so finding tenants for 30+ day stays while this process takes place helps supplement income.
- Q. Testimony that came in that no one answered the 24/7 hotline and that it ends at 11PM. Opportunity to respond to that?
- R. From 11:00 pm to 7:00 AM the calls go to a call center. Depending on the region, the call center contacts the appropriate manager or whomever else depending on the issue. If for any reason the person they try to reach can't be reached, it escalates up to the next person all the way to the two owners of the company.
- Q. Why did the system flip [the listing] from an extended stay to a STR stay on July 4?
- R. It appears that the system tried to 'help' us since we were pushing through a sub 30 day booking. We have already talked to the development team to see we can add additional warnings and notifications before doing so.
- Q. iTrip states that the STR listing turned off on Sunday. Testimony that it continued on for two weeks. Is it just two people disagreeing?
- R. We believe so, yes. On Monday morning Corey spoke with someone at the City of McMinnville and explained the situation and asked what the best path moving forward would be. They did verify at the time that it was no longer available to book under 30 days.
- Q. Do I allow pets?
- R. Yes, this was confusing as you uncovered a misalignment between iTrip's listings and the Applicant's preferences. All Listings and House Rules will stipulate no pets for LTR & STR, in accordance with Applicant's preferences.



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### **MINUTES**

September 1, 2022 Planning Commissi Regular Meeting	6:30 pm on Zoom Online Meeting McMinnville, Oregon
Members Present:	Gary Langenwalter, Sylla McClellan, Brian Randall, Matt Deppe, Beth Rankin, Lori Schanche, Dan Tucholsky, and Sidonie Winfield
Members Absent:	
Staff Present:	Heather Richards – Planning Director, Tom Schauer – Senior Planner, and Adam Tate – Associate Planner

#### 1. Call to Order

Chair Winfield called the meeting to order at 6:30 p.m.

#### 2. Citizen Comments

None

#### 3. Approval of Minutes

- June 2, 2022
- June 16, 2022
- July 21, 2022

Commissioner Tucholsky moved to approve the June 2, June 16, and July 21, 2022 minutes. The motion was seconded by Commissioner Langenwalter and passed 8-0.

#### 4. Public Hearings:

#### A. Quasi-Judicial Hearing: Short-Term Rental (STR 7-22)

Request: Request for approval of a permit to use the existing dwelling as a Short-Term Rental.

Location: 790 NW 21st Street (Tax Lot R4417AC 02344)

Application: Emily (Joyce) LaGow

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application.

Chair Winfield said she was acquainted with people in the neighborhood, but it would not affect her decision.

Chair Winfield asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing.

Commissioners Schanche and McClellan had visited the site.

Staff Report: Associate Planner Tate presented the staff report. This was a request to approve a permit to use the existing dwelling at 790 NW 21<sup>st</sup> Street as a short term rental. He discussed the subject site, applicant's site plan, project summary, applicable review criteria, summary of findings, testimony received, and recommended conditions. The applicant stated the property was operating as a short term rental before the application was approved, which was a mistake by the property management company. Staff recommended approval of the application.

Questions: Commissioner Langenwalter asked for clarification on how many days a guest would be allowed to stay. Planning Director Richards said prior to permit approval, the applicant was renting the house out for 30-plus days, but once they got their permit, they planned to use it as a short term rental and rent it for less than 30 days.

Commissioner Deppe asked about the parking. Planning Director Richards said they were supposed to provide one off street parking space per guest room. Anyone was allowed to park on the public street.

Commissioner Schanche asked about a local contact person. Planning Director Richards said they had a local address in the application.

Applicant's Testimony: Emily LaGow read a statement discussing her background, management of the house, code violation on July 4, 2022, parking, and benefits of the rental to the community.

Commissioner Tucholsky asked about the number of bedrooms that would be rented. Ms. LaGow said there would be four bedrooms, with a maximum of eight guests. She would amend the parking rules that they could not park on the street.

Commissioner Schanche asked why the property owner was not contacted about the rental on July 4 and if the management company was local. Corey Tigner, iTrip Vacations, said they were located in Portland. He explained a family was in a different home where the air conditioning had gone out and they moved the family to this home unaware that it had not received approval yet.

Chair Winfield asked why it was in the rental pool when it had not been approved yet. Mr. Tigner said it was in the 30-plus day rental pool. His company had 24 hour phone support to answer calls at any time.

Melissa Wright, property manager, clarified the listing was live for a 30-plus day rental, which was a long term rental situation and was listed as 5 bedroom. This would shift when it went down to a short term rental and would be listed as 4 bedrooms.

Chair Winfield asked about letters mailed to the neighbors. Ms. Wright said letters were mailed to the addresses the City provided.

Chair Winfield asked who the local emergency contact would be. She was concerned about the public testimony that there was not a local emergency contact. Mr. Tigner said that person was listed in the paperwork.

Public Testimony:

Proponents: Emily Smith, Beaverton resident, had decorated this property and spoke about the integrity of the management company. She thought they were responsive at all hours.

Opponents: Mark Fitz, McMinnville resident, said it was a requirement to have a local contact who could make decisions that needed to be made. He said the house was still being advertised without approval. He thought the application should be denied.

Commissioner McClellan had also looked them up, and the house was listed as a long term rental currently.

Nick Grinich, McMinnville resident, agreed about the need for a local contact. He discussed the July 4 incident and how the applicant failed to get the permit before advertising the property. He thought it was willfully operated as a short term rental without a permit and the application should be denied.

Commissioner Langenwalter asked how long the property had been advertised as a short term rental. Planning Director Richards said she had tried it on July 4, and she was able to book it as a short term rental for the next weekend. She had recently tried it again, and it was no longer being advertised as a short term rental.

Kelly Grinich, McMinnville resident, said for two weeks after July 4 she was able to book the house as a short term rental.

Rebuttal: Ms. LaGow said there would be someone on call 24 hours a day, 7 days a week. Ms. Wright asked if they tested the local contact as part of the process and if a listing could exist before the permit, but they could not accept guests into the home.

Planning Director Richards said they did not test local contacts. There had been complaints from neighbors and the neighbors raised the issue that they tried to contact somebody and that person was not available. They did not look at all the listings, but if they got a complaint, they did tests within the system. In this case, they received a complaint and she was able to book the house for two nights when it did not have a short term permit.

Mr. Tigner said the July 4 incident was a combination of factors and rare circumstance. Once they found out about it, they removed it.

Commissioner Tucholsky said there was testimony that it was up for two weeks. Mr. Tigner said they did not go far enough in the booking system. If they had, they would have found it was not available.

There was discussion regarding short term rental code update, upcoming short term rental applications, and options for Commission action.

Chair Winfield closed the public hearing.

The applicant did not waive the 7 day period for submitting final written arguments. The applicant would have until September 9 at 5 p.m. to submit their arguments. The Commission would deliberate and make a decision on this agenda item on October 6, 2022.

#### B. <u>Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 2-20) and Zone</u> <u>Change, including Planned Development Overlay Designation (ZC 3-20)</u>

(Continued from June 2, 2022 PC Meeting)

#### Applicant has requested a continuance to October 20, 2022

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-2 (General Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for approximately 37.7 acres of a 90.4-acre property.

The 37.7 acres includes 4.25 acres intended for right-of-way dedication for a future frontage road. The application also shows a portion of the area subject to the map amendment intended for a north-south extension of Cumulus Avenue and future east-west street connectivity.

The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

- Location: 3310 SE Three Mile Lane, more specifically described at Tax Lot 700, Section 26, T.4S., R 4 W., W.M.
- Application: Kimco McMinnville LLC, c/o Michael Strahs

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Commissioner Langenwalter MOVED to CONTINUE the hearing for CPA 2-20/ZC 3-20 to October 20, 2022. The motion was seconded by Commissioner McClellan and PASSED 8-0.

#### C. <u>Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 1-21) and Zone</u> <u>Change, including Planned Development Overlay Designation (ZC 2-21)</u>

(Continued from June 2, 2022 PC Meeting)

Applicant has requested a continuance to October 20, 2022

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-2 (General Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for a property of approximately 8 acres. The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

- Location: 3330 SE Three Mile Lane, more specifically described at Tax Lot 600, Section 26, T.4S., R 4 W., W.M.
- Applicant: Ken Sandblast, Westlake Consultants, Inc. Representing property owner 3330 TML, c/o Bryan Hays

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Commissioner Tucholsky MOVED to CONTINUE the hearing for CPA 1-21/ZC 2-21 to October 20, 2022. The motion was seconded by Commissioner Rankin and PASSED 8-0.

#### D. <u>Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 2-21) and</u> Zone Change, including Planned Development Overlay Designation (ZC 3-21)

(Continued from June 2, 2022 PC Meeting)

#### Applicant has requested a continuance to October 20, 2022

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-L (Limited Light Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for approximately 21.1 acres of an 89.9-acre property, plus an additional 1.5 acres of the 89.9-acre property proposed to be dedicated for right-of-way at the time of development.

The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

- Location: Three Mile Lane and Cumulus Avenue, more specifically described at Tax Lot 100, Section 27, T.4S., R 4 W., W.M.
- Applicant: Ken Sandblast, Westlake Consultants, Inc. representing property owner DRS Land, LLC c/o Dan Bansen

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Commissioner Deppe MOVED to CONTINUE the hearing for CPA 2-21/ZC 3-21 to October 20, 2022. The motion was seconded by Commissioner Tucholsky and PASSED 8-0.

#### E. <u>Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 1-20) and Zone</u> <u>Change (ZC 1-20)</u>

(Continued from July 21, 2022 PC Meeting).

Applicant has requested a continuance to February 16, 2023

Request: An application for a Comprehensive Plan Map Amendment from Residential to Commercial and a Zone Change from County EF-80 to City C-3 (General Commercial) for approximately 1.2 acres of a 50.15-acre property.

The 50.15 acre parcel is within McMinnville's Urban Growth Boundary (UGB), and it is split by City limits, with approximately 9.5 acres inside City limits and approximately 40.5 acres outside City limits. The proposed map amendment would apply to the northerly 1.2-acre portion of the 9.5 acres within City limits.

The 9.5-acre portion of the property inside City limits has a combination of Comprehensive Plan Map designations and zoning designations: Commercial/C-3 on the front (approximately 7.3 acres), Residential/County EF-80 on the rear (approximately 1.2 acres), and a portion of Floodplain/F-P along the east and north boundaries (approximately 1 acre). The proposed amendment would change the 1.2 acres from Residential/County EF-80 to Commercial/C-3, so all of the nonfloodplain portion inside City limits would then be Commercial/C-3.

The unincorporated portion of the property within the UGB and outside City limits is approximately 40.5 acres. It is within the Floodplain Comprehensive Plan Map designation. It has County EF-80 zoning, with the entirety also being within the County's Floodplain Overlay Districts. The proposal would not change the Comprehensive Plan designation or county zoning of this unincorporated portion of the parcel.

- Location: 3225 NE Highway 99 West, more specifically described at Tax Lot 1500, Section 10, T.4S., R 4 W., W.M.
- Applicant: Cascade Steel Rolling Mills, c/o Jennifer Hudson representing property owner White Top Properties LLC

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Commissioner Rankin MOVED to CONTINUE the hearing for CPA 1-20/ZC 1-20 to February 16, 2023. The motion was seconded by Commissioner Tucholsky and PASSED 8-0.

#### 5. Action Items

None

6. Commissioner Comments

None

#### 7. Staff Comments

Planning Director Richards discussed the reasons for the continued public hearings. Senior Planner Bilodeau had left the City for a different job. She announced the American Planning Association Conference on October 27-29 if any Commissioner wanted to attend. She then discussed upcoming meetings.

#### 8. Adjournment

Chair Winfield adjourned the meeting at 9:15 p.m.

Heather Richards Secretary

## Planning Commission Public Hearing September 1, 2022

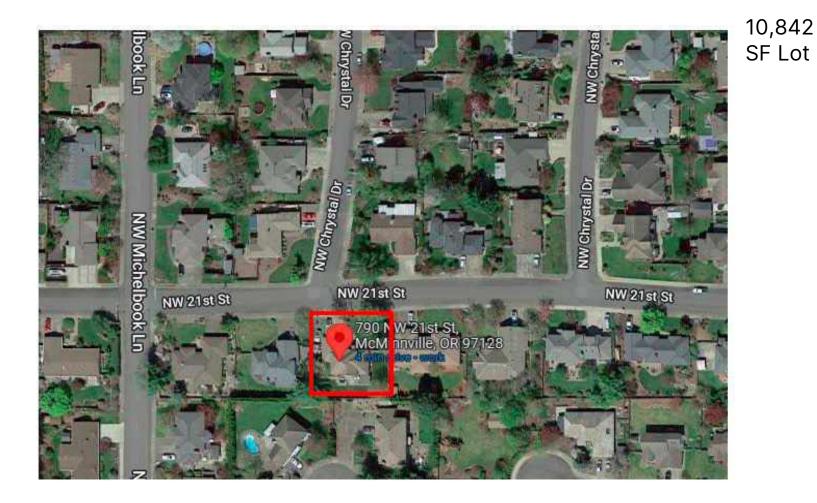
### STR 7-22 (Short-Term Rental) for 790 NW 21st Street





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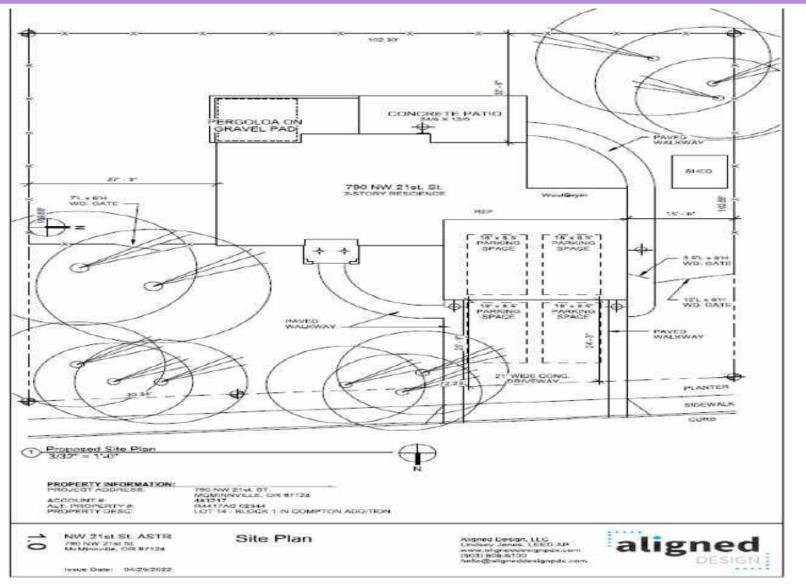
### Subject Site



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### **Applicant's Site Plan**



#### Planning Commission, 9.1.22 Added on 12.12.2022 49 of 129



### Short-Term Rentals with 200-foot buffer



Planning Commission, 9.1.22 Added on 12.12.2022 50 of 129



## **Project Summary**

- □ The property is located at 790 NW 21<sup>st</sup> Street, which is classified as a local street in the TSP. It is in an R-1 Zone. Short-term rentals are permitted in the R-1 zone as specified in Section 17.12.010 (O) of the MMC.
- ❑ After applying for a short-term rental, but before the application was reviewed and approved, the property was found to be operating as a short-term rental illegally and put into code compliance.
- □ The Applicant was given the option to withdraw the application or request a public hearing before the Planning Commission. The applicant requested the public hearing.
- Nearby property owners were notified, and several sent in comments to the Planning Department about this short-term rental application.

Planning Commission, 9.1.22 Added on 12.12.2022 51 of 129



## **Project Summary**

❑ Applicant and their property management company claim that the property was indeed operating as a short-term rental before the application was approved, but that it was a mistake by the property management company.

### □ This text for context is from Code Compliance Officer Nic Miles:

"I spoke with Corey, who owns the property management company (iTrip Vacations). He explained that over the holiday weekend, some guests staying in another short-term rental managed by his company were having AC issues. The guests contacted customer service and were moved to this property. He agreed that this was an error and that the house should not have been made available to the guests who had AC issues in their original location. Corey described it as a communication issue between customer service and the team managing that property working toward final approval with the City, combined with the holiday weekend making it hard for their internal teams to communicate with each other. He said the listings were setup to only accept 30+ day reservations, but he suspected that by letting guests stay over the holiday weekend the booking system somehow got reset and was allowing potential guests to select shorter stays. They have since adjusted both the VRBO and AirBNB listings to only allow for 30+ day reservations until they have an STR permit from the City. Corey can be reached at 503-799-7341."

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# **Today's Consideration**

Does the application meet the criterion test for a short-term rental?

Applicable Review Criteria Comprehensive Plan 17.12.010 (O) Permitted Uses in the R-1 Zone 17.72.080 Legislative or Quasi-Judicial Hearings 17.72.120 Application (Director's Decision) for which a Public Hearing is Requested (Short Term Rental)

Planning Commission, 9.1.22 Added on 12.12.2022 53 of 129



17.12.010 Permitted Uses

(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).

Satisfied. The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.

### 17.12.010 (P)

**1.** Short term rentals shall not be located within 200 feet of another short-term rental, or on the same property as another short-term rental.

Satisfied. The map provided as Figure 5 shows no other short-term rental within 200 feet.

**2.** Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.

**Satisfied with Conditions.** The application complies with this requirement at the time of application. The existing structure is a single-family dwelling. As an ongoing condition of approval, the structure shall retain the characteristics of a residence.

**3.** That a minimum of one off-street parking space be provided for each guest room.

**Satisfied with Conditions.** The application complies with this requirement at the time of application. The short-term rental will have four guest rooms and four parking spaces. As an ongoing condition of approval, the structure shall retain the minimum required parking spaces, to be available for guest use.

#### Planning Commission, 9.1.22 Added on 12.12.2022 54 of 129



Continued

**4.** That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.

**Satisfied with Conditions.** No signage is proposed at this time. As an ongoing condition of approval, any signage shall comply with this standard.

**5.** That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.

**Satisfied with Conditions.** As an ongoing condition of approval, the short-term rental use shall comply with this requirement.

**6.** That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.

**Satisfied with Conditions.** The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application.

As an ongoing condition of approval, the structure shall remain in compliance with this standard.

#### Planning Commission, 9.1.22 Added on 12.12.2022 55 of 129



Continued

**7.** That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental.

**Satisfied with Conditions.** The property owner has provided the contact information of a person living within the area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental.

As an ongoing condition of approval, this requirement shall continue to apply.

**8.** Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short-term rental permit for the subject property will become void. The use of the subject property as a short-term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:

a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or

b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.

**Satisfied with Conditions.** The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.

Planning Commission, 9.1.22 Added on 12.12.2022 56 of 129



Continued

**9.** Permits must be renewed annually. Failure to renew the short-term rental permit annually will result in the permit becoming void, and the use of the subject property as a short-term rental will again be subject to the application and review procedures in Section 17.72.110.

**Satisfied with Conditions.** This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.

**10.** Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short-term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

#### Unsatisfied.

The violation of this condition has led to this public hearing, as the use of the property as a short-term rental began before the application was reviewed and approved for such use violating Standard 8. Additionally, guests of the short-term rental parked in the street violating Standard 3.

If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints and will be listed as a condition of approval for this application.

Planning Commission, 9.1.22 Added on 12.12.2022 57 of 129



### Comments

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Wastewater Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas.

No comments were received.

### **Public Comments**

Notice of this request was mailed to property owners located within 300 feet of the subject site. Notice of the public hearing was provided in the News Register on Friday, August 26, 2022.



# **Comments: Testimony Received**

City of McMinnville Residents	Date Received	Address
Mark Pitts	08.29.2022	Not provided
Kelli Grinich	08.30.2022	708 NW 21 <sup>st</sup> St.
Jay Post	08.30.2022	2038 NW Michelbook Lane
Kathy Loving	09.01.2022	Not provided

Planning Commission, 9.1.22 Added on 12.12.2022 59 of 129



## **Recommended Conditions**

1. That four (4) off-street parking spaces (paved or of a hardscape surface) are required for the use of the Short-Term Rental, per the four (4) guest rooms provided, as indicated on the application submitted June 10, 2022.

2. That 10-year Lithium battery-powered smoke alarms and CO2 alarms must be installed in accordance with Sections R314 and R315 of the Building Code. For this one-story building, smoke alarms shall be installed in each sleeping room and outside each separate sleeping area within 21 feet of any door to a sleeping room, measured along a path of travel. One carbon monoxide alarm is required.

3. That prior to use of the subject property for vacation home rental purposes, the applicant shall register with the McMinnville Finance Department as a transient lodging provider. Local Transient Lodging Tax shall be collected and remitted to the City as provided in McMinnville Ordinance No. 4974.

4. That, as this use is required to be occupied as a single-family residence, occupancy of the vacation home rental shall be limited at all times to no more than five unrelated persons, or one or more individuals related by blood, marriage, adoption, or legal guardianship, or other duly authorized custodial relationship.

### **Planning Commission**, 9.1.22

Added on 12.12.2022 60 of 129



# **Recommended Conditions Cont.**

5. That all other requirements of Section 17.12.010(P) of the Zoning Ordinance referencing vacation home rental use shall be complied with throughout the time this property is used for such purpose, which are outlined below.

A. Short term rentals shall not be located within 200 feet of another short-term rental, or on the same property as another short-term rental.

B. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.

C. That a minimum of one off-street parking space be provided for each guest room.

D. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.

Planning Commission, 9.1.22 Added on 12.12.2022 61 of 129



# **Recommended Conditions Cont.**

E. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.

F. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.

G. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental.

H. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short-term rental permit for the subject property will become void. The use of the subject property as a short-term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:

Planning Commission, 9.1.22 Added on 12.12.2022 62 of 129



## **Recommended Conditions Cont.**

a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or

b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.

I. Permits must be renewed annually. Failure to renew the short-term rental permit annually will result in the permit becoming void, and the use of the subject property as a short-term rental will again be subject to the application and review procedures in Section 17.72.110.

J. Complaints on conditions "A" through "I" above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the short-term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

Planning Commission, 9.1.22 Added on 12.12.2022 63 of 129



### **Staff Recommendation**

Staff has reviewed the proposals for consistency with the applicable criteria. Absent any new evidence or findings to the contrary presented during the hearing, staff finds that, subject to the recommended conditions specified in the attached Decision Documents, all applicable criteria are satisfied.

Staff RECOMMENDS APPROVAL of the application, subject to the conditions specified in the attached Decision Document.



## Planning Commission Public Hearing September 1, 2022

### STR 7-22 (Short-Term Rental) for 790 NW 21st Street





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### **EXHIBIT 4 - STAFF REPORT**

DATE: September 1, 2022	
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TO: Planning Commission

**FROM:** Adam Tate, Associate Planner

SUBJECT: Short-Term Rental STR 7-22, 790 NW 21st Street, Tax Lot R4417-AC-02344

#### STRATEGIC PRIORITY & GOAL:

#### GROWTH & DEVELOPMENT CHARACTER

Guide growth & development strategically, responsively & responsibly to enhance our unique character.

### OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community

#### Report in Brief:

This proceeding is a quasi-judicial public hearing of the Planning Commission to consider an application for a Short-Term Rental (STR 7-22) to operate a short-term rental at 790 NW 21st Street.

Applications for Short-Term Rentals are processed according to the procedures for a "Director's Review with Notification" as specified in Sections 17.72.090 and 17.72.110 of the Zoning Ordinance. This process includes mailed notice to surrounding property owners and provides a 14-day comment period from the date the notice is mailed during which comments may be submitted, and during which a person who has received notice may request a public hearing. If a public hearing is requested, the Planning Commission becomes the decision-maker, and the public hearing is held by the Planning Commission following the procedures in Section 17.72.120 of the Zoning Ordinance.

The procedures for a Short-Term Rental application require the property owner to hold a neighborhood meeting prior to submittal of an application, consistent with the requirements of Section 17.72.095 of the Zoning Ordinance. At the time an application is submitted, the application submittal must include the items specified in Section 17.72.085(G), providing evidence of compliance with the requirements for the Neighborhood Meeting.

This application (STR 7-22) was received on June 10, 2022, reviewed for completeness, and deemed complete on June 28, 2022. On July 4, 2022, a nearby property owner and resident notified the Planning Department that the property was operating as a short-term rental without a permit. The applicant was notified and requested to have a public hearing before the Planning Commission. The request for hearing makes the Planning Commission, rather than the Planning Director, the decision-maker. However, the same standards and criteria apply to the application. The matter is now before the Planning Commission.

A request for a public hearing is different than an appeal of a Planning Director's decision, since a hearing is requested before a decision is issued by the Planning Director. The Planning Commission hearing date was set for September 1, 2022, and notice of the Planning Commission hearing was mailed to property owners on August 3, 2022, in accordance with Section 17.72.120 of the Zoning Ordinance.

The decision of the Planning Commission is the final decision, unless appealed to City Council. If appealed, the City Council would then be the final local decision-maker, and the same criteria and standards would continue to apply. The City Council's decision can also be appealed to the Oregon Land Use Board of Appeals (LUBA).

The Planning Commission public hearing is conducted in accordance with quasi-judicial hearing procedures specified in Section 17.72.130 of the Zoning Ordinance, and the application is subject to the 120-day processing timeline.

#### Background:

Quasi-judicial procedures and decision-making are conducted in accordance with the procedures specified in Chapter 17.72 of the Zoning Ordinance.

The purpose of this hearing is to determine whether the Short-Term Rental application complies with the applicable standards specified in the Zoning Ordinance. The hearing is not a referendum on the regulations and standards that apply to short-term rentals.

If the application meets the applicable standards, it must be approved. If the application would comply with the criteria and standards with conditions of approval, it may only include those conditions which are necessary to comply with the applicable criteria and standards. If it doesn't meet the applicable criteria and standards, it must be denied. The Planning Commission is required to make findings regarding how the application does or doesn't meet the applicable standards. The burden of proof is on the applicant.

In accordance with state law, the application must be reviewed based on the standards in effect at the time of application.

#### Subject Property & Request

The subject property is located at 790 NW 21st Street. The property is zoned R-1. A Short-Term Rental is a permitted use in the R-1 zone as specified in Section 17.15.010(P), subject to compliance with the referenced standards in Section 17.12.010(P), and subject to the procedures in specified in Section 17.72 of the Zoning Ordinance. See Figure 1 for Vicinity Map, Figure 2 for Zoning Map, Figure 3 for Applicant's Site Plan. See Figure 4 for map of Short-Term Rentals with 200' buffer shown. The application submittal includes additional materials including a floorplan diagram, photos, and information from the neighborhood meeting. Those additional materials are included in Attachment 1.

The application has come before a public hearing of the Planning Commission because it was found to be operating as a short-term rental before its application was approved. A neighbor emailed the Planning Director of the situation, and the matter was put into compliance by code enforcement. The applicant was made aware of the situation and given two options; to either withdraw the application, or come before a public hearing of the Planning Commission to make their case. The applicant chose the latter option that will be reviewed at the September 1<sup>st</sup> public hearing.

The applicant states that this issue arose due to the property management company accidentally listing the property for short-term rental basis after it had to move guests from another nearby short-term rental to this property due to an emergency situation.

This text is from Code Compliance Officer Nic Miles:

"I spoke with Corey, who owns the property management company (iTrip Vacations). He explained that over the holiday weekend, some guests staying in another short term rental managed by his company were having AC issues. The guests contacted customer service and were moved to this property."

"He agreed that this was an error and that the house should not have been made available to the guests who had AC issues in their original location. Corey described it as a communication issue between customer service and the team managing that property working toward final approval with the City, combined with the holiday weekend making it hard for their internal teams to communicate with each other."

"He said the listings were setup to only accept 30+ day reservations, but he suspected that by letting guests stay over the holiday weekend the booking system somehow got reset and was allowing potential guests to select shorter stays. They have since adjusted both the VRBO and AirBNB listings to only allow for 30+ day reservations until they have an STR permit from the City. Corey can be reached at 503-799-7341."

The application states that, "the homeowner intends to rent their four (4) bedroom, three (3) bath home on a short-term basis. The rental will be made available for guest use year round and will be professionally managed and maintained by iTrip Vacations management company." This is a permitted use, and the property can be used as such, as long as the permit for a short-term rental remains current, subject to the applicable standards. The home has four guest rooms for the short-term rental, with a maximum of eight guests. Four parking spaces are proposed, with two to be provided in the driveway, and two to be provided in the garage.

#### **Discussion**

#### Applicable Standards and Issues

Use and development of properties in the R-1 zone are subject to the applicable standards of the zone and general provisions of the Zoning Ordinance. No modifications to the site or the exterior of the existing single-family dwelling are proposed at this time, so the only applicable standards for the proposed short-term rental are those listed in Section 17.12.010(P) for use of the property for a Short-Term Rental.

These standards and associated findings are summarized below. The specific findings regarding the applicable standards are addressed in the Decision Document.

#### Summary of Findings Regarding Consistency with Applicable Standards

Standard	Summary of Findings
17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	<b>Satisfied.</b> The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	<b>Satisfied.</b> The map provided as <i>Figure 4</i> shows no other short-term rental within 200 feet.

2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	<ul> <li>Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling.</li> <li>As an ongoing condition of approval, the structure shall retain the characteristics of a residence.</li> </ul>
3. That a minimum of one off-street parking space be provided for each guest room.	Satisfied with Conditions. The application complies with this requirement at the time of application. The short-term rental will have four guest rooms and four parking spaces. As an ongoing condition of approval, the structure shall retain the minimum required parking spaces, to be available for guest use.
4. That signage is limited to only one non- illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.	<ul><li>Satisfied with Conditions. No signage is proposed at this time.</li><li>As an ongoing condition of approval, any signage shall comply with this standard.</li></ul>
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	<b>Satisfied with Conditions.</b> As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	Satisfied with Conditions. The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application. As an ongoing condition of approval, the structure shall remain in compliance with this standard.
7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	Satisfied with Conditions. The property owner has provided the contact information of a person living within the area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental. As an ongoing condition of approval, this requirement shall continue to apply.

<ul> <li>8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:</li> <li>a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or</li> <li>b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.</li> </ul>	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	<b>Satisfied with Conditions.</b> This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	<b>Unsatisfied.</b> The violation of this condition has led to this public hearing, as the use of the property as a short-term rental began before the application was reviewed and approved for such use violating Standard 8. Additionally, guests of the short-term rental parked in the street violating Standard 3. If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints, and will be listed as a condition of approval for this application.

CONCLUSION & RECOMMENDATION:	The proposed Short-Term Rental is a permitted use of the subject property. The submitted application demonstrates the proposal complies with the applicable standards.
	With conditions of approval and ongoing compliance with these standards, the proposal complies with all applicable standards for a short-term rental.
	Therefore, staff recommends approval with conditions as proposed in the submitted application, subject to the conditions of the Decision Document.

#### Public Comments

Public comments received are listed below and in the Decision Document, and they are attached as Exhibit 2 to the Decision Document. The following comments were received:

• Email received July 4, 2022, from Mark Pitts informing the Planning Department that the short-term rental at the property was operating without a permit.

Subsequent mailed notice was provided for the requested Planning Commission public hearing. As of the August 25, 2022, date of this staff report, no additional written public comments were submitted following the date that notice was mailed.

Additional written public comments received after the date of this staff report will be entered into the public record and provided to the Planning Commission. Any oral testimony presented at the Planning Commission public hearing will also be part of the record and reflected in the meeting minutes. As of the date of this staff report, none of the written public testimony submitted contends that a short-term rental is not a permitted use of the property per Section 17.15.010(P) or that the proposed short-term rental as described in the application fails to comply with any of the applicable standards listed in Section 17.12.010(P)(1)-(10).

#### Agency Comments

Notice of the proposal was sent to affected agencies and departments. Any comments received are provided in the Decision Document attached as Attachment 2.

#### Planning Commission Options (for Quasi-Judicial Hearing):

- APPROVE the application as proposed by the applicant with the conditions recommended in the attached Decision Document, <u>per the decision document provided</u> which includes the findings of fact.
- 2) **CONTINUE** the public hearing to a <u>specific date and time</u>.
- 3) Close the public hearing, but **KEEP THE RECORD OPEN** for the receipt of additional written testimony until a <u>specific date and time</u>.
- 4) Close the public hearing and **DENY** the application, <u>providing findings of fact</u> for the denial, specifying which criteria or standards are not satisfied, or specifying how the applicant has failed to meet the burden of proof to demonstrate all criteria or standards are satisfied, in the motion to deny.

#### Staff Recommendation:

Staff has reviewed the proposal for consistency with the applicable criteria and standards. Absent any new evidence to the contrary presented after this staff report or during the public hearing, staff finds that, subject to the recommended conditions specified in the attached Decision Document, the application submitted by the applicant and the record contain evidence that demonstrates that, subject to the conditions of approval in the Decision Document, the application complies with the applicable standards for a short-term rental and that the applicant has met the burden of proof.

Staff **RECOMMENDS APPROVAL** of the application, subject to the conditions specified in the attached Decision Document.

#### **Suggested Motion:**

BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, THE MATERIALS SUBMITTED BY THE APPLICANT, AND EVIDENCE IN THE RECORD, I MOVE THAT THE PLANNING COMMISSION <u>APPROVE</u> THE DECISION DOCUMENT AND <u>APPROVE</u> SHORT-TERM RENTAL APPLICATION STR 7-22 SUBJECT TO THE CONDITIONS SPECIFIED IN THE DECISION DOCUMENT.

#### Figure 1. Vicinity Map

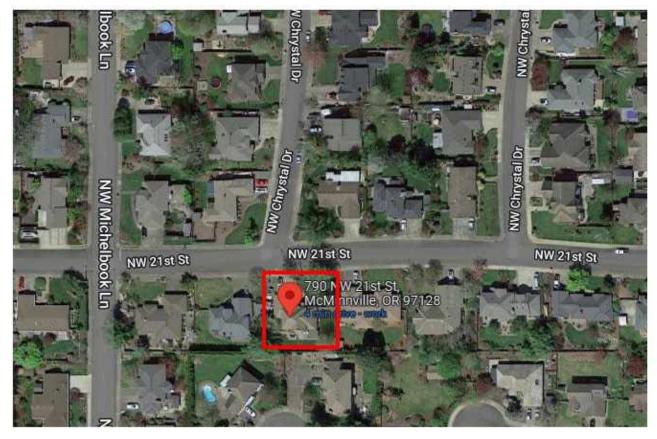


Figure 2. Zoning Map

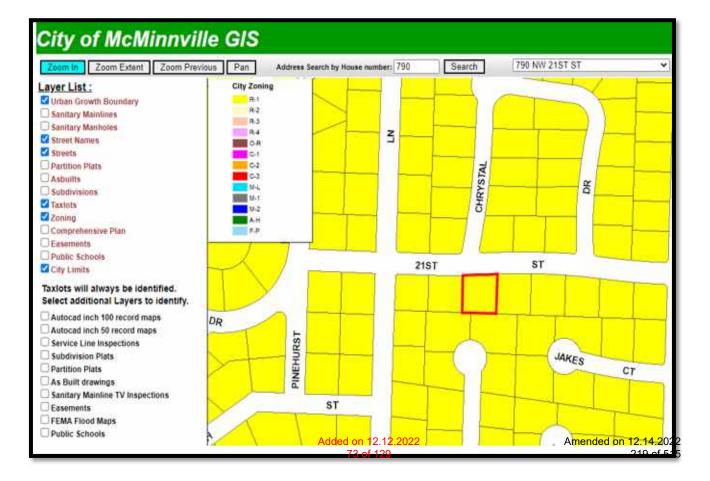
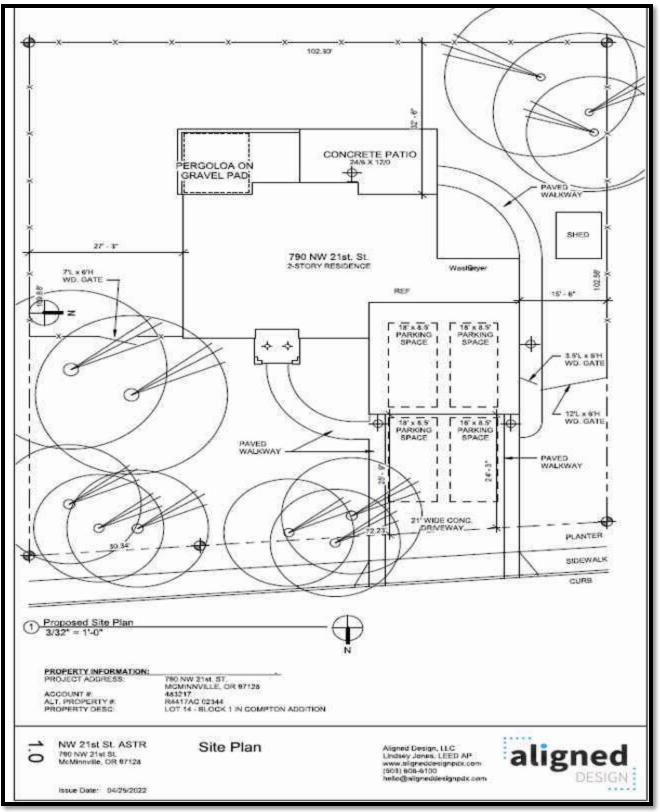


Figure 3. Applicant's Site Plan







AT



503-434-7311 www.mcminnvilleoregon.gov

# DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A SHORT-TERM RENTAL AT 790 NW 21st STREET

DOCKET:	STR 7-22
	011(122

**REQUEST:** Application to permit a short-term rental.

LOCATION: 790 NW 21st St. Tax Lot: R4417-AC-02344

**ZONING:** R-1 (Single-Family Residential)

**APPLICANT:** Emily (Joyce) LaGow

**STAFF:** Adam Tate, Associate Planner

#### DATE DEEMED COMPLETE:

June 28, 2022

#### **DECISION MAKING**

**BODY & ACTION:** The McMinnville Planning Commission makes the final decision unless the Planning Commission's decision is appealed to the City Council.

### DECISION DATE

& LOCATION: Zoom Online Meeting (for 9-1-2022 hearing): <u>https://mcminnvilleoregon.zoom.us/j/87989539440?pwd=QXJqOUEwK0ZOUDJ</u> <u>UL0FwMTZicDZ5Zz09</u>

Meeting ID: 879 8953 9440

Passcode: 134488

The public may also join the Zoom meeting by phone by using the phone number and meeting ID below:

Phone: +1 253 215 8782 Meeting ID: 879 8953 9440

- **PROCEDURE:** The application is processed in accordance with the procedures in Section 17.72.120 of the Zoning Ordinance. This short-term rental was found to be operating without a permit and referred to code compliance. The application will now be heard before a public hearing and reviewed by the Planning Commission. in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the Zoning Ordinance.
- **CRITERIA:** The applicable criteria and standards for a Short-Term Rental are specified in Section 17.12.010(P) of the Zoning Ordinance.
- **APPEAL:** As specified in Section 17.72.180 of the Zoning Ordinance, the Planning Commission's decision may be appealed to the City Council within 15 calendar

days of the date the written notice of decision is mailed. The City's final decision is subject to the 120-day processing timeline, including resolution of any local appeal.

**COMMENTS:** This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Wastewater Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas. Their comments are provided in this document.

#### DECISION

Based on the findings and conclusionary findings, the Planning Commission finds the applicable criteria are satisfied with conditions and **APPROVES** the Short-Term Rental application (STR 7-22), **subject to the conditions of approval provided in Section II of this document.** 

Date:\_\_\_\_\_

Planning Department: \_\_\_\_\_ Heather Richards, Planning Director Date:

#### I. APPLICATION SUMMARY:

#### Subject Property & Request

The subject property is located at 790 NW 21st Street. The property is zoned R-1. A Short-Term Rental is a permitted use in the R-1 zone as specified in Section 17.15.010(P), subject to compliance with the referenced standards in Section 17.12.010(P), and subject to the procedures specified in Section 17.72 of the Zoning Ordinance. See Figure 1 for Vicinity Map, Figure 2 for Zoning Map, Figure 3 for Applicant's Site Plan. See Figure 4 for map of Short-Term Rentals with 200' buffer shown. The application submittal includes additional materials including a floorplan diagram, photos, and information from the neighborhood meeting. Those additional materials are included in Attachment 1.

The application has come before a public hearing of the Planning Commission because it was found to be operating as a short-term rental before its application was approved. A neighbor emailed the Planning Director of the situation, and the matter was put into compliance by code enforcement. The applicant was made aware of the situation and given two options; to either withdraw the application, or come before a public hearing of the Planning Commission to make their case. The applicant chose the latter option that will be reviewed at the September 1<sup>st</sup> public hearing.

The applicant states that this issue arose due to the property management company accidentally listing the property for short-term rental basis after it had to move guests from another nearby short-term rental to this property due to an emergency situation.

This text is from Code Compliance Officer Nic Miles: "I spoke with Corey, who owns the property management company (iTrip Vacations). He explained that over the holiday weekend, some guests staying in another short term rental managed by his company were having AC issues. The guests contacted customer service and were moved to this property."

"He agreed that this was an error and that the house should not have been made available to the guests who had AC issues in their original location. Corey described it as a communication issue between customer service and the team managing that property working toward final approval with the City, combined with the holiday weekend making it hard for their internal teams to communicate with each other."

"He said the listings were setup to only accept 30+ day reservations, but he suspected that by letting guests stay over the holiday weekend the booking system somehow got reset and was allowing potential guests to select shorter stays. They have since adjusted both the VRBO and AirBNB listings to only allow for 30+ day reservations until they have an STR permit from the City. Corey can be reached at 503-799-7341."

The application states that, "the homeowner intends to rent their four (4) bedroom, three (3) bath home on a short-term basis. The rental will be made available for guest use year round and will be professionally managed and maintained by iTrip Vacations management company." This is a permitted use, and the property can be used as such, as long as the permit for a short-term rental remains current, subject to the applicable standards. The home has four guest rooms for the short-term rental, with a maximum of eight guests. Four parking spaces are proposed, with two to be provided in the driveway, and two to be provided in the garage.

#### Figure 1. Vicinity Map



## City of McMinnville GIS

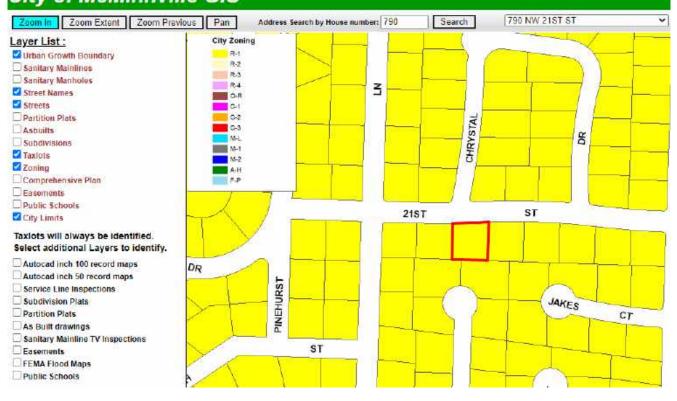
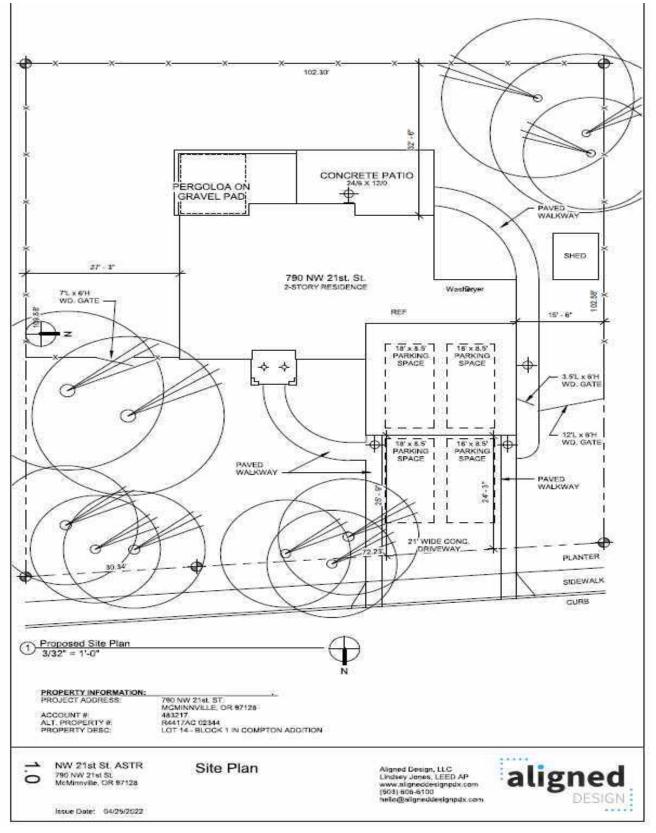


Figure 3. Applicant's Site Plan



#### Figure 4. Map of Short-Term Rentals with 200-Foot Buffer



Summary of Applicable Standards and Issues

Use and development of properties in the R-1 zone are subject to the applicable standards of the zone and general provisions of the Zoning Ordinance. No modifications to the site or existing single-family dwelling are proposed at this time, so the only applicable standards for the proposed short-term rental are those listed in Section 17.12.010(P) for use of the property for a Short-Term Rental.

The standards and associated findings are summarized below. The specific findings regarding the applicable standards are addressed in Section VII of this Decision Document. As a Type II land-use application, the criteria need to be clear and objective.

The table below illustrates how the application either complies or does not comply with applicable criteria.

# Summary of Findings Regarding Consistency with Applicable Standards (Table on next page)

Standard	Summary of Findings
17.12.010. Permitted Uses:	
(P) Short-term rentals, subject to the provisions of Section 17.12.010(P).	<b>Satisfied.</b> The proposed short-term rental use is listed as a permitted use of the subject R-1 zoned property.
17.12.010(P)	
1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.	<b>Satisfied.</b> The map provided as <i>Figure 5</i> shows no other short-term rental within 200 feet.
2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.	<ul> <li>Satisfied with Conditions. The application complies with this requirement at the time of application. The existing structure is a single-family dwelling.</li> <li>As an ongoing condition of approval, the structure shall retain the characteristics of a residence.</li> </ul>
3. That a minimum of one off-street parking space be provided for each guest room.	<b>Satisfied with Conditions.</b> The application complies with this requirement at the time of application. The short-term rental will have four guest rooms and four parking spaces.
	As an ongoing condition of approval, the structure shall retain the minimum required parking spaces, to be available for guest use.
4. That signage is limited to only one non- illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of	<b>Satisfied with Conditions.</b> No signage is proposed at this time.
face area.	As an ongoing condition of approval, any signage shall comply with this standard.
5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.	<b>Satisfied with Conditions.</b> As an ongoing condition of approval, the short-term rental use shall comply with this requirement.
6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.	<b>Satisfied with Conditions.</b> The applicant's building diagram shows the location of smoke detectors that comply with this requirement at the time of application.
	As an ongoing condition of approval, the structure shall remain in compliance with this standard.

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.	Satisfied with Conditions. The property owner has provided the contact information of a person living within the area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental. As an ongoing condition of approval, this requirement shall continue to apply.
<ul> <li>8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:</li> <li>a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or</li> <li>b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.</li> </ul>	Satisfied with Conditions. The permit is issued to the current property owner at the time of application. This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.	<b>Satisfied with Conditions.</b> This code provision remains an ongoing requirement for the use and operation of the property for a Short-Term Rental to remain in compliance with the ordinance.
10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the Zoning Ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.	<b>Unsatisfied</b> The violation of this condition has led to this public hearing, as the use of the property as a short-term rental began before the application was reviewed and approved for such use violating Standard 8. Additionally, guests of the short-term rental parked in the street violating Standard 3. If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints, and will be listed as a condition of approval for this application.

CONCLUSION:	The proposed Short-Term Rental is a permitted use of the subject property. The submitted application demonstrates the proposal complies
	with the applicable standards. With the conditions of approval in Section II and ongoing compliance with these standards, the proposal complies with the applicable standards for a short-term rental, except for Section 17.12.010(P)(10).

#### **II. CONDITIONS:**

The application for the Short-Term Rental (STR 7-22), is **approved subject to the following conditions**:

- 1. That four (4) off-street parking spaces (paved or of a hardscape surface) are required for the use of the Short Term Rental, per the four (4) guest rooms provided, as indicated on the application submitted June 10, 2022.
- 2. That 10-year Lithium battery-powered smoke alarms and CO2 alarms must be installed in accordance with Sections R314 and R315 of the Building Code. For this one-story building, smoke alarms shall be installed in each sleeping room and outside each separate sleeping area within 21 feet of any door to a sleeping room, measured along a path of travel. On CO2 alarm is required.
- 3. That prior to use of the subject property for vacation home rental purposes, the applicant shall register with the McMinnville Finance Department as a transient lodging provider. Local Transient Lodging Tax shall be collected and remitted to the City as provided in McMinnville Ordinance No. 4974.
- 4. That, as this use is required to be occupied as a single-family residence, occupancy of the vacation home rental shall be limited at all times to no more than five unrelated persons, or one or more individuals related by blood, marriage, adoption, or legal guardianship, or other duly authorized custodial relationship.
- 5. That all other requirements of Section 17.12.010(P) of the Zoning Ordinance referencing vacation home rental use shall be complied with throughout the time this property is used for such purpose, which are outlined below.
  - A. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.
  - B. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.
  - C. That a minimum of one off-street parking space be provided for each guest room.
  - D. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.

- E. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.
- F. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.
- G. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.
- H. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:
  - a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
  - b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.
- I. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.
- J. Complaints on conditions "A" through "I" above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

#### III. ATTACHMENTS:

- 1. STR 7-22 Application and Attachments (on file with the Planning Department)
- 2. Public Testimony:
  - a. Email received July 4, 2022, from Mark Pitts

#### IV. COMMENTS:

#### Agency Comments

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Wastewater Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas. Comments are due by Wednesday, August 31, 2022, and will be provided to the Planning Commission at the public hearing. As of the date of this draft Decision Document being issued, no comments were received.

#### **Public Comments**

1. Email received July 4, 2022, from Mark Pitts, notifying the Planning Director that the short-term rental was operating before their permit was approved.

#### V. FINDINGS OF FACT - PROCEDURAL FINDINGS

- 1. The applicant mailed notice of a neighborhood meeting dated April 27, 2022, and held a neighborhood meeting on May 25, 2022.
- 2. The applicant submitted the Short-Term Rental application (STR 7-22) on June 10, 2022.
- 3. The application was deemed complete on June 28, 2022.
- 4. Notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.120 of the Zoning Ordinance: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Frontier Communications; Comcast; Recology; Oregon Department of State Lands; and Northwest Natural Gas.

Comments received from agencies are addressed in Section IV of this Decision Document.

- 5. On July 4, 2022, a local resident reported to the Planning Director that the property was operating as a short-term rental before their application was approved, and provided an Airbnb listing showing the property for rent.
- 6. On July 5, 2022, the property was put into code compliance and the property owner was notified that they must stop current short-term rental operations and given the option to either withdraw their permit or have it go before a public hearing of the Planning Commission.
- 7. The hearing date was set for September 1, 2022. On August 3, 2022, notice of the application and the September 1, 2022, Planning Commission public hearing was mailed to property owners within 300 feet of the subject property in accordance with Section 17.72.120 of the Zoning Ordinance.
- 8. Notice of the application and the September 1, 2022, Planning Commission public hearing was published in the News Register on Friday, August 26, in accordance with Section 17.72.120 of the Zoning Ordinance.
- 9. On September 1, 2022, the Planning Commission held a duly noticed public hearing to consider the application.

#### VI. FINDINGS OF FACT - GENERAL FINDINGS

- 1. **Location:** 790 NW 21<sup>st</sup> St. Tax Lot R4417-AC-02344
- 2. **Size:** Approximately 0.2489 acres

- 3. Comprehensive Plan Map Designation: Residential
- 4. **Zoning:** R-1 (Single-Family Residential)
- 5. **Overlay Zones/Special Districts:** None
- 6. **Current Use:** Single-family dwelling
- 7. Inventoried Significant Resources: a. Historic Resources: None
  - b. **Other:** None identified

#### 8. Other Features:

- a. **Slopes:** The site is generally flat.
- b. **Easements:** No public easements identified
- 9. **Utilities:** The property is served with basic municipal services, including water, sewer, power, and franchise utilities.
- 10. **Transportation:** NW 21<sup>st</sup> Street is classified as a local residential street in the McMinnville TSP. Local streets have a 50-foot right-of-way.

#### VII. CONCLUSIONARY FINDINGS:

The Conclusionary Findings are the findings regarding consistency with the applicable criteria and standards for the application.

The applicable standards for a Short-Term Rental are specified in Section 17.12.010 (O) of the Zoning Ordinance. Development standards for the R-1 Zone are provided in Chapter 17.12 of the Zoning Ordinance; however, the proposed short-term rental will be located within the existing single-family dwelling, and no new development is proposed at this time.

#### McMinnville Zoning Ordinance

The following Sections of Title 17, Zoning Ordinance, of the McMinnville Municipal Code provide criteria and standards applicable to the request:

Section 17.12.010 lists permitted uses in the R-1 Zone. Subsection (P) provides the following:

P. Short term rental, subject to the provisions of Section 17.72.110

**FINDING: SATISFIED WITH CONDITIONS.** The proposed use described in the application is single-family home used for vacation rental. These are both permitted uses, and the home can be used for either of these uses as long as the property continues to comply with the requirements for a short-term rental described below and remains current with the applicable requirements, including the requirement for annual renewal of the permit.

Section 17.12.010(P) provides the following:

P. Short-term rental, subject to the provisions of Section 17.72.110 and the following standards.

Section 17.72.110. Applications – Director's Review with Notification.

**FINDING: SATISFIED.** Section 17.72.110 provides the applicable procedural requirements. As addressed in Section V of this Decision Document, the application has been processed in accordance with the applicable procedures.

*Standards in 17.12.010(P):* 

1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.

**FINDING: SATISFIED.** There is no other short-term rental within 200 feet of another short term rental. There is not another short-term rental on the subject property. See *Figure 4* for a map of short-term rentals.

2. Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.

**FINDING: SATISFIED WITH CONDITIONS.** The existing use in which the proposed short-term rental is proposed is a single-family dwelling. No outward modifications to the residence are proposed at this time.

3. That a minimum of one off-street parking space be provided for each guest room.

**FINDING: SATISFIED WITH CONDITIONS.** The proposed short-term rental would have four guest rooms. Four parking spaces are proposed. Two parking spaces would be located within the garage, and two parking spaces would be located in the driveway. Required location of parking spaces for a short-term rental is the same requirement as applies to a single-family dwelling, and the proposed parking is consistent with this requirement. As an ongoing condition, the areas identified for the required parking shall remain available for use for parking.

4. That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.

**FINDING: SATISFIED WITH CONDITIONS.** The application doesn't indicate any proposed signage at this time. As an ongoing condition of approval, any future signage shall comply with this requirement.

5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.

**FINDING: SATISFIED WITH CONDITIONS.** This provision is an on-going requirement for the operation of the short-term rental and is included as a condition of approval.

6. That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.

**FINDING: SATISFIED WITH CONDITIONS.** Subsection (2)(d) of Ordinance No. 3997 specifies that, for a lodging house, that smoke detectors are required "in all

corridors or areas giving access to rooms used for sleeping purposes, and in all sleeping rooms. Where sleeping rooms are on an upper level, an additional detector shall be placed at the center of the ceiling directly above the stairway."

The application identifies the location of smoke detectors consistent with this requirement, with a smoke detector in each guest room and the hallway, for a total of six smoke detectors and carbon monoxide detectors. This is a two-story single-family dwelling.

The application demonstrates compliance with this standard. As an ongoing condition of approval, the structure shall remain in compliance with this standard.

7. That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.

**FINDING: SATISFIED WITH CONDITIONS.** The property owner does not live within the geographic area of the 97128 zip code; however, consistent with this requirement, the applicant has provided contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short-term rental. The contact information and residence location are provided in Section 5 of the application form submitted by the applicant. The location of the residence is within the City of McMinnville and the geographic area of the 97128 zip code.

As a condition of approval, this code provision is an on-going requirement for the operation of the short-term rental.

- 8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:
  - a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
  - b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.

**FINDING: SATISFIED WITH CONDITIONS.** The applicant is the current property owner at the time of application.

This code provision is an ongoing requirement for the operation of the short-term rental and is included as a condition of approval.

9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.

**FINDING: SATISFIED WITH CONDITIONS.** This code provision is an ongoing requirement for the operation of the short-term rental, included as a condition of approval.

10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinances. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

**FINDING: UNSATISFIED** The violation of this condition has led to this public hearing, as the use of the property as a short-term rental began before the application was reviewed and approved for such use violating Standard 8. Additionally, guests of the short-term rental parked in the street violating Standard 3.

If approved, this provision will continue to apply and be available as the mechanism for reviewing complaints, and will be listed as a condition of approval for this application.

AT



COMMUNITY DEVELOPMENT 231 NE Fifth Street McMinnville, OR 97128 (503) 434-7311 www.mcminnvilleoregon.gov

# MEMORANDUM

DATE: 9/1/2022 TO: Planning Commission FROM: Adam Tate, Associate Planner SUBJECT: New Public Testimony Received for STR 7-22

**Planning Commissioners** 

Following is the public testimony that has been received for the hearing for short-term rental application STR 7-22 that has come in since the staff report went to you on August 25<sup>th</sup>, 2022.

#### Public Testimony

Email from Mark Pitts on 08.29.2022 Email from Kelli Grinich on 08.30.2022 Email from Jay Post on 08.30.2022 Email from Kathy Loving on 09.01.2022 Mark Pitts

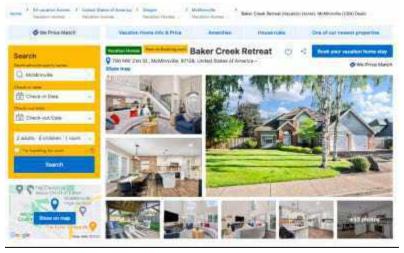
August 27, 2022

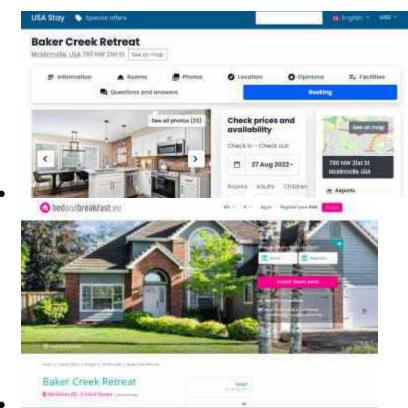
#### Objections to 790 NW 21<sup>st</sup> St. STR

Members of the Planning Commission:

I am writing to express my opposition to the short term rental application for the home at 790 NW 21st Street for the following reasons:

- First, the homeowner demonstrated a profound disrespect for this commission and the processes and policies of the city of McMinnville when--in early July-after submitting her application for approval for a STR but long before this meeting--she was advertising the home on AirBnB and receiving paying guests without having received city approval or paying the required city taxes.
- Second, as of this writing on 8/27, with city approval not yet received, the home is STILL listed on multiple STR sites including Booking.com, USAStay and BedandBreakfast.eu demonstrating either a continued flaunting of city policy or the ineptitude of her management company--either one of which would support denial of her application.





- Third, city policy item #7 requires either that the owner is a city resident OR that the owner make available "a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint…" At the required information meeting at McMenamin's Pub, the owner's representative said that a management company would meet that criterion. Two problems with that. First, the management company is not located in the 97128 zip code as required. Second, when neighbors called the management company during the meeting to inquire about their availability, the company volunteered that their help line closes down at 11PM--potentially just as concerns about noise and alcohol would be arising. When that was pointed out, there was some suggestion from the representative that the cleaners, who are local, could meet the zip code requirement, but when asked by neighbors later, the cleaners seemed bewildered by the suggestion they would handle "emergencies or complaints."
- Fourth, just as points of information, when the immediate neighbors received the required legal notice that the home at 790 NW 21st was filing a STR application and an information meeting would be held, they duplicated the letter, circulated it to the extended neighborhood and as a result about 30 people came to the

informational meeting at McMenamin's Pub. After that meeting, the neighborhood organized, contacted Zack Geary and Kelli Menke, our Council members, spoke twice at City Council twice and presented a petition with 50 signatures calling for a moratorium on STR's--all motivated by objection to this STR in our neighborhood. Our concerns about STR's in general include:

- They reduce the stock of single family housing at a time of high demand.
- Demand for STR's is moderate to low. The industry web site
   "AllTheRooms.com" indicates STR occupancy in McMinnville in 2021 was
   45%, meaning high demand family homes were empty most of the time.
- Visit McMinnville indicated that hotel occupancy last year, before new hotels came online, was 60%.
- Given the high demand for single family housing and the much lower demand for STR's and hotel rooms, our neighborhood is at a loss to understand why the city currently has such an "STR-friendly" policy and is hopeful that the newly adopted moratorium will either be extended until real need for short-term lodging can be demonstrated or that a new policy can be keyed to demonstrable high demand targets.

With all of this information in mind, I and my neighbors would respectfully request that this application for STR at 790 NW 21st street be denied.

Respectfully submitted,

Mark E. Pitts For the Ad Hoc 21st Street STR Concern Team

Mark Pitts

August 27, 2022

### Objections to 790 NW 21<sup>st</sup> St. STR: Neighborhood Petition

## Petition to Deny 790 NW 21st Street STR Application

By this document, we the undersigned communicate our strong objection to the presence of a short-term rental in our neighborhood and petition the McMinnville City Planning Commission requesting the following:

- A meeting with representatives of the neighborhood prior to a decision on this application to make our case for:
- Outright denial of the application or, failing that,
- Delay of the application in light of the proposed August 1 moratorium on city granting new STR applications while the city reviews its 2022 STR policy and procedures.
  - For the following reasons:
- The sign required to be posted on the property was not properly displayed (hidden behind bushes) for half of the required posting time.
- Only 6 neighbors received mailed notification letters. This required concerned neighbors to duplicate and independently hand-delivered to other concerned neighbors to accomplish the notification process.
- 25+ people appeared at the requested meeting with the homeowner management representative who we were told would be prepared to answer our questions, and she had answers to some but not all of our questions.
- The designated management company, "itrip" has terrible ratings, averaging 1-2 stars.
- Itrip does not have anyone on call 24 hours. On-call service ends at 11pm, just as issues of noise and alcohol would likely be beginning.
- The representative said there are "layers of people" for backup emergency contact but gave no examples or names.
- We were not given the phone number neighbors would call with issues related to garbage, parking, or noise.
- The house cleaner cited as possible contact is not on call 24 hours and in fact there is NO local person on call 24 hours.

• Finally, our understanding is that we should have received a hard copy of the owners STR application at the meeting but we did not receive a hard copy of anything. In fact, based on the wording of the notification letter, some people thought city representatives would be at the meeting.

### PETITIONERS/NEIGHBORS OBJECTING TO THE APPLICATION:

SIGNATURE	ADDRESS	
PRINTED NAME	EMAIL	
SIGNATURE	ADDRESS	
PRINTED NAME	EMAIL	
SIGNATURE	ADDRESS	
PRINTED NAME	EMAIL	
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## PETITIONERS/NEIGHBORS OBJECTING TO THE APPLICATION:

SIGNATURE

PRINTED NAME

SIGNATURE	ADDRESS	
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EMAIL

ADDRESS

Kelli and Nick Grinich 708 NW 21<sup>st</sup> St. McMinnville, OR 97128

August 29, 2022

#### A Letter for Thursday STR Hearing/Planning Commission

To Heather Richards:

Nick and I love our community and are stunned and saddened that the house on our street at 790 NW 21<sub>st</sub> street is attempting to be transformed by out of state homeowners to a Short Term Rental. This puts in the heart of our wonderful neighborhood, a hollow place, a place of no enduring connection. Everyone feels the vacant condition of the house, which is unsettling. It was with surprise that before the STR permit application was denied, or at least put off during the moratorium, we found, on the July 4th weekend, the driveway full, the street parking occupied and the house full of renters. Without a city permit. How confusing.

I could rent the house any weekend in July on AirBNB. And we could be a party of 10. And there would be no security cameras on scene. And no mention of parking overload issues! The quasi-informational session held at McMenamins several weeks ago simply duped the neighbors with statements that weren't even true.

We know now that the owner wasn't supposed to rent the unit without a city permit. I can still rent it for next November though. I can give them my credit card to hold it.

We were told so many untruths.

Here are some questions:

Who specifically is the local contact?

What training does the local contact have? Have they taken first alert courses? Fire safety? House maintenance workshops?

How do we know when problems are solved? Is there an official city contact person? How is it legal that the "housekeeper" is on call 24/7? Is this even humanly possible? What if they get sick?

What if they go away for the weekend?

What if they care for someone who is sick and cannot attend to calls?

What if they have been drinking, or are in some way incapacitated?

Who is their back up? What if they cannot be reached?

Who calls the fire dept, the police, the pest control, the garbage company? Who follows up? Who tends the weekly trash? Overflowing garbage?

How is the outdoor noise managed? What are the limits?

They said the occupancy limit was 8. Now they rent illegally to 10 people. Where are cars going to park? This could be ten different people with ten cars. Who will monitor this when the

policy is not followed (like recently with the street parking with the illegal renters)? Are neighbors to constantly police the STR?

What legal rights do the neighbors of the house have if response by the owner/agency is not achieved in a timely manner? Is there a fine? Who is watching and monitoring the efficacy of the on-call personnel?

Why is the city allowing a wonderful neighborhood home to become an STR? We know from hiring new doctors and employees through Nick's work that housing is always in shortage in McMinnville, especially a family home like this. This is a perfect home for a young family!! Kids can walk safely to Memorial. Making this house an STR robs a family of the opportunity to have an inner McMinnville home with no busy roads to cross between home and Memorial, Duniway and the City Pool and Library.

With new hotel units going up, why are the non-owner occupied STRs even allowed in McMinnville?

We have lived here for over two decades. It's a strange and not-good feeling to know that the owner of the house blatantly holds disregard for the City of McMinnville's STR policies, rules which they know because they have applied. One must assume that they hold the same entitled, careless attitude toward all of us as neighbors. Toward our children that play in the front yards. Toward our neighborhood walkers.

I see the writing on the wall. When the garbage overflows in the street, no one will come to clean it up. When the music is too loud, no one will be on sight to rein in the behavior. The sidewalks will not be shoveled during snow storms. The house will be vacant a huge majority of time, causing a hollow and noncontributory ghost in our neighborhood. Our neighborhood is full of wonderful people who contribute to the strong fabric of McMinnville. These vacant and remote owners plan to make money on the house and not even pay a cent due to the city.

It simply doesn't seem right, nor sound housing policy for the City of McMinnville. I don't write this lightly. Nick and I have stayed with our family in STRs in other places. But those were resort towns, the properties had owners nearby. There were rules that were followed such as fines for renters if music is heard by the neighbors. Mandatory garage parking occurs in the majority of our stays. They have never been in family neighborhoods.

About ten years ago we attended a talk by the founder of AirBNB in Boston at our son's college. The renting model was one of temperance. A room in a home.

It wasn't taking a full property out of the fabric of the city and rendering it independent of ordinance and law with no consequence. I hope that McMinnville can catch up with other major cities and come up with a reasonable plan, one that applies to the plethora of different

companies and people who want to use STRs as their investment.

We don't want McMinnville to become a gross rural town, hanging its all on Wine Country, when the town is so much more complex and beautiful and well-rounded. We would like to ask that this house permit be put on hold until the correct and legal processes are worked out.

Sincerely yours,

Kelli and Nick Grinich

Jay and Mollie Post 2038 NW Michelbook Lane McMinnville, OR 97128

August 30, 2022

Dear Mr. Tate:

We have been residents in McMinnville at 2038 NW Michelbook Lane for 25 years. We're strongly in favor of the August 1 moratorium on short term rental applications, and we believe that McMinnville is direly in need of revision of current policies and procedures for short term rentals.

The current policy allows for far too many short term rental homes in close proximity to each other. This has the potential to do significant damage to the quality of life in our neighborhoods. Do we want do want adjacent homes to alternate between being empty and being occupied by a parade of vacationers, or do want our neighbors to be longer term residents who have a vested interest in McMinnville's present and future?

It's our opinion that an updated policy should allow for only a small number of widely spaced short term rentals. A larger number of these properties would adversely affect both the quality of life in our neighborhoods, and the occupancy rates of current and planned McMinnville hotels, motels, and B and B's.

Given the above concerns, we believe that a decision regarding the application for short term rental of the home on 21st Street should be deferred until the City Council has had an opportunity to review and revise the short term rental policies and procedures for our community.

In addition, we urge rejection of the STR application at 790 NW 21 St. The applicant displayed disrespect and disregard for our laws by advertising and short term renting the property prior to obtaining the required STR approval. In addition, it's never been clear who would be available 24/7 to respond to noise complaints or other issues at the property.

Thank you,

Mollie and Jay Post 2038 NW Michelbook Lane McMinnville, OR 97128 Kathy Loving

September 1, 2022

#### Short Term Rental Permit for 790 NW 21<sup>st</sup> Street, McMinnville

I am writing to express my strong support to **DENY** the application for a short-term rental at 790 NW 21<sup>st</sup> Street, McMinnville, Oregon 97128. I live 2 houses to the east of this address and feel the current STR policies and procedures need to be fully revised. I previously sent a letter to City Councilor; Zach Geary as well as Kellie Menke expressing my concerns regarding this application and the current STR policy for the City of McMinnville. I asked them to include this application on the moratorium list until the Planning Department can revise the current STR policies.

The current STR-friendly policy makes the single-family housing problem worse. McMinnville families searching for single-family housing are not only competing with each other for the small supply of single-family homes for sale, but with investors (such as this applicant Emily (Joyce) LaGow) buying homes to make them shortterm rentals, thus removing them from the pool of single-family housing options. In addition, investors are not interested in our community and the daily activities of our residents that make McMinnville livable. They are only interested in how many people they can move in and out of their STR's to increase their bottom line. I am interested in a family who calls McMinnville "home" and wants to develop roots and contribute to the livability of our neighborhood and community.

The current STR policy is not neighborhood friendly. If multiple houses go on sale in any McMinnville neighborhood, if houses are not immediately next to one another, the current policy will allow every second house which met code to be purchased and approved as a short-term rental, potentially decimating a traditional McMinnville neighborhood.

The current STR policy is a solution in search of a need. The STR industry website "<u>Alltherooms.com</u>" indicates May '21 – May '22 occupancy rate for McMinnville STR's was 35%. <u>VisitMcMinnville.com</u>

indicates that the hotel occupancy rate was 63% for all of 2021 and was 59% for the first three months of 2022. Even allowing for the pandemic, there is no evidence of an urgent immediate need for more short-term rental properties, and yet the current policy has continued to approve additional unneeded short-term rental properties.

The current STR policy fails to live-up to the creative, quality-of-lifefriendliness of other McMinnville City policies. It also fails to use creative STR strategies suggested in the policy literature such as the approval of STR's based on occupancy rate targets or multiple STR zones in cities allowing easier approval near tourist attractions and stricter standards in traditional residential areas. McMinnville demonstrates a commitment to quality of community life in residential areas in so many of its departments and policies but not when it comes to STR's.

My final reason for asking for denial of this application is that Ms. LaGow chose to not wait for approval of her request for a short-term rental at 790 NW 21<sup>st</sup> Street, McMinnville. She advertised this home on Airbnb (or a similar website) and rented it out for a weekend. We, as neighbors, saw cars sitting in the driveway and along the street in front of this house. It is my understanding that someone from the Planning Department went on Airbnb (or a similar website) and requested to rent this home and their request was approved by Ms. LaGow and/or her representatives. This is a total lack of regard for McMinnville's STR application policy. This alone should DENY this request. If Ms. LaGow has the nerve to rent without approval (thus avoiding local lodging taxes), why would she follow the rules as it relates to noise, a local contact person, garbage, parking, alcohol and all the other issues that may arise when there is not a local person to contact other than the McMinnville Police Department. We should not make a lax STR policy the responsibility of the McMinnville Police Department.

I hope I have expressed my desire for the Planning Department to **DENY** this application. The City of McMinnville's Planning Department should not reward those applicants who have a total disregard for the STR application process! Thank you for your time.

Kathy Loving

Thanks, Mark,

- A public hearing will be necessary if they want to continue with their application. And we will notify adjacent property owners of the hearing date and time.
- Nic is your contact for future infractions.

Have a great day!

Heather



City of McMinnville 231 NE Fifth Street

McMinnville, OR 97128

503-474-5107 (phone) 541-604-4152 (cell)

Heather.Richards@mcminnvilleoregon.gov www.mcminnvilleoregon.gov

From: Mark Pitts <m49pitts@gmail.com> Sent: Monday, July 4, 2022 2:53 PM To: Heather Richards <Heather.Richards@mcminnvilleoregon.gov>
Cc: Nic Miles <Nic.Miles@mcminnvilleoregon.gov>; Zack Geary
<Zack.Geary@mcminnvilleoregon.gov>; Kellie Menke <Kellie.Menke@mcminnvilleoregon.gov>
Subject: RE: 790 NW 21st Street

This message originated outside of the City of McMinnville.

Hi Heather—thanks so much. I see you indicating a required public hearing. Is that correct? We'd like to be notified of when that hearing will take place so we can have some people there.

Is Nic the person to whom we should communicate further activity at the house in possible violation of an STR denial?

I know two council members are copied in. I'd express special appreciation for your action on a holiday. I've been telling our group and friends elsewhere, my personal experience is that local government is working just fine in McMinnville.

Thanks again.

## Mark

On Jul 4, 2022, 2:43 PM -0700, Heather Richards <<u>Heather.Richards@mcminnvilleoregon.gov</u>>, wrote:

It also appears that they have bookings for the rest of July, August and September, which they will need to cancel until such time that they secure a permit to operate a STR if they are able to do so. Have a great day!

Heather

<image001.png>-

Heather Richards, PCED Planning Director City of McMinnville 231 NE Fifth Street McMinnville, OR 97128

503-474-5107 (phone) 541-604-4152 (cell)

Heather.Richards@mcminnvilleoregon.gov www.mcminnvilleoregon.gov

From: Heather Richards
Sent: Monday, July 4, 2022 2:39 PM
To: Mark Pitts <<u>m49pitts@gmail.com</u>>
Cc: Nic Miles <<u>Nic.Miles@mcminnvilleoregon.gov</u>>
Subject: RE: 790 NW 21st Street

Thanks Mark. I just went online and confirmed that I could book it for this weekend. We will put this into code enforcement and let them know that they are operating without a permit.

Nic, this is a property that is operating without a STR permit, or, I am assuming, registration for the transient lodging tax. They have applied for a STR permit so clearly they understand they need a permit prior to operating the property as one. Can you put this into code enforcement?

Please let them know that since they are operating their short-term rental in violation of the city code, their application for a permit will go to a public hearing with the Planning Commission and city staff will be recommending a denial of the application per Section 17.72.010 – Short Term Rentals (10). They have the option to withdraw their application prior to the public hearing if they want to do so.

They also have the right to prove that they are not operating it as a short-term rental right now. However, I went on the Air BnB listing today and submitted for a reservation for next week and it was accepted. Please see below.

## <image005.png>

Have a great day!

Heather

<image006.png>-

Heather Richards, PCED Planning Director City of McMinnville 231 NE Fifth Street McMinnville, OR 97128

503-474-5107 (phone) 541-604-4152 (cell)

Heather.Richards@mcminnvilleoregon.gov www.mcminnvilleoregon.gov

From: Mark Pitts <<u>m49pitts@gmail.com</u>>
Sent: Monday, July 4, 2022 2:20 PM
To: Heather Richards <<u>Heather.Richards@mcminnvilleoregon.gov</u>>
Cc: Zack Geary <<u>Zack.Geary@mcminnvilleoregon.gov</u>>; Kellie Menke

<<u>Kellie.Menke@mcminnvilleoregon.gov</u>> **Subject:** Re: 790 NW 21st Street

Heather-it was even easier than that.

Here's the listing on Airbnb: Check out this home on Airbnb!

https://www.airbnb.com/rooms/6623375152956899 44?check\_in=2022-11-14&check\_out=2022-11-21&guests=1&adults=2&s=2&unique\_share\_id=3c e00850-e28d-487a-9052-3ff4b634f734

That seems to be a firm thumbing of the owners nose at the community. Thanks for following up with a denial.

Mark

# Mark Pitts Sent from my iPhone Jeremiah 9:23-24

On Jul 4, 2022, 11:54 AM -0700, Heather Richards <<u>Heather.Richards@mcminnvilleoregon.gov</u>>, wrote:

Hi Mark,

Thanks for the email. Do you have proof that she is already renting it out as a str? If so, that is reason for denial but we will need something like an ad online showing she is actively advertising it and renting it out as a str - otherwise she could be letting family or friends use it

while she waits for her permit.

Heather Richards, PCED Planning Director 231 NE Fifth Street McMinnville, OR 97128

503-474-5107 (work) 541-604-4152 (cell)

Sent from my iPhone.

On Jul 4, 2022, at 9:27 AM, Mark Pitts <<u>m49pitts@gmail.com</u>> wrote:

This message originated outside of the City of McMinnville.

Hi Heather—sorry to disturb your holiday but fyi: without approval of her application completed, the owner of 790 has started renting it out and at least one renter is parking on the street in violation of the STR policy (photo attached). Do city regulations include penalties for unapproved rentals? This doesn't seem to bode well for her respect for city policy and procedure.

We will plan to have 10-15 people at the July 12 meeting and to present our petition with 50 signatures supporting the moratorium and stricter STR policy. Thanks as always for your assistance and service.

Mark Pitts

City Of	>	Meret and		ANN
<b>Mc</b>	in	nv	/il	le
Planning Departme 231 NE Fifth Street • Mo (503) 434-7311 Office • www.mcminnvilleorego	Minnvil (503) 4	le, OR 9 74-4955	7128 Fax	

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# **Short Term Rental Application**

Applicant Information	
Applicant is: 🛛 Property Owner 🗆 Contract Buyer 🗆 Op	tion Holder
Applicant Name Emily (Joyce) LaGow	Phone_206-714-3791
Contact Name	Phone
City, State, Zip_Austin, TX 78758	
Contact Email joycelagow@hotmail.com	
Property Owner Information	
Property Owner Name (If different than above)	Phone
Contact Name	Phone
Address	
City, State, Zip	
Contact Email	
Site Location and Description (If metes and bounds description, indicate on separate sheet)	
Property Address 790 NW 21ST ST, MCMINNVILL	
Assessor Map No. R4 R4417AC02344	Total Site Area Lot size: 0.25 Acres
Subdivision Compton Addition	BlockLot
Comprehensive Plan Designation	To be Device store B-1

The Director may approve, approve with conditions, or deny the application, based on the following criteria:

- 1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.
- Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.
- 3. That a minimum of one off-street parking space be provided for each guest room.
- That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.
- 5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.
- That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.
- That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.
- 8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:
  - a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
  - b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.
- Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.
- 10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

1.	Please describe the residence and its proposed use	The homeowner intends to rent their
14	four (4) bedroom, three (3) bath home on a short	term basis. The rental will be made
	available for guest use year round and will be pro-	ofessional managed and maintained by
	iTrip Vacations management company.	
2.	How many guest rooms will be provided? What is the maximum number of guests that can be a	ccommodated? 8
3.	How many off-street parking spaces are available? Are the parking spaces paved? Yes I No I	+
4.	Are there smoke detectors in the residence? Yes  If so, where are they located?	No 🗖
	Smoke detectors are provided in each bedrood detectors are provided on each floor where a ca	n and hallway, and carbon monoxide arbon monoxide source is located.
5.	Does the property owner live within the city limits of M If no, please provide contact information of a person liv to respond immediately to any emergency or complain	ing within the city limits who shall be available
	Contact NameErika Correa	Phone 971-983-9324
	Address 540 NE 26th Ct	Phone
	City, State, Zip McMinnville, OR 97128	
	Contact Emailmariaponce352@yahoo.c	om

6. Has the applicant registered as a Transient Lodging Provider in order to collect, and pay, the Transient Lodging Tax imposed by the City of McMinnville on the rent charged to an occupant who occupies a provider's lodging for 30 successive days or less? Yes ☑ No □

In addition to this completed application, the applicant must provide the following:

- A site plan (drawn to scale, a north arrow, legible, and of a reproducible size), clearly showing the location of the residence; and existing and proposed features within and adjacent to the subject site, such as: lot and street lines with dimensions; driveway(s); parking; distances from property lines to structures; improvements; and significant features. Please note that all parking must be off-street and of a hardscaped surface. Cleary identify that the off-street parking requirements are met.
- Digital photographs of the subject residence's exterior.
- Beloor plan showing the size, function, and arrangement of interior rooms.
- Compliance of Neighborhood Meeting Requirements.
- Other information deemed necessary by the Planning Director to allow review of the applicant's proposal.
- Payment of the applicable review fee, which can be found on the Planning Department web page.

# Short Term Rental Information & Submittal Requirements



## Overview

In order to operate a vacation home rental in any of the residential zones of the City of McMinnville, a property owner must first submit an application and meet a specific set of standards as set forth in Section 17.12.010(O) (Permitted Uses) of the Zoning Ordinance, and also listed below. [Vacation home rentals located in commercial zones are exempt from these requirements; however, *all* such establishments are subject to the requirements of the *Transient Lodging Tax* program, which is administered by the City's Finance Department.]

Please note that occupancy of a vacation home rental in McMinnville is limited to a single family, as that term is defined by the McMinnville Zoning Ordinance.

## **Application Submittal**

The following materials must be provided at the time of submittal, or the application will not be accepted tor processing.

- A completed Short Term Rental application form.
- A site plan (drawn to scale, with a north arrow, legible, and of a reproducible size), clearly showing the location of the residence; and existing and proposed features within and adjacent to the subject site, such as: lot and street lines with dimensions; driveway(s); parking; distances from property lines to structures; improvements; and significant features. Please note that all parking must be off-street and of a hardscaped surface. Cleary identify that the off-street parking requirements are met.
- Digital photographs of the subject residence's exterior.
- □ Floor plan showing the size, function, and arrangement of interior rooms.
- Compliance of Neighborhood Meeting Requirements
- Payment of the applicable review fee.

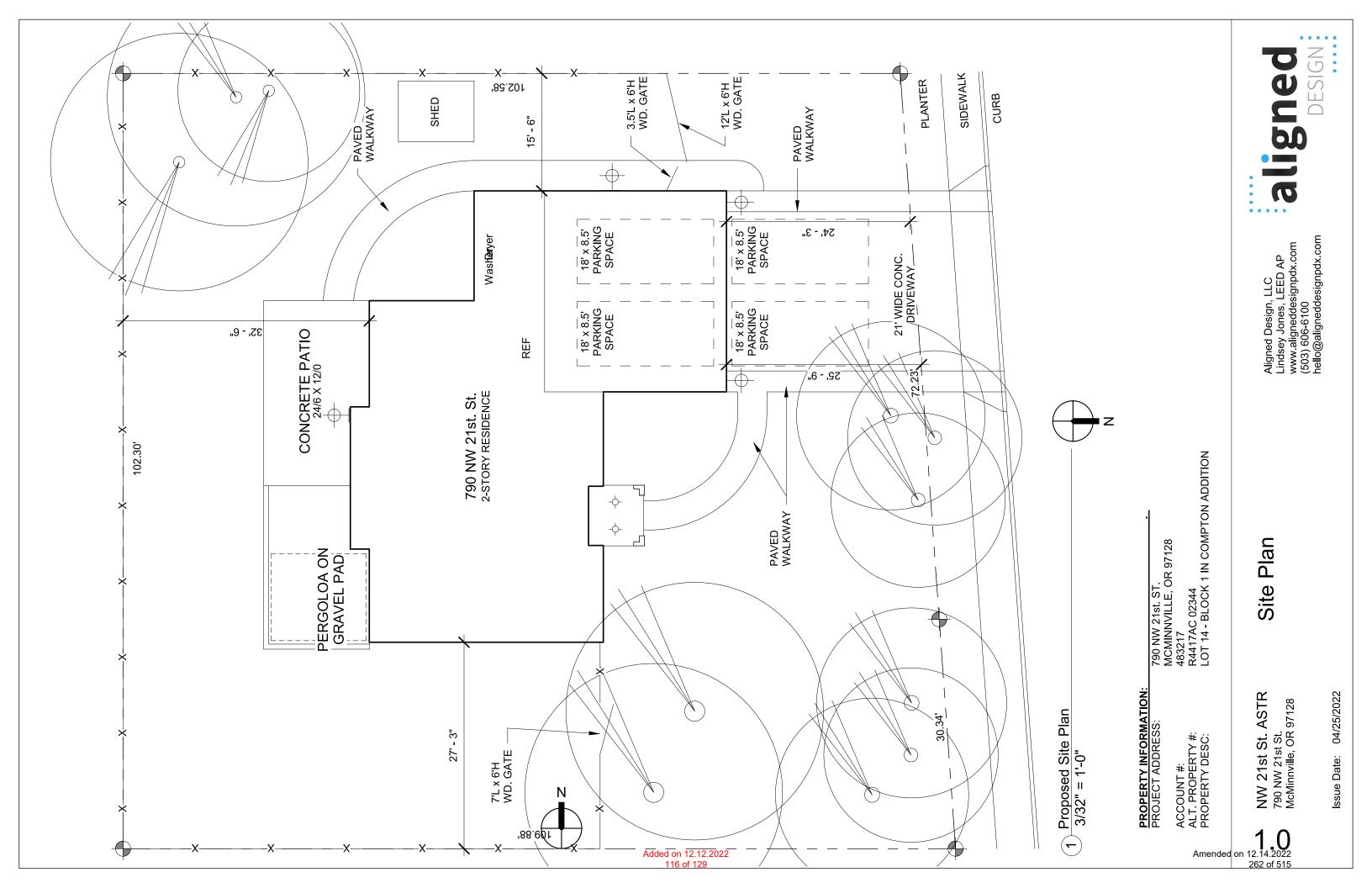
## **Review Process**

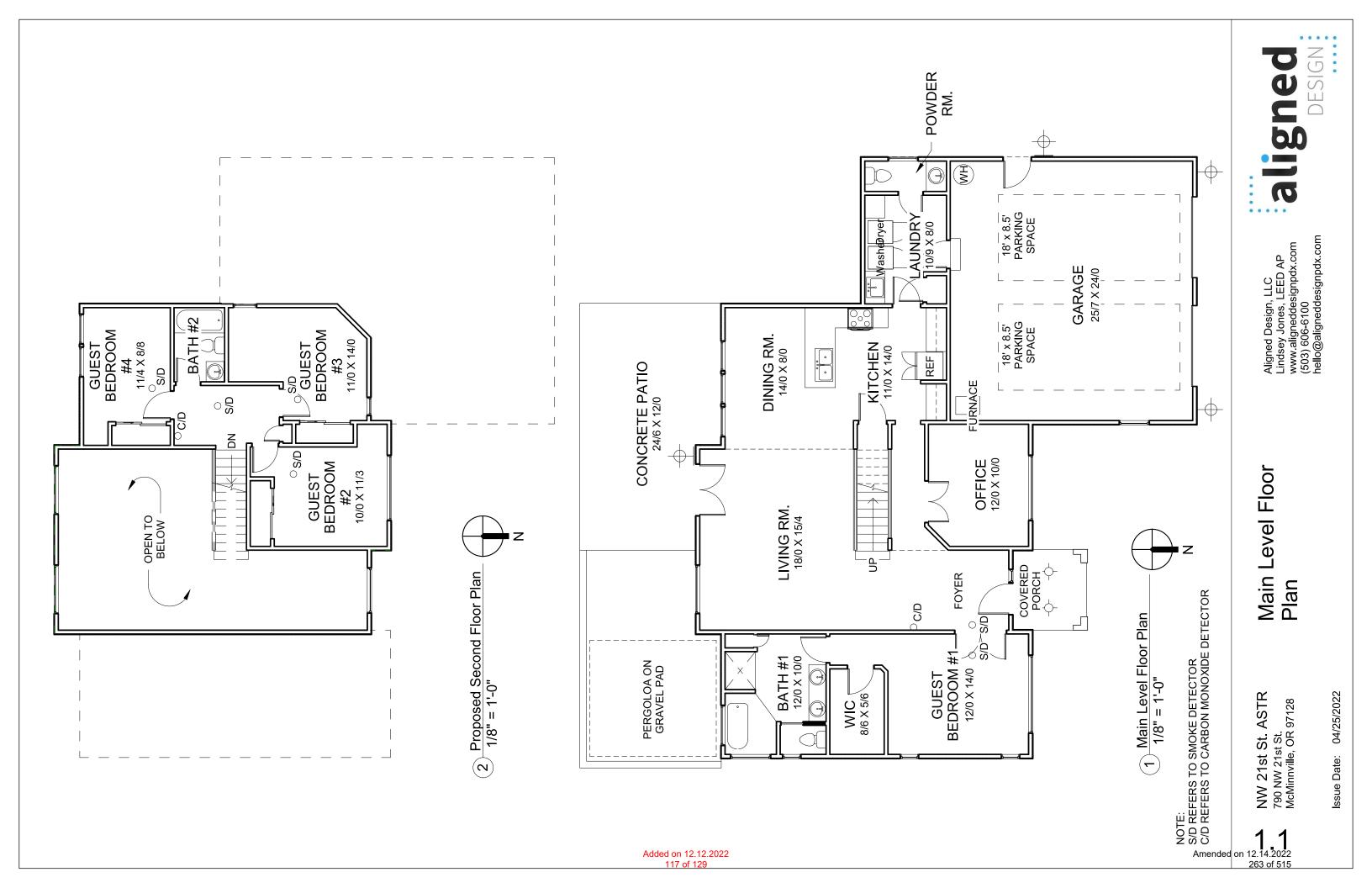
An application for a vacation home rental permit is subject to review by the Planning Director as stated in Section 17.72.110 (Director's Review with Notification) of the Zoning Ordinance, after notification of the application has been provided to property owners within 100-feet of the subject site. The decision made by the Planning Director may be appealed to the Planning Commission as outlined in Section 17.72.170 (Appeal from Ruling of Planning Director) of the Zoning Ordinance.

I hereby certify that the statements contained herein are in all respects true and correct to the best of my knowledge and belief.

Applicant's Signature Property Owner's Signature

5/22/22 5/22/22





## **HOUSE RULES**

Check in time: 4pm.

Check out time: 11am.

We cannot accommodate early check-ins nor late check outs. Should any unauthorized persons occupy or use the Premises, Tenant shall vacate the premises immediately without any refund. No key will be issued to anyone who is not an adult.

## **HAZARDOUS PRACTICES**

Do not dismantle smoke detectors as they are there for your protection. Use the overhead stove fan when cooking to avoid accidental, activation of smoke detector alarm.

## FAMILY RENTAL ONLY

Reservations made for teenagers or young single groups will not be honored without any accompanying adult staying in the unit at ALL times. We require at least one member of the party to be 25 (twenty-five) years of age! Any violators will be evicted according to local statutes with forfeiture of all monies.

## FALSIFIED RESERVATION

Any reservation obtained under false pretense will be subject to forfeiture of reservation deposit, damage deposit, and/or balance of rental payment.

## HOUSEKEEPING

There is **no daily maid service**. Linens and towels are included and not to be taken from the unit. An initial setup of trash liners, bathroom paper, soap is provided.

## NONSMOKING UNIT

Smoking is strictly prohibited. Your damage deposit will be forfeited and you will incur an additional charge for carpet cleaning and deodorizing if any evidence of smoking is found.

## **RULES AND REGULATIONS**

- Tenant agrees to leave the premises and its contents in the same condition, neat and tidy, as Tenant found the premises to be upon move-in, normal wear and tear expected. Beds should be stripped of linens and placed in a pile in each bedroom for housekeeping.
- 2. All dishes are to be washed and all garbage removed from the premises and placed in outside receptacles. Please place trash bins in front of house for pickup.
- 3. The maximum number of occupants shall not exceed eight (8) people.
- 4. Furnishings are not to be removed from the premises for use outside or in other properties.
- 5. "No pets" policy must be observed. Pets are not allowed on premises.
- 6. Smoking is not allowed in the unit.
- Reservations are not made by or for a minor, defined as any person under the age of twenty-five.
- 8. Tenant and any guest of Tenant shall obey all laws of the state of the rental resides in, as well as local laws, at all times while they are on the premises. Failure to abide by the these laws, or the above rules, may cause tenant to be asked to vacate the premises and forfeit all rents and security/damage deposits.
- 9. Quiet Hours: 10pm-7am. There shall be no noise that can be heard outside the home between the hours of 10pm - 7am. If noise is an issue, you will get a written warning text message to the number that booked the reservation and/or a phone call. If noise does not stop, you will be fined or possibly evicted immediately.

## **SLEEPING CAPACITY/DISTURBANCES**

Tenant and all other occupants will be required to vacate the premises and forfeit the rental fee and security deposit for any of the following: Occupancy exceeding the sleeping capacity of eight (8), using the premises for any illegal activity, causing damage to the premises rented or to any of the neighboring properties and **any other acts which interferes with neighbors' right to quiet enjoyment of their premises**.

Violations of our noise or maximum number of guests agreed to at the time of booking will result in possible fines or immediate eviction with all loss of all rents. Depending on severity if there is a noise situation we may call and issue a warning or proceed with a \$300 fine. If we cannot reach the guest that booked the property someone will show up to at a minimum issue a \$300 fine and/or evict the entire group immediately. Any delay will result in us involving the authorities and trespassing every person on the property as well as the loss of all rents. Additional fines or damages may be assessed after removal.

## PARKING

A parking plan will be emailed to you 2 days before arrival. You can park in the garage and in the driveway. You may not park in front of other neighbors' homes.

Please remember that you are renting a private home. Please treat it with the same respect you would like shown in your own home.

#### 790 NW 21st St.

#### McMinnville OR 97128







City of McMinnville

Transient Lodging Tax Registration Form

Date: 4-20-2022
Business Type:
Establishment Name: BEAK CREEK RETZERT
Establishment Address: 790 NW 21st Street, McMinnville, OR 98128
Mailing Address, if different: 3201 Esperanza Crossing 453, Austin, TX 78758
Manager / Operator Name: iTrip Vacations
Owner, Corporation or Partnership Name, if different: Joyce CA-Gow
Email Address:joycelagow@hotmail.com BECKETT PROPERTES
Phone: 206-714-3791
Number of Rooms:4
I declare, under penalty of making a false statement, that to the best of my knowledge, and belief, the statements herein are correct and true.

Signature	AV
Title	
Date	5/22/22

Mail your completed registration form to:

City of McMinnville Finance Department 230 NE Second Street McMinnville, OR 97128 Or fax to: 503/435-5860



www.mcminnvilleoregon.gov

# **MINUTES**

September 1, 2022 Planning Commissie Regular Meeting	6:30 pm on Zoom Online Meeting McMinnville, Oregon
Members Present:	Gary Langenwalter, Sylla McClellan, Brian Randall, Matt Deppe, Beth Rankin, Lori Schanche, Dan Tucholsky, and Sidonie Winfield
Members Absent:	
Staff Present:	Heather Richards – Planning Director, Tom Schauer – Senior Planner, and Adam Tate – Associate Planner

#### 1. Call to Order

Chair Winfield called the meeting to order at 6:30 p.m.

#### 2. Citizen Comments

None

#### 3. Approval of Minutes

- June 2, 2022
- June 16, 2022
- July 21, 2022

Commissioner Tucholsky moved to approve the June 2, June 16, and July 21, 2022 minutes. The motion was seconded by Commissioner Langenwalter and passed 8-0.

#### 4. Public Hearings:

#### A. Quasi-Judicial Hearing: Short-Term Rental (STR 7-22)

Request: Request for approval of a permit to use the existing dwelling as a Short-Term Rental.

Location: 790 NW 21st Street (Tax Lot R4417AC 02344)

Application: Emily (Joyce) LaGow

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application.

Chair Winfield said she was acquainted with people in the neighborhood, but it would not affect her decision.

Chair Winfield asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing.

Commissioners Schanche and McClellan had visited the site.

Staff Report: Associate Planner Tate presented the staff report. This was a request to approve a permit to use the existing dwelling at 790 NW 21<sup>st</sup> Street as a short term rental. He discussed the subject site, applicant's site plan, project summary, applicable review criteria, summary of findings, testimony received, and recommended conditions. The applicant stated the property was operating as a short term rental before the application was approved, which was a mistake by the property management company. Staff recommended approval of the application.

Questions: Commissioner Langenwalter asked for clarification on how many days a guest would be allowed to stay. Planning Director Richards said prior to permit approval, the applicant was renting the house out for 30-plus days, but once they got their permit, they planned to use it as a short term rental and rent it for less than 30 days.

Commissioner Deppe asked about the parking. Planning Director Richards said they were supposed to provide one off street parking space per guest room. Anyone was allowed to park on the public street.

Commissioner Schanche asked about a local contact person. Planning Director Richards said they had a local address in the application.

Applicant's Testimony: Emily LaGow read a statement discussing her background, management of the house, code violation on July 4, 2022, parking, and benefits of the rental to the community.

Commissioner Tucholsky asked about the number of bedrooms that would be rented. Ms. LaGow said there would be four bedrooms, with a maximum of eight guests. She would amend the parking rules that they could not park on the street.

Commissioner Schanche asked why the property owner was not contacted about the rental on July 4 and if the management company was local. Corey Tigner, iTrip Vacations, said they were located in Portland. He explained a family was in a different home where the air conditioning had gone out and they moved the family to this home unaware that it had not received approval yet.

Chair Winfield asked why it was in the rental pool when it had not been approved yet. Mr. Tigner said it was in the 30-plus day rental pool. His company had 24 hour phone support to answer calls at any time.

Melissa Wright, property manager, clarified the listing was live for a 30-plus day rental, which was a long term rental situation and was listed as 5 bedroom. This would shift when it went down to a short term rental and would be listed as 4 bedrooms.

Chair Winfield asked about letters mailed to the neighbors. Ms. Wright said letters were mailed to the addresses the City provided.

Chair Winfield asked who the local emergency contact would be. She was concerned about the public testimony that there was not a local emergency contact. Mr. Tigner said that person was listed in the paperwork.

Public Testimony:

Proponents: Emily Smith, Beaverton resident, had decorated this property and spoke about the integrity of the management company. She thought they were responsive at all hours.

Opponents: Mark Fitz, McMinnville resident, said it was a requirement to have a local contact who could make decisions that needed to be made. He said the house was still being advertised without approval. He thought the application should be denied.

Commissioner McClellan had also looked them up, and the house was listed as a long term rental currently.

Nick Grinich, McMinnville resident, agreed about the need for a local contact. He discussed the July 4 incident and how the applicant failed to get the permit before advertising the property. He thought it was willfully operated as a short term rental without a permit and the application should be denied.

Commissioner Langenwalter asked how long the property had been advertised as a short term rental. Planning Director Richards said she had tried it on July 4, and she was able to book it as a short term rental for the next weekend. She had recently tried it again, and it was no longer being advertised as a short term rental.

Kelly Grinich, McMinnville resident, said for two weeks after July 4 she was able to book the house as a short term rental.

Rebuttal: Ms. LaGow said there would be someone on call 24 hours a day, 7 days a week. Ms. Wright asked if they tested the local contact as part of the process and if a listing could exist before the permit, but they could not accept guests into the home.

Planning Director Richards said they did not test local contacts. There had been complaints from neighbors and the neighbors raised the issue that they tried to contact somebody and that person was not available. They did not look at all the listings, but if they got a complaint, they did tests within the system. In this case, they received a complaint and she was able to book the house for two nights when it did not have a short term permit.

Mr. Tigner said the July 4 incident was a combination of factors and rare circumstance. Once they found out about it, they removed it.

Commissioner Tucholsky said there was testimony that it was up for two weeks. Mr. Tigner said they did not go far enough in the booking system. If they had, they would have found it was not available.

There was discussion regarding short term rental code update, upcoming short term rental applications, and options for Commission action.

Chair Winfield closed the public hearing.

The applicant did not waive the 7 day period for submitting final written arguments. The applicant would have until September 9 at 5 p.m. to submit their arguments. The Commission would deliberate and make a decision on this agenda item on October 6, 2022.

#### B. <u>Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 2-20) and Zone</u> <u>Change, including Planned Development Overlay Designation (ZC 3-20)</u>

(Continued from June 2, 2022 PC Meeting)

#### Applicant has requested a continuance to October 20, 2022

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-2 (General Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for approximately 37.7 acres of a 90.4-acre property.

The 37.7 acres includes 4.25 acres intended for right-of-way dedication for a future frontage road. The application also shows a portion of the area subject to the map amendment intended for a north-south extension of Cumulus Avenue and future east-west street connectivity.

The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

- Location: 3310 SE Three Mile Lane, more specifically described at Tax Lot 700, Section 26, T.4S., R 4 W., W.M.
- Application: Kimco McMinnville LLC, c/o Michael Strahs

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Commissioner Langenwalter MOVED to CONTINUE the hearing for CPA 2-20/ZC 3-20 to October 20, 2022. The motion was seconded by Commissioner McClellan and PASSED 8-0.

#### C. <u>Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 1-21) and Zone</u> <u>Change, including Planned Development Overlay Designation (ZC 2-21)</u>

(Continued from June 2, 2022 PC Meeting)

Applicant has requested a continuance to October 20, 2022

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-2 (General Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for a property of approximately 8 acres. The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

- Location: 3330 SE Three Mile Lane, more specifically described at Tax Lot 600, Section 26, T.4S., R 4 W., W.M.
- Applicant: Ken Sandblast, Westlake Consultants, Inc. Representing property owner 3330 TML, c/o Bryan Hays

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Commissioner Tucholsky MOVED to CONTINUE the hearing for CPA 1-21/ZC 2-21 to October 20, 2022. The motion was seconded by Commissioner Rankin and PASSED 8-0.

#### D. <u>Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 2-21) and</u> Zone Change, including Planned Development Overlay Designation (ZC 3-21)

(Continued from June 2, 2022 PC Meeting)

#### Applicant has requested a continuance to October 20, 2022

Request: Approval to amend the Comprehensive Plan Map from Industrial to Commercial, and an amendment to the Zoning Map from M-L (Limited Light Industrial) to C-3 PD (General Commercial with a Planned Development Overlay), for approximately 21.1 acres of an 89.9-acre property, plus an additional 1.5 acres of the 89.9-acre property proposed to be dedicated for right-of-way at the time of development.

The request is submitted per the Planned Development provisions in Section 17.51.010(B) of the Zoning Ordinance, which allows for a planned development overlay designation to be applied to property without a development plan; however, if approved, no development of any kind can occur on the portion of the property subject to the C-3 PD overlay until a final development plan has been submitted and approved in accordance with the Planned Development provisions of the Zoning Ordinance. This requires the application for the final development plan to be subject to the public hearing requirements again at such time as the final development plans are submitted.

- Location: Three Mile Lane and Cumulus Avenue, more specifically described at Tax Lot 100, Section 27, T.4S., R 4 W., W.M.
- Applicant: Ken Sandblast, Westlake Consultants, Inc. representing property owner DRS Land, LLC c/o Dan Bansen

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Commissioner Deppe MOVED to CONTINUE the hearing for CPA 2-21/ZC 3-21 to October 20, 2022. The motion was seconded by Commissioner Tucholsky and PASSED 8-0.

#### E. <u>Quasi-Judicial Hearing: Comprehensive Plan Map Amendment (CPA 1-20) and Zone</u> <u>Change (ZC 1-20)</u>

(Continued from July 21, 2022 PC Meeting).

Applicant has requested a continuance to February 16, 2023

Request: An application for a Comprehensive Plan Map Amendment from Residential to Commercial and a Zone Change from County EF-80 to City C-3 (General Commercial) for approximately 1.2 acres of a 50.15-acre property.

The 50.15 acre parcel is within McMinnville's Urban Growth Boundary (UGB), and it is split by City limits, with approximately 9.5 acres inside City limits and approximately 40.5 acres outside City limits. The proposed map amendment would apply to the northerly 1.2-acre portion of the 9.5 acres within City limits.

The 9.5-acre portion of the property inside City limits has a combination of Comprehensive Plan Map designations and zoning designations: Commercial/C-3 on the front (approximately 7.3 acres), Residential/County EF-80 on the rear (approximately 1.2 acres), and a portion of Floodplain/F-P along the east and north boundaries (approximately 1 acre). The proposed amendment would change the 1.2 acres from Residential/County EF-80 to Commercial/C-3, so all of the nonfloodplain portion inside City limits would then be Commercial/C-3.

The unincorporated portion of the property within the UGB and outside City limits is approximately 40.5 acres. It is within the Floodplain Comprehensive Plan Map designation. It has County EF-80 zoning, with the entirety also being within the County's Floodplain Overlay Districts. The proposal would not change the Comprehensive Plan designation or county zoning of this unincorporated portion of the parcel.

- Location: 3225 NE Highway 99 West, more specifically described at Tax Lot 1500, Section 10, T.4S., R 4 W., W.M.
- Applicant: Cascade Steel Rolling Mills, c/o Jennifer Hudson representing property owner White Top Properties LLC

Disclosures: Chair Winfield opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. She asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none.

Commissioner Rankin MOVED to CONTINUE the hearing for CPA 1-20/ZC 1-20 to February 16, 2023. The motion was seconded by Commissioner Tucholsky and PASSED 8-0.

#### 5. Action Items

None

6. Commissioner Comments

None

#### 7. Staff Comments

Planning Director Richards discussed the reasons for the continued public hearings. Senior Planner Bilodeau had left the City for a different job. She announced the American Planning Association Conference on October 27-29 if any Commissioner wanted to attend. She then discussed upcoming meetings.

#### 8. Adjournment

Chair Winfield adjourned the meeting at 9:15 p.m.

Heather Richards Secretary From:Kelli GrinichTo:Claudia CisnerosCc:Heather RichardsSubject:Dec. 13 City Council STR LetterDate:Monday, December 12, 2022 10:34:30 AMAttachments:We sent you safe versions of your files.msg<br/>709 NW 21st St STR Letter.pdf

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

## Dear Councilors;

Thank you so much for taking the time to read my letter, and for all the work you do to make McMinnville wonderful. I've loved our town since the first moment I stepped onto the Linfield Campus, decades ago. One of my college jobs was interning for the Chamber of Commerce. When the opportunity came to return to McMinnville decades ago, we grabbed it.

I'm writing today to urge the City Council to deny the Short Term Rental permit for 790 NW 21<sup>st</sup> Street. I'm attaching a picture with ten cars parked at the house, taken on a Sunday night after the last STR planning commission meeting.

We as a neighborhood are frustrated with this process, especially as it lingers on beyond the final Planning Commission 7-1 decision. Fifty people in our neighborhood signed a petition expressing the desire to not have this property become a short term rental.

This weekend I read a quote from Erin Stephenson about Visit McMinnville: "Visit McMinnville's newly adopted vision is to 'cultivate the visitor economy to enhance the

quality of life for our community'. ...we can harness the power of McMinnville as a destination and make it work for us...additional hotel rooms can be the engine that pays for the things we value ---the Mack Theater, but also eventually out at Evergreen..."

This application goes against everything this lovely statement implies. Having a large family home host different big groups of strangers every weekend, potentially every night, turns the heart of our neighborhood into a business, the revenue of which flies straight to Texas, not to McMinnville. For weeks there have been five cars associated with the property. This home should be a family home, not a hollow community contributor which sees a steady flow of strangers come and go.

This house is a natural attractant for large groups. The short term occupancy will be impossible for the Planning Commission or Heather Richard's office to police, and there will be no recourse for neighbors, who will need to call on weekends about altercations, parking, noise, and other issues.

Please take the time to read the review left on Airbnb for the illegal July 4<sup>th</sup> occupancy. It doesn't jibe with the iTrip excuse that the occupants were moved around because of air conditioning failure in another unit.

The owner had multiple chances to fix the problem before the Planning Commission 7-1 decision to deny the application. The Planning Commission decision was sound. The Texan owner has no regard for the neighbors, nor the city of McMinnville.

Respectfully submitted,

Kelli Grinich

708 NW 21<sup>st</sup> Street McMinnville, OR 97128



From:	Ross Day	
To:	Claudia Cisneros	
Subject:	Letter and exhibits for appellant Emily LaGow	
Date:	Tuesday, December 13, 2022 10:37:21 AM	
Attachments:		
	2022.12.13 Letter to McMinnville City Council.docx	
	Exhibit 1 to appeal letter.pdf	
	Exhibit 2 to appeal letter.pdf	

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

#### This message originated outside of the City of McMinnville.

Attached please find a letter and exhibits on behalf of Emily LaGow.

Thank you in advance.

Ross Day

Ross Day Day Law, P.C. 7831 St. Charles St. NE Keizer, Oregon. 97303 (503) 743-6460 ross@daylawpc.com

"Please excuse any misspellings or grammatical errors, this was sent from my iPad...."

#### December 13, 2022

#### via electronic (claudia.cisneros@mcminnvilleoregon.gov) mail only

The Honorable Remy Drabkin Mayor City of McMinnville 230 NE Second Street McMinnville, Oregon 97128 The Honorable Chris Chenowith City Councilor, Ward 1 City of McMinnville 230 NE Second Street McMinnville, Oregon 97128 The Honorable Jessica Payne City Councilor, Ward 3 City of McMinnville 230 NE Second Street McMinnville, Oregon 97128

The Honorable Adam Garvin City Council President City of McMinnville 230 NE Second Street McMinnville, Oregon 97128 The Honorable Kellie Menke City Councilor, Ward 2 City of McMinnville 230 NE Second Street McMinnville, Oregon 97128 The Honorable Sal Peralta City Councilor, Ward 1 City of McMinnville 230 NE Second Street McMinnville, Oregon 97128 The Honorable Zack Geary City Councilor, Ward 2 City of McMinnville 230 NE Second Street McMinnville, Oregon 97128

#### RE: Appeal of Planning Commission Decision STR 7-22 APPEAL FILE 569-22-000412-PLNG

Mayor Drabkin, Council President Garvin, Councilors Peralta, Chenowith, Menkie, Geary and Payne:

I represent Emily (Joyce) LaGow (herein "Applicant"), the application for the above-referenced application for a short-term rental permit (herein "Application") pursuant to Section 17.12.010(P) of the McMinnville Zoning Ordinance (herein "MZO"). Thank you for taking the time to consider the Applicant's appeal.

The McMinnville Planning Commission (herein "Commission") denied the Application, determining the Application did not meet the criteria under MZO §17.12.010(P). Specifically, the Commission held the Application did not meet the requirement of MZO §17.12.010(P)(3) (One off-street parking space per guest room) and MZO §17.12.010(P)(7) (Property owner must live in the area of 97128 zip code or have alternate person available to respond to emergencies/complaints).

Unfortunately, the bases for denying the Application appears to be a miscommunication between the Applicant and the City.

As an initial matter, the Applicant owns the private real property who address is 790 NW 21<sup>st</sup> Street, McMinnville, Oregon, 97128 (herein "Property").

## Number of Rooms to Rent and Parking

MZO §17.12.010(P)(3) requires that a minimum of one off-street parking space be provided for each guest room. The Application (which is attached as Exhibit 1 to this letter) clearly states there are four (4) guest rooms, and there are four (4) off-street parking spaces.

Attached as Exhibit 2 to this letter is a copy of the site plan submitted with the Application (herein "Site Plan"). Page 2 of the Site Plan clearly demonstrates four (4) guest rooms and four (4) off-street parking spaces. The Applicant met her burden sufficient to meet the criteria of MZO §17.12.010(P)(3).

The miscommunication stems from the fact the Applicant was once renting the Property, advertising five (5) guest rooms. The Applicant assumed she could continue renting the Property, advertising the Property as having space for ten (10) guests until such time as the Application was approved and permit issued.

To be perfectly clear: there are only four (4) guest rooms available. There are four (4) off-street parking spaces available. This criterion is satisfied.

## **Response/Availability for Emergencies and/or Complaints**

MZO §17.12.010(P)(7) requires:

That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.

Importantly, this section of the MZO <u>does not</u> require someone be available 24 hours a day, 7 days a week to respond to emergencies/complaints. Such a rule would be as untenable as it would be unreasonable. Unfortunately, some of the opponents of the Application asserted to the Commission the MCZ required 24 hours a day, 7 days a week availability.

As explained in the Application, and again explained herein, the Applicant has a designated contact person named Erika Correa who will be able to respond to complaints/emergencies at the Property. In addition, I live in north Keizer and I will be available to respond to complaints/emergencies as well.

Finally, iTrip (the company the Applicant will be using to manage the booking of the Property, has a phone number that can be called to report complaints/emergencies. This phone number operates 24 hours a day, 7 days a week.

As I understand the circumstances involving the Commission's consideration of the Application, opponents of the Application misrepresented Ms. Correa's role. Opponents attempted to contact

Ms. Correa, and apparently when they called Ms. Correa did not answer the call. Opponents then called the iTrip phone number, and were told that iTrip did not answer calls after 11 p.m. The representation made to the Commission was that the Applicant did not have a person on-call to respond to complaints/emergencies as required by the MZO. This representation is absolutely false.

Ms. Correa is available to respond to complaints/emergencies as they arise, as am I. iTrip, the company assisting the Applicant with managing the Property is also available 24 hours a day, 7 days a week to respond to complaints/emergencies as required by the MZO. MZO \$17.12.010(P)(7) is satisfied.

## **Conclusion**

Pursuant to ORS 197.797(6)(a), the Applicant requests an additional seven (7) days to submit additional evidence. Pursuant to ORS 197.797(6)(e), the Applicant requests seven (7) days from the date the record is closed to new and/or rebuttal evidence to submit final argument.

The Application meets all of the applicable criteria listed in MZO §17.12.010(P). The decision of the Commission should be REVERSED and the Application should be GRANTED.

Best,

ROSS DAY, Esq. DAY LAW, PC ross@daylawpc.com

City Of		
<b>McMir</b>	nnvi	lle
Planning Department 231 NE Fifth Street $\circ$ McMinr (503) 434-7311 Office $\circ$ (503)		

www.mcminnvilleoregon.gov

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Received by	

## **Short Term Rental Application**

Applicant Information		
Applicant is: 🛱 Property Owner 🗆 Contract Buyer 🗆 Option Holder	Agent      Other	
Applicant NameEmily (Joyce) LaGow	Phone_ 206-714-3791	
Contact Name (If different than above) Address3201 Esperanza Crossing 453 City, State, Zip_Austin, TX 78758	-3	
Contact Email joycelagow@hotmail.com		
Property Owner Information Property Owner Name	Phone	
Contact Name	Phone	
Address		
City, State, Zip		
Contact Email		
<u>Site Location and Description</u> (If metes and bounds description, indicate on separate sheet) Property Address_790 NW 21ST ST, MCMINNVILLE, OR 97	128	
	Site Area_Lot size: 0.25 Acres	
Subdivision Compton Addition Block		
Comprehensive Plan DesignationZonin		

Added on 12.14.2022 5 of 11 The Director may approve, approve with conditions, or deny the application, based on the following criteria:

- 1. Short term rentals shall not be located within 200 feet of another short term rental, or on the same property as another short term rental.
- Short term rentals shall be allowed in single family dwellings, common-wall single family dwellings, and accessory dwelling units (ADUs). The structure shall retain the characteristics of a residence.
- 3. That a minimum of one off-street parking space be provided for each guest room.
- That signage is limited to only one non-illuminated or incidentally illuminated wooden sign not exceeding three (3) square feet of face area.
- 5. That the duration of each guest's stay at the residence be limited to no more than 30 (thirty) consecutive days.
- That smoke detectors be provided as per the requirements for "lodging houses" in Ordinance No. 3997.
- That the property owner shall live within the geographic area of the 97128 zip code or shall provide contact information of a person living within the geographic area of the 97128 zip code who shall be available to respond immediately to any emergency or complaint related to the short term rental.
- 8. Permits shall be issued to the current property owner at the time of application. Permits do not transfer with the sale or conveyance of the property. Upon any change in ownership, the short term rental permit for the subject property will become void. The use of the subject property as a short term rental by the new owner will again be subject to the application and review procedures in Section 17.72.110. The following situations are not deemed to be a change in ownership for the purposes of this section:
  - a. Transfer of property from a natural person(s) to a Trust serving the same natural person(s) or to a family member pursuant to a Trust; or
  - b. Transfer of ownership pursuant to a will or bequest upon the death of the owner.
- 9. Permits must be renewed annually. Failure to renew the short term rental permit annually will result in the permit becoming void, and the use of the subject property as a short term rental will again be subject to the application and review procedures in Section 17.72.110.
- 10. Complaints on conditions 1 through 9 above will be reviewed by the Planning Commission at a public hearing. The Planning Commission will review complaints based on the criteria listed in Sections 17.74.030 and 17.74.040 of the zoning ordinance. If the short term rental is found to be in violation of the criteria, the Planning Commission may terminate the use.

1.	Please describe the residence and its proposed use. The homeowner intends to rent their		
	four (4) bedroom, three (3) bath home on a short-term basis. The rental will be made		
	available for guest use year round and will be professional managed and maintained by		
	iTrip Vacations management company.		
2. How many guest rooms will be provided?			
	What is the maximum number of guests that can be accommodated? <u>8</u>		
3.	and the second sec		
	Are the parking spaces paved? Yes ☑ No □		
4.	Are there smoke detectors in the residence? Yes Ø No		
	If so, where are they located?		
	Smoke detectors are provided in each bedroom and hallway, and carbon monoxide		
	detectors are provided on each floor where a carbon monoxide source is located.		
5.	Does the property owner live within the city limits of McMinnville? Yes D No D		
	If no, please provide contact information of a person living within the city limits who shall be available to respond immediately to any emergency or complaint related to the vacation home rental:		
	Contact Name Erika Correa Phone 971-983-9324		
	Address 540 NE 26th Ct Phone		
	City, State, Zip McMinnville, OR 97128		
	Contact Emailmariaponce352@yahoo.com		

6. Has the applicant registered as a Transient Lodging Provider in order to collect, and pay, the Transient Lodging Tax imposed by the City of McMinnville on the rent charged to an occupant who occupies a provider's lodging for 30 successive days or less? Yes ☑ No □

In addition to this completed application, the applicant must provide the following:

- A site plan (drawn to scale, a north arrow, legible, and of a reproducible size), clearly showing the location of the residence; and existing and proposed features within and adjacent to the subject site, such as: lot and street lines with dimensions; driveway(s); parking; distances from property lines to structures; improvements; and significant features. Please note that all parking must be off-street and of a hardscaped surface. Cleary identify that the off-street parking requirements are met.
- Digital photographs of the subject residence's exterior.
- Beloor plan showing the size, function, and arrangement of interior rooms.
- Compliance of Neighborhood Meeting Requirements.
- Other information deemed necessary by the Planning Director to allow review of the applicant's proposal.
- Payment of the applicable review fee, which can be found on the Planning Department web page.

# Short Term Rental Information & Submittal Requirements



## Overview

In order to operate a vacation home rental in any of the residential zones of the City of McMinnville, a property owner must first submit an application and meet a specific set of standards as set forth in Section 17.12.010(O) (Permitted Uses) of the Zoning Ordinance, and also listed below. [Vacation home rentals located in commercial zones are exempt from these requirements; however, *all* such establishments are subject to the requirements of the *Transient Lodging Tax* program, which is administered by the City's Finance Department.]

Please note that occupancy of a vacation home rental in McMinnville is limited to a single family, as that term is defined by the McMinnville Zoning Ordinance.

## Application Submittal

The following materials must be provided at the time of submittal, or the application will not be accepted tor processing.

- A completed Short Term Rental application form.
- A site plan (drawn to scale, with a north arrow, legible, and of a reproducible size), clearly showing the location of the residence; and existing and proposed features within and adjacent to the subject site, such as: lot and street lines with dimensions; driveway(s); parking; distances from property lines to structures; improvements; and significant features. Please note that all parking must be off-street and of a hardscaped surface. Cleary identify that the off-street parking requirements are met.
- Digital photographs of the subject residence's exterior.
- Floor plan showing the size, function, and arrangement of interior rooms.
- Compliance of Neighborhood Meeting Requirements
- Payment of the applicable review fee.

## **Review Process**

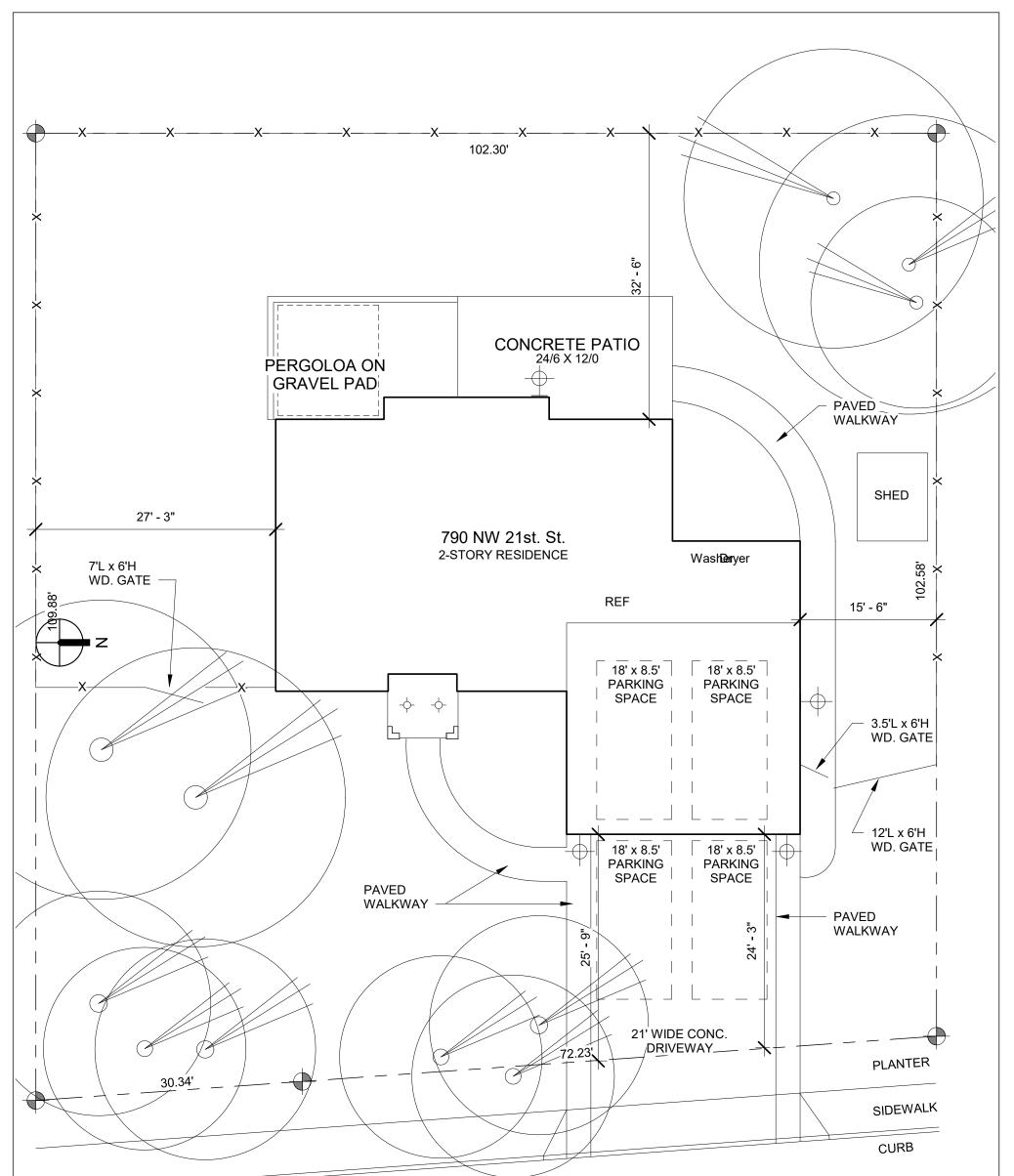
An application for a vacation home rental permit is subject to review by the Planning Director as stated in Section 17.72.110 (Director's Review with Notification) of the Zoning Ordinance, after notification of the application has been provided to property owners within 100-feet of the subject site. The decision made by the Planning Director may be appealed to the Planning Commission as outlined in Section 17.72.170 (Appeal from Ruling of Planning Director) of the Zoning Ordinance.

Exhibit 1 Appeal Letter to McMinnville City Council December 1326 2022 Page 4 of 5

Added on 12.14.2022 8 of 11 I hereby certify that the statements contained herein are in all respects true and correct to the best of my knowledge and belief.

Applicant's Signature Property Owner's Signature

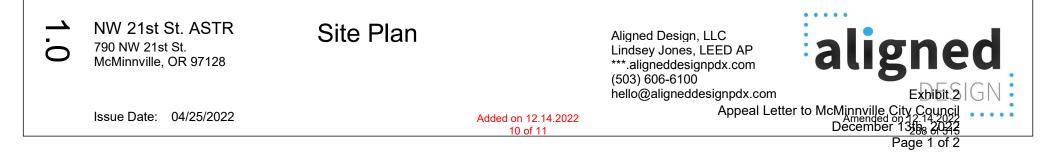
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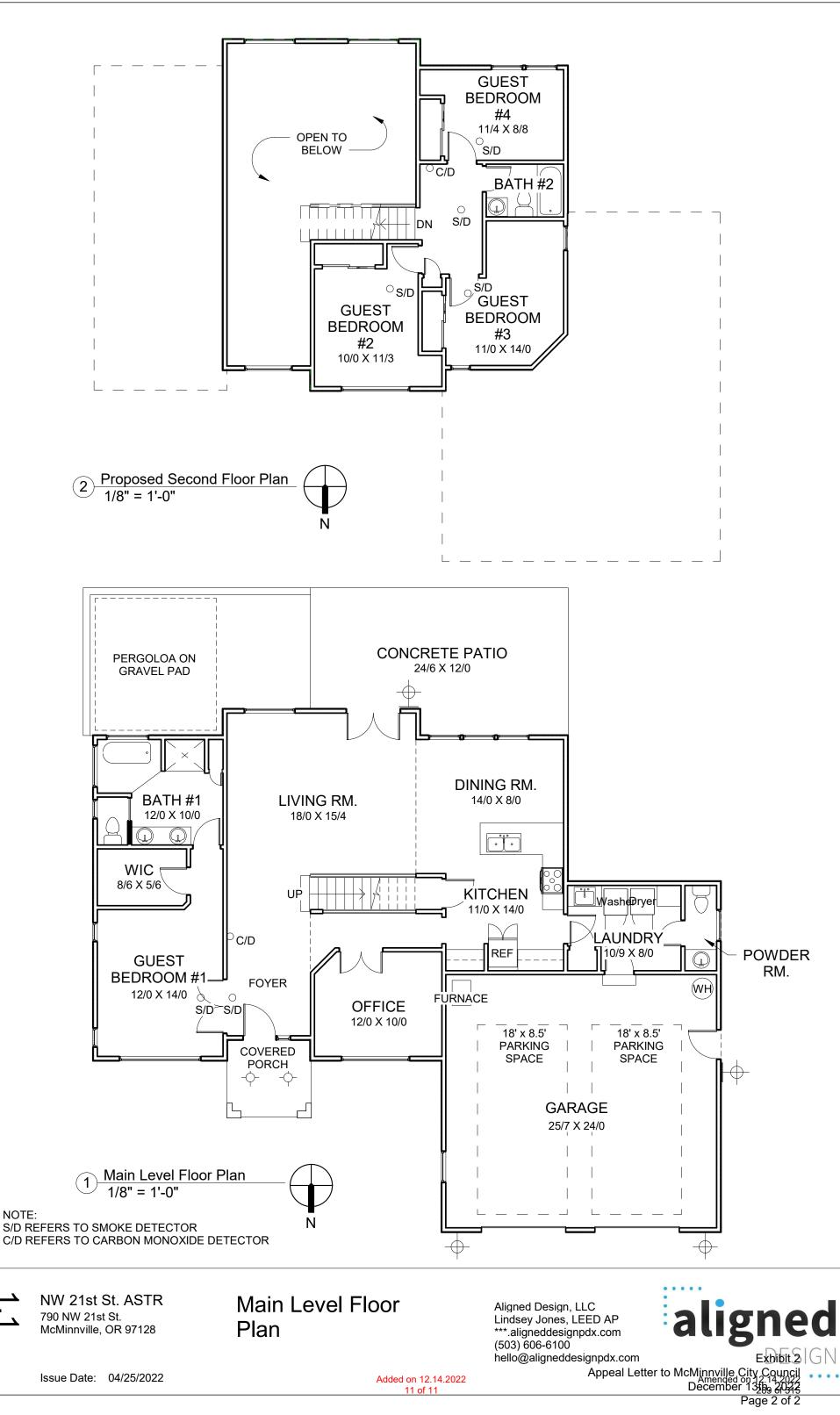




#### **PROPERTY INFORMATION:**

PROJECT ADDRESS:	790 NW 21st. ST.
	MCMINNVILLE, OR 97128
ACCOUNT #:	483217
ALT. PROPERTY #:	R4417AC 02344
PROPERTY DESC:	LOT 14 - BLOCK 1 IN COMPTON ADDITION





11 of 11

From:	JAY POST	item (
То:	Heather Richards	
Cc:	Mark Pitts	
Subject:	Appeal of the Planning Commission decision to deny a short-term rental permit at 790	NW 21st Street.
Date:	Monday, December 12, 2022 11:48:49 AM	

This message originated outside of the City of McMinnville.

Dear Ms. Richards:

My name is Jay Post, and I'm a long time resident of McMinnville residing at 2038 NW Michelbook Lane. I'm writing to ask the City Council to affirm the Planning Commission denial of the short term rental application at 790 NW 21st St. The applicants have in my opinion already shown repeated disregard for regulations and the legal process. Here are some of my concerns:

If their explanation of prior events is accurate, the property management company violated our local process by placing a client at the rental property prior to it's approval as a short term rental. The explanation given was that air conditioning failed at another local property, resulting in a need to move the client at that property. Although I'm not personally aware of evidence supporting this explanation, I'll give the property owner and rental company the benefit of the doubt and assume the explanation is supported by facts. If so, they (rental management company and/or property owner?) chose the option of moving their client to a property not approved by the city. There would have been potential other options including keeping them at their current location, or placing them at a hotel/motel. They chose the option that placed them in violation of city rules.

Even prior to the approval which applicant has anticipated, there has apparently been at least one instance of disregard for on-street parking rules.

It's still not clear that there is a person available to contact 24/7 should neighbors become aware of a disturbance or violation at the rental property. There should be a named individual, as well as a local backup individual for times when the primary person is unavailable.

I feel that the applicant has shown a pattern of disregard for the rules and the local process even prior to the approval that they've anticipated. Why should we expect that they'd be more likely to comply with rules after approval?

My opinion is that the denial of approval of this application by the Planning Commission should be upheld by the City Council.

Jay Post 2038 NW Michelbook Lane

# CITY OF MCMINNVILLE - CASH AND INVESTMENT BY FUND June 2022

		GENERAL OPERATING	3	
FUND #	FUND NAME	CASH IN BANK	INVESTMENT	TOTAL
01	General	\$1,057,665.69	\$6,556,834.86	\$7,614,500.55
05	Grants & Special Assessment	\$621.16	\$3,586,588.17	\$3,587,209.33
07	Transient Lodging Tax	\$348.14	(\$151,000.00)	(\$150,651.86)
08	Affordable Housing	\$812.94	\$1,500,000.00	\$1,500,812.94
10	Telecommunications	\$596.07	(\$23,970.00)	(\$23,373.93)
15	Emergency Communications	\$768.85	\$146,094.81	\$146,863.66
20	Street (State Tax)	\$763.96	\$2,552,430.06	\$2,553,194.02
25	Airport Maintenance	\$190.27	\$651,749.03	\$651,939.30
45	Transportation	\$597.22	\$3,483,494.92	\$3,484,092.14
50	Park Development	\$509.12	\$2,049,441.49	\$2,049,950.61
58	Urban Renewal	\$782.18	\$157,721.74	\$158,503.92
59	Urban Renewal Debt Service	\$930.37	\$576,775.44	\$577,705.81
60	Debt Service	\$458.17	\$434,456.05	\$434,914.22
70	Building	\$932.03	\$1,941,240.37	\$1,942,172.40
75	Wastewater Services	\$672.11	\$2,817,431.30	\$2,818,103.41
77	Wastewater Capital	\$231.05	\$40,349,103.65	\$40,349,334.70
80	Information Systems & Services	\$782.40	\$248,742.38	\$249,524.78
85	Insurance Reserve	\$218.59	\$535,290.54	\$535,509.13
	CITY TOTALS	1,067,880.32	67,412,424.81	68,480,305.13

MATURITY			INTEREST	
DATE	INSTITUTION	TYPE OF INVESTMENT	RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.20%	\$ 1,067,880.32
N/A	Key Bank of Oregon	Money Market Savings Account	0.01%	\$ 18,537,716.93
N/A	State of Oregon	Local Government Investment Pool (LGIP)	0.75%	\$ 47,861,674.77
N/A	State of Oregon	Urban Renewal Loan Proceeds (LGIP)	0.75%	\$ 179,099.62
N/A	MassMutual Financial Group	Group Annuity	3.00%	\$ 833,933.49
				\$ 68,480,305.13

\$

# CITY OF MCMINNVILLE - CASH AND INVESTMENT BY FUND July 2022

		GENERAL OPERATING	3	
FUND #	FUND NAME	CASH IN BANK	INVESTMENT	TOTAL
01	General	\$2,055,974.25	\$3,692,143.65	\$5,748,117.90
05	Grants & Special Assessment	\$939.32	\$3,585,588.17	\$3,586,527.49
07	Transient Lodging Tax	\$910.49	\$38,000.00	\$38,910.49
08	Affordable Housing	\$895.85	\$1,501,000.00	\$1,501,895.85
10	Telecommunications	\$596.07	(\$23,970.00)	(\$23,373.93)
15	Emergency Communications	\$473.03	\$150,094.81	\$150,567.84
20	Street (State Tax)	\$706.53	\$2,501,115.16	\$2,501,821.69
25	Airport Maintenance	\$47.25	\$614,749.03	\$614,796.28
45	Transportation	\$423.81	\$3,543,494.92	\$3,543,918.73
50	Park Development	\$754.59	\$2,082,441.49	\$2,083,196.08
58	Urban Renewal	\$54.14	\$145,911.39	\$145,965.53
59	Urban Renewal Debt Service	\$619.38	\$575,547.61	\$576,166.99
60	Debt Service	\$947.07	\$351,655.78	\$352,602.85
70	Building	\$395.17	\$1,962,240.37	\$1,962,635.54
75	Wastewater Services	\$54.72	\$2,624,563.24	\$2,624,617.96
77	Wastewater Capital	\$724.55	\$40,652,103.65	\$40,652,828.20
80	Information Systems & Services	\$626.52	\$233,742.38	\$234,368.90
85	Insurance Reserve	\$308.02	\$593,290.54	\$593,598.56
	CITY TOTALS	2,065,450.76	64,823,712.19	66,889,162.95

MATURITY			INTEREST	
DATE	INSTITUTION	TYPE OF INVESTMENT	RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.20%	\$ 2,065,450.76
N/A	Key Bank of Oregon	Money Market Savings Account	0.01%	\$ 18,537,874.38
N/A	State of Oregon	Local Government Investment Pool (LGIP)	1.25%	\$ 45,272,222.40
N/A	State of Oregon	Urban Renewal Loan Proceeds (LGIP)	1.25%	\$ 179,289.27
N/A	MassMutual Financial Group	Group Annuity	3.00%	\$     834,326.14 \$  66,889,162.95

\$

# CITY OF MCMINNVILLE - CASH AND INVESTMENT BY FUND August 2022

		GENERAL OPERATING	3	
FUND #	FUND NAME	CASH IN BANK	INVESTMENT	TOTAL
01	General	\$1,297,402.71	\$2,839,295.23	\$4,136,697.94
05	Grants & Special Assessment	\$760.02	\$7,487,057.52	\$7,487,817.54
07	Transient Lodging Tax	\$780.90	(\$6,000.00)	(\$5,219.10)
08	Affordable Housing	\$297.13	\$1,503,000.00	\$1,503,297.13
10	Telecommunications	\$928.09	\$1,030.00	\$1,958.09
15	Emergency Communications	\$597.21	\$160,094.81	\$160,692.02
20	Street (State Tax)	\$515.97	\$2,426,472.29	\$2,426,988.26
25	Airport Maintenance	\$200.40	\$633,749.03	\$633,949.43
45	Transportation	\$160.07	\$3,588,494.92	\$3,588,654.99
50	Park Development	\$694.38	\$2,092,441.49	\$2,093,135.87
58	Urban Renewal	\$418.54	\$109,151.59	\$109,570.13
59	Urban Renewal Debt Service	\$46.13	\$484,549.41	\$484,595.54
60	Debt Service	\$526.05	\$54,739.76	\$55,265.81
70	Building	\$309.95	\$1,973,240.37	\$1,973,550.32
75	Wastewater Services	\$44.24	\$2,576,988.62	\$2,577,032.86
77	Wastewater Capital	\$748.58	\$41,090,103.65	\$41,090,852.23
80	Information Systems & Services	\$819.68	\$209,742.38	\$210,562.06
85	Insurance Reserve	\$384.74	\$510,290.54	\$510,675.28
	CITY TOTALS	1,305,634.79	67,734,441.61	69,040,076.40

MATURITY			INTEREST	
DATE	INSTITUTION	TYPE OF INVESTMENT	RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.30%	\$ 1,305,634.79
N/A	Key Bank of Oregon	Money Market Savings Account	0.01%	\$ 18,538,031.82
N/A	State of Oregon	Local Government Investment Pool (LGIP)	1.58%	\$ 48,134,544.49
N/A	State of Oregon	Urban Renewal Loan Proceeds (LGIP)	1.58%	\$ 179,529.47
N/A	MassMutual Financial Group	Group Annuity	3.00%	\$ 882,335.83
				\$ 69,040,076.40

\$



City of McMinnville Public Works Department 3500 NE Clearwater Drive McMinnville, Oregon 97128 (503)434-7313 www.mcminnvilleoregon.gov

# **STAFF REPORT**

DATE:December 13, 2022TO:Jeff Towery, City ManagerFROM:Leland Koester, Wastewater Services ManagerSUBJECT:Purchase of Dump Truck (Swap Loader) for Wastewater Services Conveyance<br/>Group

#### Report in Brief:

This action is the consideration of a resolution to enter into a contract with Premier Truck Group of Portland for the purchase of a 2023 Freightliner 114SD chassis with a General Equipment Swaploader Model SL-400 with two (2) dump boxes through Oregon's State procurement contract.

#### Background:

The Conveyance Team presently must have two separate dump trucks and two drivers available while performing excavation work on our sanitary sewer system. They presently do not have a dump truck, so they borrow one from Public Works Operations and the other from the Water Reclamation Facility (WRF). During excavation, one employee operates the excavator and then two employees are in the dump trucks. This process requires a total of three employees.

#### **Discussion:**

By purchasing a Swaploader with two (2) drop boxes, we will only need two (2) employees for this process - one for the excavator and one for the Swaploader. The Swaploader driver will drop off the empty box to be filled by the excavator and then pick up the second box while the first is being filled. The Swaploader driver will then replace the full drop box with an empty one, repeating the process as necessary until the work is complete. This reduces the job needs by one (1) employee and limits the amount of idle time while waiting for a truck to fill.

Besides filling the need of a dump truck, the Swaploader has multiple other uses. A water tank can be purchased and used as a water truck, or a sander box can be purchased to sand streets during winter storms.

#### Attachments:

- 1. Resolution No. 2022-67
- 2. Premier Truck Group of Portland Quote and Specifications
- 3. Oregon State Purchasing Agreement PA1640
- 4. Amendment to agreement PA1640
- 5. Excel spreadsheet of pricing for PA1640

6. Signed City of McMinnville Purchase Order.

#### Fiscal Impact:

The Adopted FY23 budget includes \$250,000 in the Wastewater Capitol Fund (77) for the purchase of a dump truck. Using the State procurement contract, the total price is \$224,911.

#### **Recommendation:**

Staff recommends that the City Council adopt the attached Resolution authorizing the City Manager to enter into a Contract with Premier Truck Group of Portland for \$ 224,911 for the purchase of a 2023 Freightliner 114SD Chassis and Swaploader with two (2) dump boxes.

# **RESOLUTION NO. 2022-67**

A Resolution authorizing the City Manager to enter into a purchase agreement with Premier Truck Group of Portland for the procurement of a 2023 Freightliner 114SD chassis with a General Equipment Swaploader Model SL-400 with two (2) dump boxes through the Oregon Department of Administrative Services Contract PA1640.

#### **RECITALS:**

**Whereas**, Wastewater Services budgeted \$250,000 for the purchase of a dump truck for the Conveyance Team in the 77.8710 account; and

**Whereas**, Through the Oregon Administrative Services Contract PA1640, Premier Truck Group of Portland is providing a 2023 Freightliner 114SD Chassis with a 12-liter Cummins engine, General Equipment Swaploader, and 2 Dump Boxes for \$224,911.

**Whereas**, ORS 279A.225 and ORS 190.025 and ORS 279B.140 authorize the State of Oregon Administrative Services and Oregon units of local government to undertake cooperative procurement of goods and services; and

**Whereas**, the State of Oregon Department of Administrative Services has undertaken a competitive procurement process and entered into a Price Agreement for goods to be purchased on terms and conditions set forth in OAS Contract No. PA1640; and

**Whereas**, pursuant to ORS 279A.210, sanitary system staff have confirmed that the OAS solicitation and award process for Contract PA1640 was open, impartial and competitive and used source selection methods substantially similar to applicable Chapter 279 A, B, and C procurement standards for this type of goods; that OAS Contract PA1640 specifies estimated contract requirements; and that no material change has been made to the terms, conditions, and prices of the original contract between the contractor and the Oregon OAS.

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

- 1. That entry into a contract on all of the procurement terms and conditions specified by State of Oregon OAS Contract No. PA1640 with Premier Truck Group of Portland in the amount of \$224,911 for the purchase of a 2023 Freightliner Chassis, Swaploader and Two Drop Boxes is hereby approved.
- 2. The City Manager is hereby authorized and directed to execute the Purchase agreement.

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 <u>13th</u> day of <u>December</u> 2022 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this  $\underline{13}^{\text{th}}$  day of December 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

Exhibits:

- A Oregon State Purchase Agreement PA1640
- B Amendment to Agreement PA1640 to include Premier Truck Group of Portland
- C Price Sheet for Contract PA1640
- D Signed City of McMinnville Purchase Order

# **State of Oregon**



# PRICE AGREEMENT WITH

# JMR Group, LLC (dba McCoy Freightliner)

# FOR

# **Freightliner and Western Star Brand Vehicles** Price Agreement # 1640

Price Agreement # 1640 JMR Group, LLC dba McCoy Freightliner This Price Agreement ("Agreement') is between the State of Oregon (the "State"), acting by and through its Department of Administrative Services Procurement Services ("DAS PS" or "Agency") and JMR Group, LLC (dba McCoy Freightliner), an Oregon Limited Liability Company ("Contractor").

# Section 1 - Agreement

# 1.1 Parties

- 1.1.1 The only parties to this Agreement are Contractor and DAS PS.
- 1.1.2 Authorized Purchasers may purchase goods and related services specified in Exhibit A ("Goods") by issuing ordering instruments that create and become part of separate contracts ("Contracts"). The only parties to Contracts created by ordering instruments are the applicable Authorized Purchaser and Contractor. DAS PS is an intended beneficiary of each Contract created by an ordering instrument.
- 1.1.3 As used in this Agreement, "Authorized Purchaser" means: State agencies of Oregon, Oregon Cooperative Procurement Program ("ORCPP") participants and authorized members to the State of Washington Master Contracts Usage Agreement (MCUA). Contractor may be required to obtain manufacturer authorization prior to an MCUA member's purchase of Goods under this Agreement.

# **1.2 Ordering Instrument**

- 1.2.1 Authorized Purchasers may order Goods during the Term of this Agreement using an ordering instrument:
  - a) Authorized Purchasers who are agencies of the State of Oregon under DAS procurement authority may issue ordering instruments under this Price Agreement for any dollar amount without further delegation of procurement authority from DAS. Notwithstanding the foregoing DAS delegation, Authorized Purchasers who are agencies of the State of Oregon must obtain all other necessary approvals, including but not limited to legal sufficiency approval as required.
  - b) Authorized Purchasers that are agencies of the State of Oregon may use either of the following as ordering instruments: i) the DAS PS approved purchase order form. Exhibit B is a sample DAS PS approved purchase order form; or ii) an electronic ordering method when the Authorized Purchaser is using a Small Purchase Order Transaction System (SPOTS) card. Unless expressly

authorized by DAS PS in writing, Contractor shall not accept a different type of ordering instrument from a State agency.

- c) Authorized Purchasers that are not agencies of the State of Oregon may use their own purchase order forms as ordering instruments.
- d) To be effective, the ordering instrument must specify all of the following:
  - i) Language stating that the ordering instrument is submitted under this Agreement (and include the Agreement reference number from the Agreement coversheet).
  - ii) The specific Goods and quantity of each item ordered.
  - iii) The net price.
  - iv) The requested delivery schedule.
  - v) The delivery location(s).
  - vi) The invoicing address.
  - vii) The Authorized Purchaser's authorized representative and relevant contact information, including an e-mail address or fax number.
- 1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Agreement. Additional, different or conflicting terms and conditions in any purchase order or any other form of either an Authorized Purchaser or the Contractor may not vary the terms of a Contract. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.
- 1.2.3 Contractor shall accept ordering instruments from Authorized Purchasers that comply with the provisions of this Agreement until this Agreement terminates.
- 1.2.4 An ordering instrument is deemed accepted by Contractor unless Contractor rejects an ordering instrument within three (3) business days after it is received. Contractor may reject an ordering instrument: i) using the same means as were used to deliver the ordering instrument, or ii) by e-mail if the email address is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.
- 1.2.5 Accepted ordering instruments establish separate Contracts between the Authorized Purchaser and Contractor and include the terms set forth in Sections 2 and 3. As used in the Contracts, "Price Agreement" means this Agreement.
- 1.2.6 DAS PS is not obligated or liable under an ordering instrument unless DAS PS is purchasing Goods as the Authorized Purchaser.
- 1.2.7 Nothing in this Agreement obligates any Authorized Purchaser to place any ordering instrument or to purchase any Goods.

Contractor may verify that Authorized Purchasers are MCUA members at the following address: <u>\*\*\*\*\*\*\*apps.des.wa.gov/DESContracts/Home/MCUAListing</u>

1.2.9 Contractor shall reject an ordering instrument that does not meet the requirements of this Agreement.

#### 1.3 Prices

- 1.3.1 Except as provided in this Section, during the Term of this Agreement, Contractor shall offer Goods to Authorized Purchasers at prices that do not exceed the prices listed in Exhibit A. The pricing for this Agreement is in U.S. dollars.
- 1.3.2 Contractor and an Authorized Purchaser may agree to lower prices for Goods. Those lower prices apply only to applicable Contracts between Contractor and Authorized Purchaser.
- 1.3.3 Contractor shall subtract from percentages or prices charged to Authorized Purchasers any unit price decrease that has been achieved or gained by the Contractor, whether through the manufacturer or otherwise. Contractor shall give Authorized Purchasers the immediate benefit of the decrease. Contractor shall promptly notify the DAS-PS Contract Administrator ("Contract Administrator") of the amount and effective date of the decrease.
- 1.3.4 Either party to this Agreement may request a price adjustment, or an adjustment to the discount percentage, for some or all of the Goods, subject to Section 1.3.5 below.
- 1.3.5 Contractor may request unit price increases from DAS PS following the first year of the term of the Contract, but no more than once in any 12-month period. Contractor must submit a request to the Contract Administrator in writing at least 60 days before the proposed effective date of the increase, or at such other time as specified by the Contract Administrator for submittal of the request. The request must show all proposed increases by line item and include supporting documentation acceptable to DAS PS. DAS PS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or

Consumer Price Index data, published MSRP or any other relevant manufacturer or industry data substantiating the increase.

1.3.6 Discontinued Goods may be subtracted and new Goods meeting or exceeding the RFP specifications may be added throughout the term of this Agreement. Goods may be adjusted upon both parties' approval in writing, without a signed amendment to this Agreement. All adjustments will be included on a revised Exhibit A.

### 1.4 Contractor Reporting and Payment Requirements

Contractor will be required to submit Volume Sales Reports and Vendor Collected Administrative Fees.

#### 1.4.1. Volume Sales Reports

Pursuant to the process defined by DAS PS found at: \*\*\*\*\*\*\*\*.oregon.gov/das/Procurement/Pages/Supplier.aspx, Contractor shall submit a Volume Sales Report ("VSR") to DAS PS on a quarterly basis; the quarterly report is due no later than thirty (30) calendar days from the end of the applicable quarter. (For purposes of this Agreement, quarters end March 31, June 30, September 30 and December 31.) Upon written notice from DAS PS, **Contractor shall submit the VSR on a monthly basis, VSR due date to be determined by DAS PS.** 

The VSR will contain:

- Complete and accurate details of all receipts (sales and refunds) for the reported period; and
- Such other information as DAS PS may reasonably request.

Contractor is responsible for timely reporting and shall submit a VSR whether or not there are sales. When no sales have been recorded for the reporting period, a report must be submitted stating "*No Sales for the Reporting Period".* 

#### 1.4.2. Vendor Collected Administrative Fee

Pursuant to the process defined by DAS PS and published at \*\*\*\*\*\*\*.oregon.gov/das/Procurement/Pages/Supplier.aspx, Contractor shall submit a Vendor Collected Administrative Fee ("VCAF"), as directed by DAS PS. The VCAF is a charge equal to one percent (1%), not to exceed a total of \$325 per vehicle, of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the reporting period.

# 1.5 Term of Agreement

- 1.5.1 The initial term of this Agreement begins on the later of May 1, 2021 or the date this Agreement has been signed by DAS PS and Contractor and all required approvals have been obtained (the "Effective Date") and expires two (2) years after the Effective Date unless sooner terminated or extended as provided in this Agreement. DAS PS has the option to extend this Agreement for one or more additional 1-year terms, provided that the initial term, together with all extensions, shall not exceed a total of five (5) years. DAS PS may exercise these options to extend by giving Contractor written notice of such exercise no later than 30 calendar days before the expiration of the then current term. The initial term, together with all extension terms are collectively referred to herein as the "Term" of this Agreement.
- 1.5.2 Notwithstanding the foregoing, DAS PS reserves the right in its sole discretion to extend the Agreement for a maximum of one (1) calendar month beyond the end of any term. DAS PS shall notify Contractor in writing of the one (1) month extension. Consecutive one (1) month extensions obtained under this Section 1.5.2 are not allowed.
- 1.5.3 After termination or expiration of this Agreement, Contractor shall not accept new ordering instruments.
- 1.5.4 Termination of this Agreement also terminates "blanket" ordering instruments in which the Contractor is not required to deliver specific quantities of Goods at specific times. The intent of this paragraph is to terminate what is commonly known as blanket purchase orders (orders that may contain details of the Goods, but under which actual sales of Goods are made by periodic releases that specify a date for delivery of specific Goods).
- 1.5.5 Except as provided in Section 1.5.4, termination of this Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument that was accepted before termination of this Agreement, for non-recurring deliveries of Goods.
- 1.5.6 DAS PS may, in its sole discretion, terminate this Agreement upon 30 calendar days' written notice to Contractor for any or no reason.

# 1.6 Insurance

Contractor shall obtain insurance specified in Exhibit C and shall maintain the insurance until all Contracts under this Agreement are terminated.

# 1.7 Miscellaneous

- 1.7.1 <u>Choice of Law.</u> The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- 1.7.2 <u>Designation of Forum and Consent to Jurisdiction.</u> Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- 1.7.3 <u>Amendments.</u> Unless otherwise defined in this Agreement, no amendment of this Agreement is valid unless it is in writing and signed by the parties.
- 1.7.4 <u>Transfer.</u> Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of DAS PS. DAS PS' consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided, their permitted legal successors and assigns.
- 1.7.5 <u>Counterparts.</u> This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.
- 1.7.6 <u>Force Majeure.</u> Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DAS PS may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Agreement within an acceptable time period. In the event of any such delay, Contractor's obligations are suspended to the extent of and for the duration of such causes. However, Contractor shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of

Contractor's obligations with all reasonable diligence. DAS PS, in its sole discretion, may extend the period for performance under this Agreement to enable Contractor, once such causes have been removed, to fulfill its obligations hereunder.

- 1.7.7 <u>Entire Agreement.</u> This Agreement, together with the attached exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.
- Notices. Except as otherwise expressly provided in this Price 1.7.8 Agreement, any communications between the parties, or notices to be given under this Price Agreement, are effective only if given in writing or by personal delivery, email or United States Postal Service, postage prepaid, to the Contract Administrator for Contractor or DAS-PS, as applicable, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.
- 1.7.9 <u>No Third Party Beneficiaries.</u> DAS PS and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 1.7.10 <u>Waiver</u>. The failure of DAS PS to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance does not constitute a waiver by DAS PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such a failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.
- 1.7.11 <u>Certification of Compliance with Tax Laws</u>. Contractor has complied with the tax laws of this State and all applicable tax laws of political subdivisions of this State. Contractor shall, throughout the duration of this Agreement and any Contract and any extensions thereof, comply with all tax laws of this State and all applicable tax laws of any

political subdivision of this State. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this State that applied to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Any failure to comply with the provisions of this subsection 1.7.11 constitutes a material default of this Agreement and any Contract. Any failure to comply entitles DAS PS or Authorized Purchaser to terminate this Agreement or any Contract, as applicable and to pursue and recover any and all damages that arise from the default and the termination of this Agreement or any Contract, and to pursue any or all of the remedies available under this Agreement or any Contract, at law, or in equity, including but not limited to:

- Termination of this Agreement or any Contract, as applicable, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's or Authorized Purchaser's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default of this Agreement or any Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods, services and applications.
- 1.7.12 <u>Recycled Products.</u> DAS PS' performance under this Agreement is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Agreement), 279B.230 and 279B.235 (if applicable to this Agreement), which are incorporated into this Agreement by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).
- 1.7.13 <u>Records Archiving.</u> Contractor shall retain, maintain and keep accessible all records relevant to this Price Agreement (the "Records")

for a minimum of six (6) years, or such longer period as may be required by applicable law following termination of this Agreement. Such period shall be further extended until the conclusion of any audit, controversy or litigation commenced during such period and arising out of or related to this Agreement or any Contract. Financial Records must be kept in accordance with Generally Accepted Accounting Principles. During the record-retention period established in this Section, Contractor shall permit DAS-PS, the State of Oregon and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

- 1.7.14 <u>Performance Evaluations</u>. DAS PS may conduct evaluations of Contractor's performance during the term of this Agreement. DAS PS will compile and maintain completed evaluations, which will become a written record of Contractor's performance. DAS PS may also maintain as part of that written record information obtained from Contractor during an exit interview following Contract termination. DAS PS may provide copies of any documents in the written record to the Contractor and third parties upon request. DAS PS may use performance evaluations in any way it deems necessary, in its sole discretion, including but not limited to making responsibility determinations and decisions to award contracts.
- 1.7.15 <u>Reporting</u>. This Agreement and Contract(s) of Authorized Purchasers who are State agencies will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Agreement or any Contract or (ii) exercising a right of setoff against Contractor's compensation under this Agreement or any Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.
- 1.7.16 <u>Survival:</u> All rights and obligations cease upon termination or expiration of this Price Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination, including without limitation this Section 1.7.16, and provisions regarding warranties and liabilities, independent Contractor status and taxes and withholding, compensation, Contractor's representations and warranties, control of defense and settlement, remedies, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

### Section 2 - Standard Terms for Contracts Under This Agreement

- **2.1 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** The Contract consists of the ordering instrument and the provisions in Sections 2 and 3 of the Price Agreement. In the event of a conflict between the ordering instrument and provisions in Sections 2 and 3, the provisions in Sections 2 and 3 take precedence.
- **2.2 PAYMENT:** Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under this Contract. AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THIS CONTRACT. Subject to Authorized Purchaser's acceptance of Goods, payment is due from Authorized Purchaser within 45 calendar days after the date of the invoice.
- **2.3 OVERDUE CHARGES:** At Contractor's option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum).
- **2.4 PAYMENT ADDRESS:** Payments must be sent to the address specified in the Contractor's invoice.
- **2.5 INVOICES:** Contractor shall invoice Authorized Purchaser only after delivery of all Goods ordered. Invoices shall be sent to the address provided by Authorized Purchaser for that purpose. Contractor shall include all of the following in its invoice:
  - 2.5.1. Price Agreement number.
  - 2.5.2. Ordering instrument number.
  - 2.5.3. Goods ordered.
  - 2.5.4. Date delivered.
  - 2.5.5. Volume or quantity of Goods delivered.
  - 2.5.6. The price per item.
  - 2.5.7. The total amount invoiced.
  - 2.5.8. The address to which payment is to be sent.
  - 2.5.9. Additional Taxes (e.g. privilege or vehicle use tax and corporate activity tax) (determined based on the state of purchase)
- **2.6 PRICES:** Contractor represents that all prices for Goods under this Contract are equal to or better than the prices listed in the Price Agreement.
- 2.7 CANCELLATION; INSPECTIONS AND ACCEPTANCE: The Authorized Purchaser may cancel an order in whole or in part before Goods described in the cancelled whole or part are delivered. The Authorized Purchaser has ten (10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects,

including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery). If the Authorized Purchaser elects to provide Contractor an opportunity to cure the defects, notice of rejection must also specify such opportunity to cure, and the time period in which such cure must be completed.

- 2.7.1. The Authorized Purchaser may elect to have Contractor deliver substitute conforming Goods at no additional cost to the Authorized Purchaser. In such an event, Contractor shall deliver substitute conforming Goods within ten (10) calendar days of receipt of notice of rejection.
- 2.7.2. If the Goods are rejected or acceptance is revoked, Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.
- 2.7.3. Nothing contained in Section 2.7 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

#### 2.8 **REPRESENTATIONS AND WARRANTIES:**

- 2.8.1. **OFFICER STATUS, INSURANCE:** Contractor represents and warrants that it is not an "officer," "employee," or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265. Contractor represents and warrants that Contractor has obtained and will maintain during the term of this Contract all insurance required by the Price Agreement.
- 2.8.2. WARRANTY ON MATERIALS, DESIGN AND MANUFACTURE: Unless otherwise approved, in writing, by the Authorized Purchaser, Contractor represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture. Contractor further represents and warrants that all Goods are in compliance with and meet or exceed all specifications in Exhibit D to the Price Agreement.
- 2.8.3. **WARRANTY ON SERVICE STANDARDS:** Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with the highest standards prevalent in the industry.

2.8.4. WARRANTY OF TITLE: Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods that is superior to or infringes upon the rights granted to the Authorized Purchaser under this Contract.

### 2.8.5. WARRANTY ON SAFETY AND HEALTH REQUIREMENTS:

Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration ("OSHA"), and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Consumer and Business Services Department.

- 2.8.6. **MANUFACTURER WARRANTIES:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser, and provide warranty documents to the Authorized Purchaser, at time of delivery at no charge.
- 2.8.7. **WARRANTIES CUMULATIVE:** The warranties set forth in this Section 2.8 are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties provided in this Contract are cumulative, and are intended to afford the Authorized Purchaser the broadest warranty protection available.

# 2.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

- 2.9.1 **LAWS AND REGULATIONS:** Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract as they may be adopted or amended from time to time.
- 2.9.2 **STATUTORY TERMS:** Authorized Purchaser's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(h)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).
- 2.9.3 **NONCOMPLIANT GOODS:** In the event of a conflict between the specifications in this Contract and applicable federal or State law, the

law will prevail. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify DAS PS and Authorized Purchaser.

- 2.9.4 **RECALLED GOODS OR COMPONENTS:** In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify DAS PS, and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:
  - a) Reject the Goods.
  - b) Revoke its acceptance of the Goods.
  - c) Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to the Authorized Purchaser.
  - d) Terminate the Contract in its entirety or with respect to the recalled or noncompliant Goods.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and shall reimburse Authorized Purchaser for any payments made.

- 2.10 FOREIGN CONTRACTOR: If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue ("ODR") all information required by the ODR relative to the Contract. Authorized Purchaser may withhold final payment under the Contract until Contractor has met this requirement.
- **2.11 SAFETY DATA SHEET:** Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet ("SDS") as defined by the OSHA for any Goods provided under the Price Agreement that may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and MSDS information if available and as requested by Authorized Purchasers.
- **2.12 TIME IS OF THE ESSENCE:** Time is of the essence for performance of Contractor's performance obligations under this Contract.

**2.13 FORCE MAJEURE:** Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. Authorized Purchaser may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract within an acceptable time period.

# 2.14 RESERVED

2.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS: If Authorized Purchaser is an agency of the State of Oregon or another governmental body, payment obligations under this Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under this Contract.

# 2.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:

- 2.16.1 Contractor is an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods and (ii) to evaluate the quality of completed performance, Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any obligations required by this Contract.
- 2.16.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

# 2.17 INDEMNIFICATION:

2.17.1 Contractor shall defend, save, hold harmless, and indemnify the Authorized Purchaser, the State of Oregon and its officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (including reasonable attorney's fees and expenses at trial, on appeal and in connection with any petition for review) (collectively, "claim") which may be brought or made against any Authorized Purchaser, the State, or their agents, officials, employees and arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of Contractor, its employees or agents, (ii) any act or omission by Contractor that constitutes a material default of this Contract, including without limitation any breach of warranty, or (iii) the infringement of any patent, copyright, trade secret or other proprietary right of any third party by delivery or use of the Goods. Authorized Purchaser or the State shall promptly notify Contractor in writing of any claim of which Authorized Purchaser or State becomes aware. Contractor's obligation under this Section shall not extend to any claim solely caused by (i) the negligent or willful misconduct of Authorized Purchaser, or (ii) Authorized Purchaser's modification of Goods without Contractor's approval and in a manner inconsistent with the purpose and proper usage of such Goods.

2.17.2 The Oregon attorney general must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of the State, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and that of its officers, employees, or agents under clauses (i) and (ii) above.

# 2.18 DEFAULT:

2.18.1 **BY CONTRACTOR:** Contractor is in default under this Contract if:

- a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- b) Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or
- c) Contractor commits any default of any covenant, representation, warranty, obligation or certification under this Contract, provided however that Contractor may cure the default within the period specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the default is curable by Contractor within an acceptable time period.

# 2.18.2 **BY AUTHORIZED PURCHASER:** Authorized Purchaser is in default of this Contract if:

- a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor's notice of such failure or such longer period as Contractor may specify in such notice; or
- b) Authorized Purchaser commits any default of any covenant, warranty, or obligation under this Contract and such default is not cured within ten (10) business days after delivery of Contractor's notice of default or such longer period as Contractor may specify in such notice.

# 2.19 REMEDIES:

- 2.19.1 **AUTHORIZED PURCHASER'S REMEDIES:** If Contractor is in default under Section 2.18.1, in addition to the remedies afforded elsewhere in this Contract, the Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:
  - a) Termination of the Contract as provided in Section 2.20.2;
  - b) Withholding all monies due for invoiced Goods or services that Contractor has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
  - c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
  - d) Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty to Authorized Purchaser.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

2.19.2 **CONTRACTOR'S REMEDIES:** If Authorized Purchaser terminates this Contract, or if Authorized Purchaser is in default under Section 2.18.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 2.20.3, Contractor's sole remedy is: (a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser, (b) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser, and (c) with respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

#### 2.20 TERMINATION:

- 2.20.1 **BY MUTUAL CONSENT:** This Contract may be terminated at any time by mutual written consent of Authorized Purchaser and Contractor.
- 2.20.2 **RIGHTS OF AUTHORIZED PURCHASER.** Authorized Purchaser may, at its sole discretion, terminate this Contract or other ordering instrument for convenience with thirty (30) days' written notice. Authorized Purchaser may terminate this Contract immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract; (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way so as to prohibit either the purchase of the Goods by Authorized Purchasers under the Price Agreement or Authorized Purchaser's payment for such Goods from the planned funding sources; or (c) Contractor is in default of this Contract under Section 2.18.1. Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Authorized Purchaser.
- 2.20.3 **RIGHTS OF THE CONTRACTOR:** Contractor may terminate this Contract with ten (10) days' written notice to Authorized Purchaser, if Authorized Purchaser is in default of this Contract as described in Section 2.18.2.
- 2.21 ACCESS TO RECORDS: Contractor shall retain, maintain, and keep accessible all records relevant to the this Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will also be kept in accordance with Generally Accepted Accounting Principles ("GAAP"). During the record-retention period established in this Section, Contractor shall permit DAS PS,

the Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

- **NOTICES:** Except as otherwise expressly provided in this Contract, any 2.22 communications between the parties, or notices to be given under this Contract, are effective only if given in writing by personal delivery, email or United States Postal Service, postage prepaid, to the party's authorized representative. For Authorized Purchaser, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the ordering instrument or as later indicated by Authorized Purchaser pursuant to this Section. For Contractor, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the Price Agreement or as later indicated by Contractor pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.
- **2.23 ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS:** The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.
- **2.24 GOVERNING LAW:** This Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

#### 2.25 VENUE; CONSENT TO JURISDICTION:

#### 2.25.1 STATE OF OREGON CONTRACT VENUE; CONSENT TO

**JURISDICTION:** Any claim, action, suit or proceeding (collectively, "Claim") between an Authorized Purchaser that is an agency of the State of Oregon and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District

of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.25.2 NON STATE OF OREGON CONTRACT VENUE; CONSENT TO **JURISDICTION:** Any Claims between Contractor and an Authorized Purchaser other than an agency of the State of Oregon that arise from or relate to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such Authorized Purchaser resides, or at the Authorized Purchaser's option, within such other county as the Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such Authorized Purchaser resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

- **2.26 SURVIVAL:** The following provisions survive termination or expiration of this Contract: Sections 2.8, 2.9.1, 2.9.4, 2.16, 2.17, 2.18, 2.19, 2.21, 2.23, 2.24, 2.25, 2.26; the paragraph in Exhibit C bearing the caption "TAIL COVERAGE"; and any other provision that by its nature would reasonably be expected to survive termination or expiration.
- **2.27 SEVERABILITY:** If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- **2.28 ASSIGNMENTS, SUBCONTRACTS, AND SUCCESSORS:** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee,

transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

- 2.29 MERGER CLAUSE; AMENDMENT; WAIVER: This Contract constitutes the entire agreement between Contractor and Authorized Purchaser on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter of this Contract. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of this Contract is not a waiver by Authorized Purchaser of that or any other provision.
- **2.30 INTENDED BENEFICIARY.** DAS PS is an intended beneficiary of this Contract. However, the parties to this Contract may modify the ordering instrument or terminate this Contract without the consent of DAS PS.
- **2.31 ASSIGNMENT OF ANTITRUST RIGHTS.** Contractor irrevocably assigns to the State Of Oregon any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Agreement to irrevocably assign to the State of Oregon, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Agreement, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

# Section 3 - Special Terms for Contracts under this Agreement

- **3.1** CONTRACTOR CERTIFICATIONS: If Contractor offers Goods under the Price Agreement, Contractor shall maintain its status as a manufacturer-authorized product reseller for the Goods throughout the Term of the Price Agreement. If Contractor offers installation and/or maintenance services under this Price Agreement, Contractor shall maintain its status as a manufacturer-authorized service provider. If any required status is discontinued, this Contract may be terminated.
- **3.2** SELECTION PROCESS: This is not an exclusive agreement. DAS PS intends to award multiple Price Agreements and Participating Addenda for the Goods and services offered under this solicitation. Authorized Purchasers who are State of Oregon Agencies must follow the selection process outlined below. Authorized Purchasers who are **not** State of Oregon Agencies may select the Contractor of Authorized Purchaser's choice in compliance with applicable statute and rules.
  - 3.2.1 For purchases under \$10,000, Authorized Purchasers who are State Agencies may select the Contractor of their choice in compliance with applicable statute and rule.
  - 3.2.2 For purchases over \$10,000 Authorized Purchasers who are State Agencies shall use one of the following selection processes:
  - a) **Brand Name Justification** A documented brand name justification in compliance with applicable statutes and rules.
  - b) **Best Value Analysis** Authorized Purchaser may conduct a comparison of the offers based upon the following best value analysis process;
  - i. Determine category of need, if more than 3 Contractors offer Goods and services in the category of need, contact at least 3 Contractors and request a quote for the anticipated Goods and services. If 3 or less Contractors offer Goods and Services in category of need, contact all Contractors that provide Goods and services in the category of need and request a quote for anticipated Goods and services. Quoted rates must not exceed the most competitive rates and discounts set forth in this Price Agreement. Authorized Purchaser may provide a deadline for quote response to Contractor.
  - Determine which Contractor and Authorized Dealer provides the best value for Authorized Purchaser. Some or all of the following factors may be used in the Authorized Purchaser's determination of best value (additional factors not listed may also be used) :
    - Applicable discounts and incremental pricing options;
    - Shipping costs;
    - Manufacture timelines;

- Delivery process;
- Maintenance and repair service levels;
- Applicable warranties;
- Contractor's past performance record through reference checks;
- Contractor's service area;
- Price comparison
- Life cycle costing including expected life, salvage value and discounted total cost of ownership.
- iii. Negotiate with one or more Contractors to gain the best value for the desired Goods and services.
- iv. Authorized Purchasers may make award decisions based on price alone, or may also take value and technical and past performance considerations into account.
  - c) Document Authorized Purchasers procurement files describing the process, considerations, findings, and decisions used for determining the Contractor selected through the Best Value Analysis.
- **3.3** DELIVERY CHARGES: For all orders, FOB destination delivery costs up to 60 miles from dealership shall be paid by the Contractor. Additional delivery charges for delivery beyond 60 miles must be based on delivery cost outlined in Exhibit A.
- **3.4** ADVANCE PAYMENT PROHIBITED: No advance payment shall be made for the Goods or services furnished by Contractor pursuant to this Contract.
- **3.5** NOTICE OF ORDER SHORTAGES: Contractor shall notify Authorized Purchaser within twenty-four (24) hours of receiving notice that ordered Goods or services will not be available for shipment or scheduling on the scheduled delivery day. This includes a notice to Authorized Purchaser whenever a particular Good will be short-shipped. Notice of unavailability for services or projected short-shipment of Goods will not eliminate Authorized Purchaser's right to pursue all available remedies.
- **3.6** UNAUTHORIZED WORK: Goods or services provided without or prior to receipt of written authority (i.e. without a Purchase Order duly issued under the Price Agreement) will be considered unauthorized and may not be paid for by Authorized Purchaser.
- **3.7** PRICE QUOTES: Contractor price quotes will be considered a firm offer (or maximum price) for a set time period of 90 days after issuance. Upon any negotiations with an Authorized Purchaser, Contractor will update the quote, or provide a new "not-to-exceed" final price quote for desired Goods and Services prior to Authorized Purchaser placing an order. Price Quotes must include all costs, including but not limited to, additional options, taxes (including privilege tax and corporate activity or vehicle use tax for State of Oregon), fees, and delivery and registration costs.

## Section 4 - Signature of Contractor's Duly Authorized Representative

- **4.1** The undersigned represents:
  - (a) Signee is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Contractor;
  - (b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Agreement;
  - (c) Contractor will furnish the Goods in accordance with Contracts under this Agreement; and
  - (d) Contractor shall furnish federal identification number or social security number under a separate document.
  - (e) All Contractor affirmations contained in its bid or proposal related to this Agreement are true and correct.
  - (f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.
  - (g) Contractor has a written policy and practice that meets the requirements, described in ORS279A.112, of preventing sexual harassment, sexual assault, and discriminating against employees who are members of a protected class. Contractor agrees, as a material term of the Price Agreement, to maintain the policy and practiced in force during the entire Price Agreement term.
  - (h) Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.
  - (i) Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this Section constitutes a material element of this Price Agreement and a failure to comply constitutes a default that entitles Agency to terminate this Price Agreement for cause.
  - (j) Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

Agreed:

Contractor's Name: JMR Group, LLC (dba McCpy Freightliner)
Authorized Signature:
The Solumit
Printed Name of Authorized Signature:
Title of Authorized Signature: Vice President
Date: 3/16/21

Contractor Administrative Contact (also referred to as Contract Administrator):

Kevin Dripps
9622 NE VUNCOUVER Way, Portland 9721
503-283-0345
Kevin Dripps @ POXFTL.COM

# Section 5 – Signature of DAS PS

Agreed:

Authorized Signature:

Date: 31 March 2021

DAS PS Contract Administrator (Type or Print):

Name	Brent Lutz
Address	1255 SE Ferry Street, Salem, OR 97301
Telephone	(971) 719-3436
E-mail	brent.l.lutz@oregon.gov

Legal Review:

Approved pursuant to ORS 291.047

Approved by Mc S. Bcc, S A A G

Per email dated 3/16/2021

# Exhibit B

<b>STATE OF OREGON</b>						PURCHASE ORDER (PO) NO.	PAGE #	
Autho	rized Purchaser	's Authorized R	epresentative	Purchase Order	Date		Requisition No.	
Contractor Name and Address					nvoicing Address			
Contra	actor FEIN		Price Agreement n	umber	Authorized Pur Email Address	chaser's A	uthorized Representative	2
Deliver to Address			Phone and Fax	Number	uthorized Representative	9		
					Delivery Sched	ule or Deli	very Date	
Item		De	escription		Quantity	U/M	Unit Price	Net Price
							Sub Total	
					Freight			
							Total	
This l	Purchase Orde	er, in addition	to any exhibits or	addenda attac	hed, is placed a	gainst St	ate of Oregon	

Solicitation **# DASPS-2295-20** and Price Agreement **#1640**. The terms and conditions contained in the Price Agreement apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.

Agency's Authorized Representative to Make Purchase	Date	

# Exhibit C INSURANCE REQUIREMENTS

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under this Price Agreement and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

# WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contactor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

# **COMMERCIAL GENERAL LIABILITY:**

Required Not required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than **\$2,000,000** per occurrence. Annual aggregate limit shall not be less than **\$4,000,000**.

# **AUTOMOBILE LIABILITY INSURANCE:**

Required Not required

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than **\$2,000,000** for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

# **EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

# **ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Price Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

# WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

# TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Contract.

# **CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

# NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

# **INSURANCE REQUIREMENT REVIEW:**

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

# STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit C.

# Exhibit D SPECIFICATIONS

# **1. GENERAL PROVISIONS:**

- 1.1 **SILENCE OF SPECIFICATIONS:** The apparent silence of the specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be interpreted as requiring that Contractor shall perform to only the best commercial practice and that Contractor shall supply and incorporate into Goods only materials and workmanship of first quality. However, if any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, and Contractor failed to seek a formal request for change during the solicitation process for the Agreement, then Contractor shall be required to provide Goods meeting the Authorized Purchaser's needs with regard to any omitted specification.
- **1.2 ADHERENCE TO THE SPECIFICATIONS:** Deviations from specifications discovered after purchase shall be corrected by Contractor at no cost to the Authorized Purchaser.

# 2. SPECIFICATIONS:

Specifications below provide a minimum requirement.

- 2.1 All Base Model Vehicles must include all OEM standard features, equipment, and components, Manufacturer or Dealer installed according to the Manufacturer's standard procedures, requirements, and specifications. All Vehicle Base Models must include two (2) sets of keys and all user manuals.
- 2.2 Additional equipment packages, factory installed options and aftermarket options may also be offered. Cab and Chassis optional Body Upfit may also be offered. Contractor shall provide all sub-contractors for Body Upfits to DAS PS.
- 2.3 All required installation services must be completed by the manufacturer or a manufacturer authorized installer and Contractor must certify completed vehicle conforms to all Federal Motor Vehicle Safety Standards ("FMVSS") and all body modifications must have National Highway Traffic Safety Administration ("NHTSA") certification.
- 2.4 Unless otherwise DAS PS approved, all Vehicles must be no older than 1 year beyond the current Manufacturer's model year, new and unused, free of damage, rust and other defects that may affect appearance or serviceability.
- 2.5 All Vehicles must comply with all federal and State laws, requirements, and regulations applicable to the type and class of Vehicles and contractual services. This includes, but is not limited to, FMVSS, Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State laws, requirements, and regulations. In addition, if any applicable federal or State legislation becomes effective during the term of the Contract regarding the Goods and related services, including but not limited to requirements concerning specifications and safety, and environmental requirements, those requirements shall immediately become a part of the Agreement and each Contract. The Contractor shall meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor shall contact the Contract Administrator immediately.
- 2.6 Vehicles must not contain Dealer's advertising or identification (name, logos, etc.) including all Base Equipment; OEM Options, Accessories, & Implements; OEM & Replacement Parts; and their components. Manufacturer's advertising or identification (name, model, logos, etc.) will be permitted on the respective Vehicles if such

advertising or identification is a Manufacturer's standard on the specific Vehicle.

2.7 Acceptable Vehicle fuel and alternative fuel options include gasoline (E-10), diesel, bio-diesel, natural gas (compressed or liquefied), ethanol flex fuel (E-85), liquefied petroleum gas, Hydrogen Fuel Cell Electric Hybrid, Plug-in Hybrid Electric and Plug-in Electric Vehicle. Additional fuel options may be accepted upon DAS PS approval.

# AMENDMENT #1 to Price Agreement # 1640

This is Amendment No. 1 ("Amendment") to Price Agreement #1640 ("Agreement") between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services ("DAS PS"), JMR Group, LLC (dba McCoy Freightliner) ("JMR") and PTG Oregon, LLC (dba Premier Truck Group) ("Contractor"). This Amendment is effective on the date it has been fully executed by all parties and approval from the Department of Justice has been obtained.

# RECITALS

1. JMR has transferred all of its rights and obligations under the Agreement to Contractor, subject to the consent of DAS PS as required under the Agreement.

# AGREEMENT

**I.** DAS PS hereby consents to Contractor's assumption of JMR's rights and obligations under the Agreement.

II. The Agreement is hereby amended as follows:

A. All references in the Agreement to "JMR Group, LLC" are changed to "PTG Oregon, LLC"

B. All references to "Price Agreement 1640" in the Agreement are changed to OregonBuys Master Blanket Purchase Order # "PO-10700-00004663".

**III.** Except as expressly amended above, all other terms and conditions of the Agreement remain in full force and effect. Contractor hereby makes or gives all of the representations, warranties and certifications made by JMR under the Agreement and certifies that such representations, warranties and certifications are true and correct as of the effective date of this Amendment and with the same effect as though made or given on the effective date of this Amendment.

Certifications. The individual signing on behalf of Contractor hereby:

A. Certifies and swears under penalty of perjury to the best of the individual's knowledge that: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, that Contractor is not in violation of any State of Oregon tax laws and that for a period of no fewer than six (6) calendar years preceding the Effective Date, Contractor has faithfully complied with: (i) all tax laws of the State of Oregon, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321 and 323; and local taxes administered by the Oregon Department of Revenue under ORS 305.620;(ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the

foregoing tax laws or provisions; (c) Contractor is an independent contractor as defined in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate;

- B. Certifies that, to the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, womanowned business, business that service-disabled veteran owns, or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;
- C. Certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of the Agreement, to maintain the policy and practice in force during the entire Agreement term; and
- D. Certifies that Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at https://www.treasury.gov/ofac/downloads/sdnlist.pdf.

# CONTRACTOR: PTG OREGON, LLC

Ву:	Rich Shearing	President & CEO	1/6/2022
	Name:	Title:	Date

# JMR Group, LLC

John Schmitz

Vice President

6/22

# DEPARTMENT OF ADMINISTRATIVE SERVICES, PROCUREMENT SERVICES:

Name:	Title:	Date	
Approved By:	Digitally signed by Darwin Kumpula Date: 2022.01.06 17:02:50 -08'00' Deputy Chief Procurement Officer	6-Jan-2022	

Legal Review:

Approved pursuant to ORS 291.047

Approved by Marc Bocci

Per email dated: November 12, 2021

Product Name	Product Description	Product Description 2	Product Price	UOM	Image URL Tag	Brand	Vendor	Coope	ra Cooperati	v Product Catego Key	Value	SKU Mode	l Nun NIGP
Freightliner MT45 6.7 L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$60,765.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	Class 5, 16,001 · Delivery	ei \$3.00	401711 FCCC	MT4: 998-94
Freightliner MT55 6.7 L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$61,646.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	Class 6, 19,501 · Delivery	ei \$3.00	401712 FCCC	MT5: 998-94
Freightliner M2 106 6.7 L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$64,231.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	Class 6, 19,501 · Delivery	ei \$3.00	401713 M210	6 998-94
Freightliner 108SD 6.7 L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$68,981.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	Class 6, 19,501 · Delivery	e∈ \$3.00	401714 108SD	998-94
Freightliner M2 106 9L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$68,539.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	Class 7, 26,001 · Delivery	ei \$3.00	401716 M2 10	6 998-94
Freightliner M2 108SD 9L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$71,437.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	Class 7, 26,001 - Delivery Class 8,	ei \$3.00	401718 108-SI	998-94
Freightliner M2 112 9L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$81,689.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	Delivery Class 8, 33,001	ei \$3.00	401720 M2 11	.2 998-94
Freightliner M2 112 DD13	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$88,155.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	GVWR - and Delivery	e∈ \$3.00	401721 M211	2 998-94
Freightliner 114SD 9L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$81,135.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	GVWR - and Delivery	et \$3.00	401722 114SD	998-94
Freightliner 114SD 12L CUM	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$89,379.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	GVWR - and Delivery	ei \$3.00	401724 114S-I	998-94
Freightliner 114SD DD13	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$89,083.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	GVWR - and Delivery	et \$3.00	401725 11-45	998-94
WESTERN STAR 4700 9L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$93,988.00	EA	https://cdn.periscopem: Freightline	r, V Freightliner	McCoy Freightliner	Y	PA-1640	GVWR - and Delivery	e: \$3.00	401728 4700V	VS 998-94
WESTERN STAR 4700 12L	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$101,258.00	FA	https://cdn.periscopem; Freightline	r. V Freightliner	McCoy Freightliner	Y	PA-1640	GVWR - and Deliverv	e∈ \$3.00	401729 4700-	WS 998-94
WESTERN STAR 4700 DD13	Model Year: 2023	Price Does not include privilege/use tax or CAT	\$101,305.00		https://cdn.periscopem; Freightline		McCoy Freightliner	Y	PA-1640	GVWR - and Delivery			

Step Van - Class - 5 & 6	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$35,352.00 EA	https://cdn.periscopemi Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401738	Body 998-94
Step Van - Class - 5 & 6	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$34,976.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401739	Body 998-94
10' Flatbed - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$6,312.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401740	Body 998-94
12' Flatbed - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$9.731.00 EA	https://cdn.periscopemi Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40174:	Body 998-94
Swap Loader - Class - 6	Lead time of - 120 Days	Price Does not include privilege/use tax or CAT	\$38.778.00 EA	https://cdn.periscopemiFreightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40174	,
Service Bodies - Class - 6 & 7	Lead time of - 120 Days	Price Does not include privilege/use tax of CAT	\$17,704.00 EA	https://cdn.periscopemi.Freightliner, V body Subcontract MCcoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40174:	
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Flat beds - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$10,670.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401744	,
Mech Service Body - Class - 6	Lead time of - 150 Days	Price Does not include privilege/use tax or CAT	\$34,084.00 EA	https://cdn.periscopem; Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401745	
Stellar Hook - Class - 6	Lead time of - 120 Days	Price Does not include privilege/use tax or CAT	\$40,902.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401746	Body 998-94
4 Yd Dump - Class - 6 & 7	Lead time of - 120 Days	Price Does not include privilege/use tax or CAT	\$13,200.00 EA	https://cdn.periscopem; Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fe€ \$0.00 401743	Body 998-94
9' Service - Class - 6	Lead time of - 120-180 Days	Price Does not include privilege/use tax or CAT	\$15,885.00 EA	https://cdn.periscopem; Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fe∈ \$0.00 401748	Body 998-94
11' Service - Class - 6 & 7	Lead time of - 90 Davs	Price Does not include privilege/use tax or CAT	\$18,859.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401745	Body 998-94
Rugby 2/3 yd Dump - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$10,860.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401750	
Crane Service Bod - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax of CAT	\$45,656.00 EA	https://cdn.periscopemiFreightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40175:	
Rugby 4/5 Yd dump - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$11,395.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40175	
Flatbeds - Class - 6, 7 & 8	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$6,775.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40175	,
24' Box Van - Class - 6, 7 & 8	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$15,325.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401754	Body 998-94
26' Box Van - Class - 6, 7 & 8	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$16,866.00 EA	https://cdn.periscopem; Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fe€ \$0.00 40175	Body 998-94
VST-5000 Aerial - Class - 6, 7 & 8	Lead time of - 180 day	Price Does not include privilege/use tax or CAT	\$123,343.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401756	Body 998-94
Service Body - Class - 6 & 7	Lead time of - 120 Days	Price Does not include privilege/use tax or CAT	\$16,300.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40175	Body 998-94
5 Yd Dump - Class - 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$15,818.00 EA	https://cdn.periscopemi Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40175	
20' Flatbed - Class - 6, 7 & 8	Lead time of - 90 Days	Price Does not include privilege/use tax of CAT	\$19,240.00 EA	https://cdn.periscopemi.Freightliner, V Body Subcontract MCcoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401755	
-			1 .,		
Tank Body - Class - 6, 7 & 8	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$28,361.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fer \$0.00 401760	
Crane Service Body - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$34,947.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40176:	
5/6 Yard Dump - Class - 6 & 7	Lead time of - 40 Days	Price Does not include privilege/use tax or CAT	\$39,216.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401762	
6/8 Yard Dump - Class - 7 & 8	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$39,938.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401763	Body 998-94
7/8 Yard Dump - Class - 7 & 8	Lead time of - 40 Days	Price Does not include privilege/use tax or CAT	\$40,695.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401764	Body 998-94
Swap Loader - Class - 7	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$42,642.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40176	Body 998-94
Johnson Sweeper - Class - 6 & 7	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$123,600.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401766	Body 998-94
Hiab F680 Crane - Class - 6 & 7	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$56,304.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401767	Body 998-94
18 foot Flatbed - Class - 6, 7 & 8	Lead time of - 30 Days	Price Does not include privilege/use tax or CAT	\$20,364.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401766	,
9' 2/3 vd Dump - Class - 5 & 6	Lead time of - 60 Days	Price Does not include privilege/use tax of CAT	\$18,717.00 FA	https://cdn.periscopemi Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fe \$0.00 401765	
, - ,			+		,
16' Flatbed - Class - 6, 7 & 8	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$15,098.00 EA	https://cdn.periscopemi Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40177	
Palfinger Hooklift - Class - 6, 7 & 8	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$35,941.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40177	
Crane Serice Body - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$29,032.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40177	,
5/6 Yard Dump - Class - 6 & 7	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$43,632.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40177	Body 998-94
Vactor Paradigm - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$185,231.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401774	Body 998-94
Vactor Impact - Class - 6 & 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$194,179.00 EA	https://cdn.periscopem; Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fe∈ \$0.00 40177	Body 998-94
P315 1500 Tanker - Class - 7	Lead time of - 180 Days	Price Does not include privilege/use tax or CAT	\$49,668.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401776	Body 998-94
HL15-DS Deicer - Class - 7	Lead time of - 180 Days	Price Does not include privilege/use tax or CAT	\$74,930.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401777	
Asphalt Distributor - Class - 7 & 8	Lead time of - 180 Days	Price Does not include privilege/use tax or CAT	\$159,679.00 EA	https://cdn.periscopem: Freightliner, V Body SubContract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401778	,
Asphalt Distributor - Class - 7 & 8	Lead time of - 120	Price Does not include privilege/use tax of CAT	\$139,187.00 EA	https://cdn.periscopemi Freightliner V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40177	
Mech Service Bod - Class - 7	Lead time of - 90 Davs		\$46.355.00 EA		
		Price Does not include privilege/use tax or CAT			
Stellar Hook - Class - 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$42,006.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40178:	
Stellar Slider - Class - 7	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$47,006.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40178	
VST-6300 Aerial - Class - 7 & 8	Lead time of - 180 day	Price Does not include privilege/use tax or CAT	\$163,211.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401783	Body 998-94
VST-7500 Aerial - Class - 8	Lead time of - 180 Day	Price Does not include privilege/use tax or CAT	\$193,760.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401784	Body 998-94
10-12 Dump - Class - 8	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$31,656.00 EA	https://cdn.periscopem; Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fe∈ \$0.00 401785	Body 998-94
10/12 Dump - Class - 8	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$45,048.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401786	Body 998-94
3800 Flusher - Class - 8	Lead time of - 180 Days	Price Does not include privilege/use tax or CAT	\$160,821.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401783	
10/12 Yard Dump - Class - 8	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$41,847.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401788	
12/15 Yard Dump - Class - 8	Lead time of - 60 Days	Price Does not include privilege/use tax or CAT	\$42,607.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 401788	
9/12 Yard Dump - Class - 8	Lead time of - 60 Days	Price Does not include privilege/use tax of CAT	\$42,507.00 EA		,
					,
10 Yard DOT complete Spec - Class -		Price Does not include privilege/use tax or CAT	\$247,802.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40179:	
Hi-Vac - Class - 8	Lead time of - 120 Days	Price Does not include privilege/use tax or CAT	\$261,189.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 401792	,
Swap Loader - Class - 8	Lead time of - 120 Days	Price Does not include privilege/use tax or CAT	\$44,610.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fet \$0.00 40179	
					Body 998-94
Hiab F880 Crane - Class - 8	Lead time of - 150 Days	Price Does not include privilege/use tax or CAT	\$94,563.00 EA		,
Hiab F880 Crane - Class - 8 Rear Jetter - Class - 8	Lead time of - 150 Days Lead time of - 90 Days	Price Does not include privilege/use tax or CAT Price Does not include privilege/use tax or CAT	\$94,563.00 EA \$149,859.00 EA	https://cdn.periscopemi:Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Uprit Delivery Fee \$0.00 401/94 https://cdn.periscopemi:Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Uprit Delivery Fee \$0.00 401795	,
					Body 998-94
Rear Jetter - Class - 8	Lead time of - 90 Days	Price Does not include privilege/use tax or CAT	\$149,859.00 EA	https://cdn.periscopem: Freightliner, V Body Subcontract McCoy Freightliner Y PA-1640 Body Upfit Delivery Fee \$0.00 40179	Body 998-94 Body 998-94
Rear Jetter - Class - 8 Front jetter - Class - 8 HXX Prodigy - Class - 8	Lead time of - 90 Days Lead time of - 90 Days Lead time of - 90 Days	Price Does not include privilege/use tax or CAT Price Does not include privilege/use tax or CAT Price Does not include privilege/use tax or CAT	\$149,859.00 EA \$164,283.00 EA	https://cdn.periscopem: Freightliner, V         Body Subcontract McCoy Freightliner         Y         PA-1640         Body Upfit         Delivery Fee         \$0.00         401793           https://cdn.periscopem: Freightliner, V         Body Subcontract McCoy Freightliner         Y         PA-1640         Body Upfit         Delivery Fee         \$0.00         401793           https://cdn.periscopem: Freightliner, V         Body Subcontract McCoy Freightliner         Y         PA-1640         Body Upfit         Delivery Fee         \$0.00         401793           https://cdn.periscopem: Freightliner, V         Body Subcontract McCoy Freightliner         Y         PA-1640         Body Upfit         Delivery Fee         \$0.00         401793	Body 998-94 Body 998-94 Body 998-94
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Amended on 12.14.2022 331 of 515

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Agenc		lle		PO Date	Delivery D	ate	Bid Number	Requisition No.
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3500	of McMinnv ) NE Clearw linnville, Ore	ater Drive			Terms			
		T	escription		Quantity	U/M	Unit Price	Extended Amt.
Etem 1	2023 Freir		SD with 12-lite	r Cummins	1	Ea	\$89,379.00	\$89,379.00
2 3	Vehicle A Swapload	ccessories	to accommoda		1	Ea	\$42,947.00 -\$3,024.00	\$42,947.00
3	r letiner c	puon bise	Van		1577	5-5-5-55		26 12
4			Swaploader		1	Ea	\$44,610.00	\$44,610.00
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6	Drop Box				Z	Ea	\$12,494.00	φ24,800.00
	"Estimate	" Oregon (	CAT Tax					\$870.00
	Vendor atte accurate	sts that all de	scriptions and pri					
	Afr	Ago.		11-3-7022				
	Pr	mizr T	RUCK GRO	wp				
Specia	al Terms and Co						Sub Total	\$224,911.00
							Freight	NA
							Total	\$224,911.00

This Purchase Order and the terms and conditions on page 2 constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written.

Authorized Agent/Approved Date	Total	
		1.

#### STATE OF OREGON - TERMS AND CONDITIONS

 DELIVERY: Deliveries will be F.O.B destination, unless otherwise agreed. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties.
 ACCEPTANCE: Agency may inspect and test the Goods and related Services (collectively, Goods). Agency may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure defects within a reasonable time, Agency may reject the Goods and cancel the PO in whole or in part. Title to the Goods passes to Agency in accordance with the Uniform Commercial Code, ORS chapters 71-79 (UCC), and this section does not affect or limit Agency's rights under the UCC.

3. PAYMENT: Agency shall pay Contractor within 30 days from (i) the date the Goods are delivered and accepted or (ii) the date the invoice is received,

whichever is later. If Agency fails to pay within 45 days of such date, Contractor may assess overdue account charges up to a rate of 2/3% per month (8% APR) or the maximum rate allowed by law on the outstanding balance.

 REPRESENTATIONS AND WARRANTIES: Contractor represents and warrants that:

- Unless otherwise agreed, the Goods are new and unused, (and if applicable, the current model), free and clear of any liens or encumbrances, and carry full manufacturer warranties;
- · Contractor shall transfer all manufacturer warranties to the State;
- Delivered Goods will comply with specifications and be free from defects in labor, material and manufacture;
- · Contractor owns or has the right to transfer or sell the Goods to Agency;
- Contractor has the authority to enter into this PO and this PO is a binding obligation upon Contractor;
- Contractor is an independent contractor and its provision of the Goods creates no potential or actual conflict of interest as defined in ORS 244;
- Contractor shall comply with the tax laws of this state and all political subdivisions;
- Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State, and
- All implied and express warranties under the UCC are incorporated in this PO.

These representations and warranties are cumulative and are in addition to and not in lieu of any other representations or warranties found in this PO or the law. 5. TERMINATION:

- · The parties may terminate this PO by mutual agreement.
- Agency may terminate this PO at any time upon written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and Agency shall pay Contractor for Goods delivered and accepted.
- Agency may terminate this PO at any time upon written notice to Contractor if Agency fails to receive funding, appropriations, or other expenditure authority.
- Agency may terminate this PO for cause upon written notice to Contractor, if Contractor breaches any PO provision, including the representations and warranties related to liquidated and delinquent debt, or is declared insolvent. Contractor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.
- Agency may terminate this PO if Contractor fails to comply with the tax laws
  of this state or any political subdivision or Contractor violates any warranties or
  certification related to compliance with the tax laws of this State and any
  political subdivision of this State.

6. RÉMEDIES: Any violation or breach of this PO entitles Agency to terminate this PO, to pursue and recover any and all damages that arise from the breach and the termination of this PO, and to pursue any or all of the remedies available under this PO, at law, or in equity, including but not limited to: termination of this PO in whole or in part; collection by administrative offset or garnishment, if applicable, or withholding amounts otherwise due and owing to Contractor without penalty. The remedies set forth in this Section 6 are cumulative.

7. HOLD HARMLESS: Contractor shall indemnify, defend and hold harmless the State and it agencies, their divisions, officers, employees, and agents, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this PO.
8. GOVERNING LAW, JURISDICTION, VENUE: This PO is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws. Any unresolved Dispute between Agency or and Contractor that arises from or relates to the PO shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Dispute must be brought in a federal forum, then

unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing herein shall be construed as a waiver of the State of Oregon's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise or of any defenses to Claims, or as consent to jurisdiction the jurisdiction of any court.

9. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, transfer, or subcontract rights (Subcontract) or delegate responsibilities under this PO in whole or in part, without the prior written approval of Agency. This PO's provisions are binding upon and inure to the benefit of the parties to the PO and their respective successors and assigns.

10. ACCESS TO RECORDS: Contractor shall maintain all accounting records relating to this PO according to Oregon Accounting Manual (OAM) and any other records relating to Contractor's performance ("Records") for 6 years from termination or as otherwise required. Contractor shall grant the State and its agencies, the Secretary of State, the federal government, and their duly authorized representative's access to the Records, including reviewing, auditing, copying, and making transcripts.

11. COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as amended. Agency's performance is conditioned upon Contractor's compliance with, 279B.220, 279B.225, 279B.230, and 279B.235, as applicable. All applicable Rules are incorporated by reference in this PO.

12. INSURANCE: Contractor shall obtain and maintain the following insurance coverage:

- Workers' Compensation: Contractor shall comply with ORS 656.017 and provide workers' compensation coverage for subject workers, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.
- Commercial General Liability: Contractor shall provide and maintain insurance covering bodily injury and property damage, written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. The policy(ies) must name the State of Oregon as additional insured.

13. FORCE MAJEURE: Neither Contractor nor Agency may be held responsible for delay or default caused by events beyond its reasonable control. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and diligently pursue its performance under this PO.

14. SAFETY DATA SHEETS: As applicable, Contractor shall provide Agency with a Safety Data Sheet (SDS) for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use 29 CFR 1910.1200(g)(6)(iii). Contractor shall label, tag or mark such Goods. 15. RECYCLABLE PRODUCTS: Unless otherwise required, Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the PO. These products shall include recycled paper, recycled PETE products, other recycled products (ORS)

279A.010(1)(gg),(hh),(ii)), and other recycled plastic resin products. 16. AMENDMENTS: All amendments to this PO must be in writing, approved by Agency.

 SEVERABILITY: If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

18. WAIVER: Agency's failure to enforce any provision of this PO is not a waiver or relinquishment by Agency of its rights to such performance in the future or to enforce any other provisions.

19. AWARD TO FOREIGN CONTRACTOR: If Contractor is not registered to do business or has no office in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this PO. Agency may withhold final payment under this PO until Contractor has met this requirement.

20. TAX CERTIFICATION: Contractor hereby certifies under penalty of perjury: (a) the number shown on this form is the correct Federal Employer Identification Number; (b) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (c) it is not in violation of any Oregon tax laws.



231 NE Fifth Street McMinnville, OR 97128 (503) 434-7312 www.mcminnvilleoregon.gov

# **STAFF REPORT**

DATE:October 24, 2022TO:Jeff Towery, City ManagerFROM:Jeff Gooden, Project ManagerSUBJECT:Contract Award – Cozine Pump Station Emergency Stand-by Generator

# Report in Brief:

This action is the consideration of a resolution to award a public improvement contract in the amount of \$416,356.60 to Applied Technical Systems Inc. for the construction of the Cozine Pump Station Emergency Stand-by Generator, Project 2022-6.

# Background:

The City's Water Reclamation Facilities Plan addresses the need for emergency power generation at the Cozine Pump Station through the use of emergency stand-by generators to keep these critical facilities operating during a wide spread power outage.

#### Discussion:

On Thursday, October 20<sup>th</sup>, 2022, six bids were received, opened, and publicly read for the construction of the Cozine Pump Station Emergency Stand-by Generator Installation project. The bid results are as follows:

Applied Technical Systems Inc.	\$ 416,356.60
North East Electric LLC.	\$ 423,500.00
Dalke Construction	\$ 472,869.10
La Londe Electric	\$ 476,397.00
ORR Inc.	\$ 517,695.00
<ul> <li>Legacy Telecommunications LLC</li> </ul>	\$ 611,276.18

The bids were checked for completeness, including a review of the following:

- Was the bid submitted, on time, in a properly sealed and labeled envelope?
- Was the bidder present at the mandatory pre-bid meeting?
- Was the Bid Form properly filled out and executed?
- Was a Bid Bond included?



- Were the project addenda acknowledged?
- Was the First Tier Subcontractor Form turned in on time?

All of the bids were complete and met the City's requirements. A detailed breakdown of the received bids is on file in the Engineering Department.

The bid from Applied Technical Systems Inc. in the amount of \$416,356.60, was deemed to be the lowest responsible and responsive bid.

The project is expected to start no later than September 1<sup>st</sup>, 2023 and be complete by March 1, 2024.

#### Attachments:

- 1. Proposed Resolution 2022-68
- 2. Bid Results
- 3. Construction Contract
- 4. Addendum 1
- 5. Vicinity Map

#### Fiscal Impact:

The Adopted FY23 budget includes \$500,000 in the Wastewater Capitol Fund (77) for the supply and installation of stand-by emergency generator at the Cozine Pump Station. With the bid of \$416,356.60, the project will be delivered within budget.

#### **Recommendation:**

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to enter into a public improvement contract with Applied Technical Systems Inc. for \$ 416,356.60 for the Cozine Pump Station Emergency Stand-by Generator, Project 2022-6.

# **RESOLUTION NO. 2022-68**

A Resolution authorizing the City Manager to enter into a contract with Applied Technical Systems Inc. for the procurement, construction, and installation of the Cozine Pump Station Emergency Stand-by Generator, Project 2022-6.

#### **RECITALS:**

**Whereas**, The City's Water Reclamation Facilities Plan Addresses the need for emergency power generation at the Cozine Pump Station through the use of an emergency stand-by generator; and

**Whereas**, At 2:00pm on October 20<sup>th</sup>, 2022, six bids were received, opened, and publicly read for the Cozine Pump Station Emergency Stand-by Generator, Project 2022-6. The bid for Applied Technical Systems Inc., in the amount of \$416,356.60, met all of the bid requirements and should be considered the lowest responsible and responsive bid.; and

**Whereas**, Funding for this project is included in the adopted FY23 Wastewater Capitol Fund (77).

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

- That entry into a contract with Applied Technical Systems Inc. in the amount of \$416,356.60 for the Cozine Pump Station Emergency Stand-by Generator. Project 2022-6 is hereby approved.
- 2. The City Manager is hereby authorized and directed to execute the Construction Contract.
- 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  $\underline{13^{th}}$  day of <u>December</u>, 2022 by the following votes:

Ayes: \_\_\_\_\_

Nays:

Approved this <u>13<sup>th</sup></u> day of <u>December</u> 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

Resolution No. 2022-68 Effective Date: December 13, 2022 Page 1 of 1

Amended on 12.14.2022 337 of 515

	А	В	С	D	E	F	G	Н	I	J	К	L	М	Ν	0	Р
1	1 Cozine Pump Station Emergency Stand-by Generator Project 2022-6				Legacy Telecom	inications LLC	Applied Technica	ll Systems Inc	NorthEast <b>E</b>	Electric LLC	ORR Inc		La Londe Electric		<b>Dalke Construction</b>	
2	Item				Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total
3	No.	Description	Qty.	Unit	Price	Price	Price	Price	Price	Price	Price	Price	Price	Price	Price	Price
4	10	Lump Sum amount for all work included in the plans and specifications	1	LS		\$555,705.62		\$378,506.00		\$385,000.00		\$470,632.00		\$433,089.00		\$429,881.00
5	20	10% Contigency	1	LS		\$55,570.56		\$37,850.60		\$38,500.00		\$47,063.00		\$43,308.00		\$42,988.10
6		Total Bid				\$611,276.18		\$416,356.60		\$423,500.00		\$517,695.00		\$476,397.00		\$472,869.10
7																
8		Error Found in Bid, Bid Adjusted per the line item														
9		Apparent Low Bidder														
10																

# CITY OF McMINNVILLE CONSTRUCTION CONTRACT

 This Construction Contract ("Contract") for the \_\_\_\_\_\_ Project

 ("Project") is made and entered into on this \_\_\_\_\_\_ day of \_\_\_\_\_\_ 2022 ("Effective

 Date") by and between the **City of McMinnville**, a municipal corporation of the State of Oregon

 (hereinafter referred to as the "City"), and \_\_\_\_\_\_\_, a(n) \_\_\_\_\_\_\_

 [state] \_\_\_\_\_\_\_ [corporation/limited liability company, etc.] (hereinafter referred to as "Contractor").

# RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, 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. Contract Documents

This Contract includes and incorporates by reference all of the foregoing Recitals and all of the following additional "Contract Documents": Oregon Department of Transportation 2021 Oregon Standard Specifications for Construction, bid documents, Contractor's Bid submitted in response thereto, and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

# Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder ("Work") is completed and accepted, or no later than \_\_\_\_\_\_, 20\_\_\_\_, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. *All Work must be at Final Completion by no later than June 30, 2023*. See Section 24 for the definition of Final Completion.

# Section 3. Contractor's Work

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Project.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, of Contractor's authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, of Contractor's authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor's Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor's Project Manager will provide such written documentation.

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

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

# Section 4. Contract Sum, Retainage, and Payment

4.1 Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor a not to exceed unit price of \_\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) for performance of the Work ("Contract Sum"). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor. Contractor's unit price is set forth in **Exhibit B**, attached hereto and incorporated by reference herein.

4.2 During the course of Contractor's performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 26**.

4.3 Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a \_\_\_\_\_\_ percent (\_\_\_%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in Section 25.

4.4 Except as provided in **Section 8.2**, the Contract Sum includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees required to perform the Work on the Project.

4.5 The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

4.6 Contractor's unit prices and Contract Sum 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 all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

4.7 Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in 2021 ODOT Standard (whatever is set forth in the contract documents paragraph 1 above and in ORS 279C.570.)

# Section 5. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this project are those published by the Bureau of Labor and Industries (BOLI), effective July 1, 2021, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts found following can be at the website: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\_state.aspx. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

# Section 6. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall verify that the first-tier subcontractor files the required certified statement, and the first-tier subcontractor files the required certified statement, contractor shall pay the first-tier subcontractor files the required certified statement, contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

# Section 7. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

# Section 8. City's Rights and Responsibilities

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

8.2 If applicable, the City will pay the required Bureau of Labor and Industries fee of one/tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3 The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

8.4 If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

8.5 Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. 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 22.

# Section 9. City's Project Manager

The City's Project Manager is Jeff Gooden. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

# Section 10. Contractor's Project Manager

Contractor's Project Manager is \_\_\_\_\_\_. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such redesignation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor'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 Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

# Section 11. Project Information

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in 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 12. Duty to Inform

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

# Section 13 Subcontractors and Assignments

13.1. Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor 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. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

# Section 14. Contractor's Responsibilities

In addition to the Contractor's Responsibilities set forth in the General Conditions and Supplementary Conditions included in the Contract Documents, Contractor also agrees to the following, some of which may also be set forth in the General Conditions:

14.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

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

14.3. The City understands and agrees that Contractor may request/has requested that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

14.4. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with, and be subject to, the provisions of this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

14.5. Contractor must make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract as such claims become due. Contractor 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 Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may 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 Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

14.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor 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. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

14.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract 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 Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

14.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.9. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

14.10. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

14.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

14.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.13. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

14.14. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

14.15. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

14.16. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

14.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

14.17.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

14.17.2 All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

14.17.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

14.18. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

14.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.17.1, 14.17.2, and 14.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

14.20. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

14.21 Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

14.22. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

14.23. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

14.24. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

14.25. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

14.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

# Section 15. Subcontractor Requirements

15.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

15.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in **Subsection 15.1.1** above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

15.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 15.1.1 and 15.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

15.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

15.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

# Section 16. Environmental Laws

16.1. Contractor shall perform all Work in compliance with permits for the Project issued by the US Army Corp of Engineers, Oregon Department of State Lands, and Oregon Department of Environmental Quality, and shall maintain a copy of these permits on the job site at all times.

16.2. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

<u>FEDERAL AGENCIES</u> :	Agriculture, Department of
Forest Service	Soil Conservation Service
Defense, Department of	Army Corps of Engineers
Environmental Protection Agency	Interior, Department of
Bureau of Sport Fisheries and Wildlife	Bureau of Outdoor Recreation
Bureau of Land Management	Bureau of Indian Affairs
Bureau of Reclamation	Labor, Department of
Occupational Safety and Health Administration	Transportation, Department of
Coast Guard	Federal Highway Administration
<u>STATE AGENCIES</u> : Environmental Quality, Department of Forestry, Department of Human Resources, Department of Soil and Water Conservation Commission State Land Board	Agriculture, Department of Fish and Wildlife, Department of Geology and Mineral Industries, Department of Land Conservation and Development Commission National Marine Fisheries Service (NMFS) State Engineer Water Resources Board
LOCAL AGENCIES:	City Council
County Courts	County Commissioners, Board of
Port Districts	Metropolitan Service Districts
County Service Districts	Sanitary Districts
Water Districts	Fire Protection Districts

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

16.3. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

16.4. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

16.5. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

# Section 17. Indemnity

17.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, 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 Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. 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 Contractor 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 Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, 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 Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in Subsection 17.2. Contractor 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 Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

17.2. <u>Standard of Care</u>. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's reperformance of any Work, 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 Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

# Section 18. Insurance

18.1. <u>Insurance Requirements</u>. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or Work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor 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 Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

18.1.1. <u>Commercial General Liability Insurance</u>. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, 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 Contract 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 Contract.

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

18.1.3. <u>Business Automobile Liability Insurance</u>. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor 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**.

18.1.4. <u>Workers Compensation Insurance</u>. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract 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. Contractors 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.

18.1.5. <u>Insurance Carrier Rating</u>. Coverages provided by Contractor 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.

18.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in Additional Insured coverage under Contractor's Commercial insurance coverages. 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. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

18.1.7. <u>Certificates of Insurance</u>. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor 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.

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

# Section 19. Bonding Requirements

19.1. <u>Payment and Performance Bonds</u>. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

19.2. <u>Maintenance/Warranty Bond</u>. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

19.3. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

19.4. <u>Completion Bond</u>. Contractor shall also maintain a two (2) year Completion Bond, in a form acceptable to the City and from a surety acceptable to the City, in the full amount of the Contract Sum.

19.5. <u>Bond Claims</u>. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

# Section 20. Warranty

20.1. Contractor shall provide a full warranty for all Work for a period of \_\_\_\_\_ (\_2\_\_) years from the date of Final Acceptance of all Work.

20.2 In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of \_\_\_\_\_\_ (\_2\_\_) years from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within \_\_\_\_\_\_ (\_2\_) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The \_\_\_\_\_\_ (\_2\_) years from the date of completion to such required repair, be extended \_\_\_\_\_\_ (\_2\_) years from the date of completion of such repair.

20.3. If Contractor, after written notice, fails within **ten** (10) **days** to proceed to comply with the terms of this section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the

cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

20.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

# Section 21. Early Termination; Default

21.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

21.1.1. By mutual written consent of the parties;

21.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

21.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

21.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, 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, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor 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 Contract and seek remedies for the default, as provided above.

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

21.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 30**, for which Contractor has received payment or the City has made payment.

# Section 22. Suspension of Work

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

# Section 23. Final Completion and Liquidated Damages

23.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is complete, and create a project corrections list ("punch list") of any remaining items to be completed before the Final Completion date of **June 30, 2023.** All punch list items must be fully addressed and corrected on or before the Final Completion date.

23.2 The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if all Work is not fully completed by June 30, 2023, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount of amount calculated per Special Provision 00180.85(b)(1)\_\_\_\_\_\_ Dollars (\$\_\_\_) per day for each and every day that expires after June 30, 2023. Retainage will not be released before Final Completion is established.

23.3. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Final Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Completion. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

23.4. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to circumstances beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that would preclude any reasonable Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

# Section 24. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in Section 4 of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order 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 Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor 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 Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

# Section 25. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Yamhill County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

# Section 26. Access to Records

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

#### Section 27. As-Builts

Contractor must provide redlined as-builts prior to Final Acceptance. As-builts should be provided in electronic format.

# Section 28. Property of the City

28.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, spreadsheets, charts, graphs, modeling, data generation, papers, inspection reports, and photographs, performed or produced by Contractor under this Contract 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 Contractor as creator of such work shall be conveyed to the City upon request without additional compensation.

28.2. Contractor 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 Contractor pursuant to this Contract without the express written permission of Contractor.

# Section 29. Notices

Any notice required or permitted under this Contract 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: Jeff Gooden
	230 NE Second Street
	McMinnville, OR 97128
To Contractor:	
	Attn:

# Section 30. Miscellaneous Provisions

30.1. <u>Integration</u>. This Contract 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 Contract shall control.

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

30.3. <u>No Assignment</u>. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

30.4. <u>Adherence to Law</u>. This Contract shall be subject to, and Contractor 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 Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

30.5. <u>Governing Law</u>. 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.

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

30.7. 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 Contract 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 Contract, 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.

30.8. <u>Nonwaiver</u>. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract 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.

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

30.10. <u>Modification</u>. This Contract may not be modified except by written instrument executed by Contractor and the City.

30.11. <u>Time of the Essence</u>. Time is expressly made of the essence in the performance of this Contract.

30.12. <u>Calculation of Time</u>. 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 Contract, the first day from which the designated period of time begins to run shall not be included.

30.13. <u>Headings</u>. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

30.14. <u>Number, Gender and Captions</u>. In construing this Contract, 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 Contract.

30.15. <u>Good Faith and Reasonableness</u>. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. 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 Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

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

30.17. <u>Interpretation</u>. As a further condition of this Contract, the City and Contractor acknowledge that this Contract 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 contract, 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.

30.18. <u>Defined Terms</u>. Capitalized terms not otherwise defined herein shall have the meaning given to them in the *Specifications and Contract Documents*.

30.19 <u>Entire Agreement</u>. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

30.20. <u>Counterparts</u>. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

30.21 <u>Authority</u>. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

#### **CONTRACTOR:**

#### CITY:

CITY OF McMINNVILLE

By:	By:
Print Name:	Print Name:
As Its:	As Its:
Employer I.D. No	

APPROVED AS TO FORM:

City Attorney City of McMinnville, Oregon



#### ADDENDUM NO. 1

#### Dated: October 5th, 2022

## TO THE CONTRACT DOCUMENTS FOR THE

#### Cozine Pump Station Emergency Stand-by Generator Project 2022-6

#### NOTICE TO ALL PLANHOLDERS:

You are hereby notified of the following clarifications, additions, and/or revisions to the contract documents for the above referenced project:

#### **BIDDING REQUIREMENTS**

#### 1. Modification to the Construction Contract Remove Section 2 Term and replace with the attached revised section 2 Term

- A. The Contractor shall substantially complete the contract within **onehundred and eighty (180) days** of beginning construction activities on site. Contract shall commence upon starting any significant construction activities on site, including mobilization, excavation, demolition, or similar.
- B. Within **sixty (60) days** of execution of the contract, the contractor shall submit documentation from equipment suppliers showing that the generator and motor control centers are ordered.
- C. Regardless of the date that site work is started, all work shall be substantially completed by **March 1, 2024.**
- D. Unless otherwise specified in the Contract Documents or otherwise approved by the Owner in accordance with the General Conditions of the Contract Documents, all work shall be entirely completed (Final Completion) and ready for final payment within **fifteen (15)** calendar days after the date of substantial completion.
- 2. Modification to the Construction Contract

Remove Section 23.1 and 23.2 and replace with the attached revised section 23.1 and 23.2

23.1 Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is complete, and create a project corrections list ("punch list") of any remaining items to be completed before the Final Completion date of **March 1, 2024.** 

23.2 The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if all Work is not fully completed by March 1, 2024, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay the City the amount calculated per Special Provision 00180.85(b)(1)\_\_\_\_\_\_ Dollars (\$\_\_\_\_\_) per day for each and every day that expires after March 1, 2024. Retainage will not be released before Final Completion is established.

# COZINE PUMP STATION EMERGENCY STAND-BY GENERATOR

## DESIGN TEAM

OWNER

**CITY OF MCMINNVILLE** 231 NE FIFTH STREET MCMINNVILLE, OR 97128

CIVIL:

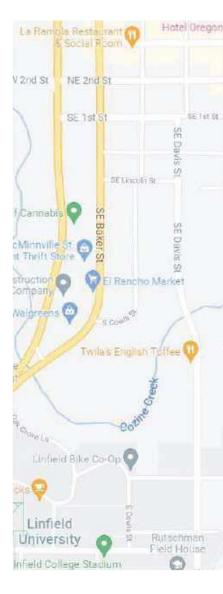
WESTECH CHRIS BRUGATO 3841 FAIRVIEW INDUSTRIAL DR S#100 SALEM, OR 97302 503-585-2474

**ELECTRICAL:** LANDIS CONSULTING 6446 FAIRWAY AVE SE, SUITE 220 SALEM, OR 97306 503-584-1576

## SHEET INDEX

- G1.0 COVER SHEET
- C1.0 CIVIL SITE PLAN
- C1.1 CIVIL DETAILS
- **E0.1 ELECTRICAL ABBREVIATIONS & SYMBOL LEGEND**
- E0.2 ELECTRICAL DETAILS
- **E0.3 DEMOLITION ONE-LINE DIAGRAM**
- E0.4 PROPOSED ONE-LINE DIAGRAM
- **E0.5 ELECTRICAL SCHEDULES**
- ED1.1 DEMOLITION ELECTRICAL SITE PLAN
- **ED3.1 ELECTRIAL DEMOLITION ELEVATIONS**
- E1.1 ELECTRICAL PLANS
- E2.1 ELECTRICAL ELEVATIONS
- E3.1 ELECTRICAL TRANSFORMER SECTION

## AREA MAP

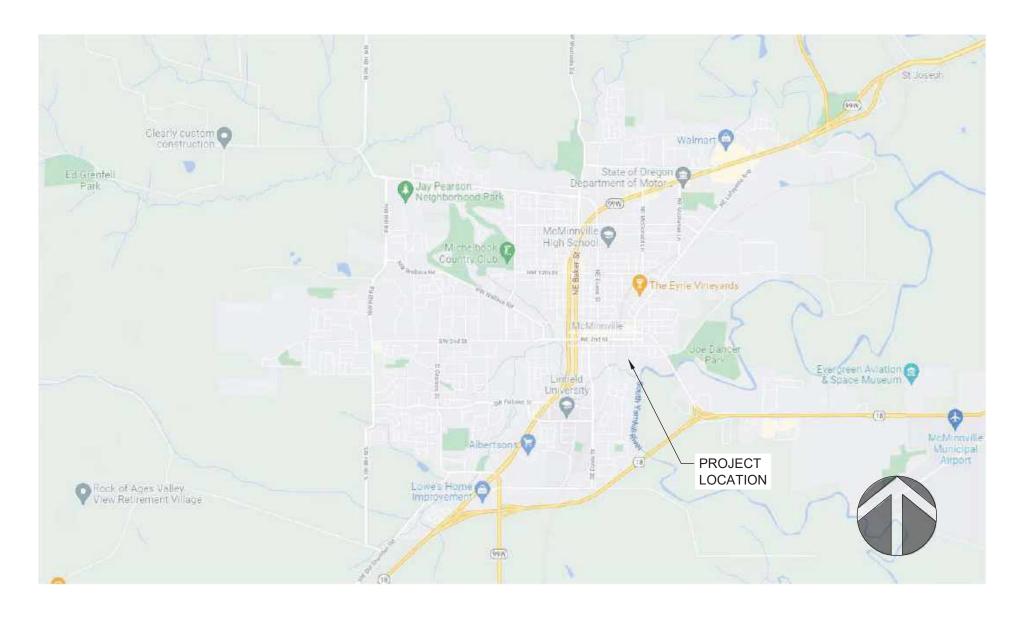


## First Christian C - PROJECT LOCATION West B & B SE Naorni Way

## **TEMPORARY POWER AND CONSTRUCTION SEQUENCING:**

- 1. CONTRACTOR SHALL REFER TO SECTION 16000 GENERAL PROVISIONS PART 1 FOR TEMPORARY POWER PORTABLE GENERATOR REQUIREMENTS AND SIZES.
- 2. CONTRACTOR SHALL REFER TO SECTION 16000 GENERAL PROVISIONS PART 1 FOR CONSTRUCTION SEQUENCING AND SCHEDULING REQUIREMENTS.

## VICINITY MAP



## GENERAL NOTES:

- 1. ATTENTION: OREGON LAW REQUIRES THE CONTRACTOR TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH ON OAR 952-001-0001 THROUGH OAR 952-001-0090. CONTRACTOR MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER. (NOTE: THE TELEPHONE FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503) 232-1987 OR 811).
- 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ANY AND ALL EXISTING UTILITIES AND OBTAINING UTILITY LOCATIONS PRIOR TO START OF CONSTRUCTION. THE CONTRACTOR MUST CONTACT OREGON UTILITY NOTIFICATION CENTER 811 OR (503) 232-1987 OR 811), A MINIMUM OF 48 HOURS PRIOR TO START OF CONSTRUCTION.
- 3. ALL EXCAVATED MATERIAL SHALL BE HAULED AND DISPOSED OF OFF SITE, UNLESS OTHERWISE NOTED.
- 4. ANY INSPECTION BY THE CITY, COUNTY, STATE, FEDERAL AGENCY, OR ENGINEER SHALL NOT, IN ANY WAY, RELIEVE THE CONTRACTOR FOR ANY OBLIGATION TO PERFORM THE WORK IN COMPLIANCE WITH THE APPLICABLE CODES, REGULATIONS, CITY STANDARDS, AND PROJECT CONTRACT DOCUMENTS.
- 5. THE CONTRACTOR IS RESPONSIBLE FOR POTHOLING TO VERIFY EXISTING UTILITY LOCATIONS AND ENSURE NO CONFLICTS EXIST PRIOR TO CONSTRUCTION.
- 6. NOT ALL TREES, SHRUBS, AND HARDSCAPES ARE SHOWN ON THE PLANS, CONTRACTOR SHALL VISIT EACH LOCATION TO DETERMINE EXTENT OF REQUIRED CLEARING, GRUBBING AND RESTORATION.

CITY OF MCMINNVILLE, OREGON ENGINEERING DIVISION WRF AND RSPS EMERGENCY STAND-BYGENERATOR INSTALLATION

Consulting and services Landis (

COVER

SHEET



### **STAFF REPORT**

DATE:January 11, 2022TO:Mayor and City CouncilorsFROM:Jennifer Cuellar, Finance DirectorSUBJECT:Resolution 2022-69: Appointments for positions on the City's Budget<br/>Committee

#### **Strategic Priority and Goal:**

#### **CITY GOVERNMENT CAPACITY**

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

#### **Background:**

m

ORS 294.414(1) requires a local government to establish a budget committee for purposes of acting as the local government's fiscal planning advisory committee. The committee is comprised of the elected members of the governing body and an equal number of electors of the municipal corporation (i.e., qualified voters). The governing body appoints electors to the budget committee for three-year terms.

There are currently three vacancies on the City's Budget Committee. The vacancies were advertised on the City website. We received seven applications for the vacant positions.

Seven interviews were scheduled with all applicants – Charles Gibbins, Jerry Mason, Joshua Tikhonoff, Lonny Watne, Sandra Feston, Scott Cunningham and William Newman. Interviews took place on Monday November 14, 2022, with members of the Audit Committee (Councilors Menke and Payne) and Mayor Drabkin.

Mayor Drabkin and Councilors Menke and Payne recommend the new appointments of Jerry Mason, Scott Cunningham and Lonny Watne to 3-year terms starting January 1, 2023.

#### **Recommendation:**

That City Council appoint the candidates noted above.

#### Attachments:

The Interview Schedule and Committee Applications (redacted) Resolution 2022-69

#### McMinnville Budget Committee Applicant Interview Schedule

#### 14-Nov-22

#### Start time

- 12:00 PM Get organized scoring, question order, other
- 12:20 PM Charles Gibbins
- 12:40 PM Lonny Wayne (zoom)
- 1:00 PM Scott Cunningham
- 1:20 PM Jerry Mason
- 1:40 PM William "Buck" Newman
- 2:00 PM Joshua Tikhonoff
- 2:20 PM Sandra Feston
- 2:40 PM Deliberation and next steps

#### **Electeds present:**

Remy Drabkin Kellie Menke Jessica Payne



#### **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: Lonny Watne	Home Phone:				
Address:	Cell Phone:				
McMinnville, OR 97128	Work Phone:				
Email:					
Board, Commission or Committee for which you	u are an applicant:				
Advisory Board					
Airport Commission	Landscape Review Committee				
☐ Board of Appeals	McMinnville Affordable Housing				
Budget Committee	Task Force				
Citizens' Advisory Committee	McMinnville Urban Renewal				
Historic Landmark Committee	Advisory Committee (MURAC)				
	Planning Commission				
<u>Ward</u> in which you reside (if applicable): <u>2</u>					

How many years have you lived in McMinnville? 3+

Educational and occupational background: Director of Finance for the Allison Inn & Spa Previously a Director of Finance or Controller for 30+ years and before that a loan officer in the banking industry. Business and Economics at Eastern Oregon University

Why are you interested in serving? I would like to use my experience in budgeting to help McMinnville City Government.

Date 13 October 2022

Signe

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: Scott Cunningham Address McMinnville OR 97128 Email:	Home Phone: Cell Phone: Work Phone:			
Board, Commission or Committee for which y Advisory Board Airport Commission Board of Appeals Budget Committee	you are an applicant:  Landscape Review Committee  McMinnville Affordable Housing Task Force			
<ul> <li>Citizens' Advisory Committee</li> <li>Historic Landmark Committee</li> <li><u>Ward</u> in which you reside (if applicable): 3</li> </ul>	McMinnville Urban Renewal Advisory Committee (MURAC) Planning Commission			

How many years have you lived in McMinnville?<sup>9</sup> years

Educational and occupational background: B.A. Government from University of Redlands 20 years of budget management of restaurants. Helped with the budget for the McMinnville Downtown Association for six years. Excel Proficient.

Why are you interested in serving? I feel this is a great way for me to serve our city. Wether it has been a recession or Covid I have had to manage very tight budgets at my restaurants. Proper budgeting takes the ability to assess the needs of the community while balancing the realities of revenues. All of these I feel fairly confident in my decision making capabilities.

Date9/12/2022

Signed\_

41

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.

putional board of commission.				
Name: Jerry Mason	Home Phone: <u>n/a</u>			
Address:	Cell Phone:			
McMinnville, OR 97128	Work Phone:n/a			
Email:				
Board, Commission or Committee for which	n you are an applicant:			
Advisory Board				
Airport Commission	Landscape Review Committee			
Board of Appeals	McMinnville Affordable Housing			
Budget Committee	Task Force			
Citizens' Advisory Committee	McMinnville Urban Renewal			
Historic Landmark Committee	Advisory Committee (MURAC)			
	Planning Commission			
How many years have you lived in McMinnvill Educational and occupational background:				
I have served as a city planner and legal a				
special purpose districts in Idaho for 50 ye				
	ofessional experience has engaged me in a			
broad spectrum of local government resp	onsibilities. See attached brief biography.			
Why are you interested in serving?				
Moving to Mac early this year, my wife an	id I wanted to establish new roots in the			
community of our choice. My goal would	be to sustain the quality of life that this			
city currently enjoys. The community is c	hanging as most western cities are.			
Responding to that likely change is a task	for all involved. I believe I have a lot			
to learn, but also have a backgound that	should allow me to catch on quickly.			
Date September 1, 2022	Signed_			

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

#### **RESOLUTION NO. 2022-69**

## A Resolution appointing Jerry Mason, Lonny Watne, and Scott Cunningham as representatives of the City of McMinnville Budget Committee.

#### **RECITALS:**

ORS 294.414(1) requires a local government to establish a budget committee for purposes of acting as the local government's fiscal planning advisory committee.

The Budget Committee is comprised of the elected governing body and an equal number of volunteer electors who are appointed by the governing body for three-year terms.

There are currently three vacancies on the City of McMinnville Budget Committee. Seven candidates applied for the vacant positions.

The City advertised the vacancies in the local newspaper and posted the advertisement on the City's website.

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

1. The City Council appoints the following volunteers to the Budget Committee:

#### BUDGET COMMITTEE (3-year term)

#### Jerry Mason Lonny Watne Scott Cunningham

2. This Resolution and these appointments will take effect as of January 1, 2023.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 13<sup>th</sup> day of December, 2022 by the following votes:

Ayes: \_\_\_\_\_

Nays:

Approved this  $\underline{13^{th}}_{day}$  of <u>December</u> 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

Resolution No. 2022-69 Effective Date: December 13, 2022 Page 1 of 1 City Recorder



## STAFF REPORT

DATE:December 13, 2022TO:McMinnville City CouncilFROM:Nic Miles, Code Compliance OfficerSUBJECT:Resolution No. 2022-71, Liens for Unpaid Citations and Abatement Costs

#### STRATEGIC PRIORITY & GOAL:

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#### **COMMUNITY SAFETY & RESILIENCY**

Proactively plan for & responsively maintain a safe & resilient community.

#### OBJECTIVE/S: Build a community culture of safety (consider safety best practices)

#### Report in Brief:

This is the consideration of Resolution No. 2022-71, approving liens on property that have not paid for the costs associated with property nuisance abatements per Section 8.10 of the McMinnville Municipal Code. These liens represent the few property nuisances that were not able to be resolved voluntarily.

#### Background:

In October 2019, City Council voted to approve amendments to Title 2 and Title 8 of the McMinnville Municipal Code. Those updates provided code compliance staff with more efficient tools for addressing property maintenance and health and safety concerns in an expeditious time frame. Since that time, code compliance staff has continued to resolve most complaints through voluntary compliance. For those property owners who do not voluntarily comply, the City will abate the property and then invoice the property owner for the full costs of the abatement including staff time. Per Section 2.50.250(F) of the McMinnville Municipal Code, if the property owner refuses to pay the invoice, the City has the right to lien the property for the unpaid invoice per the McMinnville Municipal Code after City Council approval. Resolution No. 2022-03 represents unpaid civil penalty citations and corrective action costs for five properties with unpaid invoices from citations or abatements in the final quarter of 2021.

#### Discussion:

Unpaid Citations and Abatement Costs:

2022 NW Cedar St.

#### Junk, Vegetation and Discarded Vehicle Removal: \$559.57

Code compliance staff received complaints from three different neighbors in the vicinity
of this property. The complaints included an accumulation of household junk, debris, and
overgrown weeds along the side of the house as well as in the driveway. Additionally,
neighbors complained that there were two discarded vehicles in the driveway that were
inoperable and hadn't moved for an extended period of time.

#### 510 SW Russ Ln.

#### Discarded Vehicles: \$250.00

 Code compliance staff received complaints from neighbors regarding ongoing issues at this property involving discarded vehicle storage in the street, driveway, and yard. Due to ongoing non-compliance, a \$250 citation was issued to the property. Achieving long-term effectiveness with this type of chronic nuisance property is the staff's goal for creating new code language that allows for swifter action when necessary.

#### Attachments:

- 1. Before/After 2022 NW Cedar St.
- 2. Resolution No. 2022-71

#### Fiscal Impact:

Placing these unpaid citations and abatement costs will result in eventual full cost recovery, including administrative time and resources.

City Council Options:

- 1) Approve Resolution No. 2022-71 that will then put the liens on the properties so that the City can recover the costs of the abatement or citations upon the sale of the property.
- 2) Elect to not approve Resolution No. 2022-71 which would not guarantee the City recovery of the costs of the abatement or citations.

#### **Recommendation:**

*Staff recommends approval of Resolution No. 2022-71 so that these unpaid citations and abatement costs be placed on the lien docket.* 





#### RESOLUTION NO. 2022-71

A Resolution approving code compliance liens on properties to recover unpaid corrective action cost and civil penalty citations.

#### **RECITALS:**

On August 13, 2019, the McMinnville City Council adopted Ordinances No. 5078 and 5079, amending the McMinnville Municipal Code to restructure the code compliance program with an emphasis on efficiency, timeliness, voluntary compliance, and the ability to abate properties and issue civil penalties when voluntary compliance was not achieved.

Per Section 2.50.250(F) of the McMinnville Municipal Code, if the city needs to obtain a correction action warrant to abate properties that were not voluntarily abated for public safety, health, and welfare, the city can bill the property owner for the full cost recovery of that abatement.

Per Section 2.50.250(F)(2) of the McMinnville Municipal Code, if the property owner refuses to pay the full costs of the correction action within thirty (30) days, the City Council can lien the property by resolution.

Per Section 2.50.310 of the McMinnville Municipal Code, the city can issue a Notice of Civil Penalty to the property owner.

Per Section 2.50.250(F)(2) of the McMinnville Municipal Code, if the property owner refuses to pay the civil penalties within thirty (30) days, the City Council can lien the property by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, that the following properties have been assessed either corrective action costs or civil penalties that after due process and notification, the property owners have refused to pay within thirty (30) days and are now approved to be recorded as liens on the property:

Property Address	Violation Type	Amount of Lien
2022 NW Cedar Street	Corrective Action Costs	\$559.57
510 SW Russ Lane	Civil Penalty Citation	\$250.00

Adopted by the Common Council of the City of McMinnville at a meeting held the 13<sup>th</sup> day of December 2022 by the following votes:

Ayes:

Nays:

Approved this <u>13th</u> day of December, 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder



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

## **STAFF REPORT**

DATE:December 13, 2022TO:Mayor and City CouncilorsFROM:Heather Richards, Community Development DirectorSUBJECT:Resolution No. 2022-74, Contract Award – AnyDoor Place, a McMinnville<br/>Navigation Center, Construction Manager/General Contractor

#### **STRATEGIC PRIORITY & GOAL:**

HOUSING OPPORTUNITIES (ACROSS THE INCOME SPECTRUM)

Create diverse housing opportunities that support great neighborhoods.

**OBJECTIVE:** Collaborate to improve the financial feasibility of diverse housing development opportunities

#### **Report in Brief:**

This action is the consideration of Resolution No. 2022-74 awarding a professional services contract in the amount of \$174,450 for the Construction Manager/General Contractor for the AnyDoor Place project, a McMinnville Navigation Center.

#### Background:

The City of McMinnville has partnered with the Yamhill Community Action Partnership to manage the construction phase of the AnyDoor Place, a McMinnville Navigation Center. The City received \$1.5M from the Oregon Legislature in 2021 session for the project. The City will contract an experienced Construction Manager/General Contractor (CM/GC) to rehabilitate two existing structures, (approximately 2,677 and 2,251 square feet respectively) and build a new addition (approximately 2,420 square feet) joining the two structures as an emergency low barrier shelter and supportive services facility. The CM/GC firm that is selected will be providing services during the design and construction phases of the project. The construction will start on approximately May 1, 2023 and be complete by March 8, 2024.

#### **Discussion:**

The CM/GC Request for Proposals was released on October 17, 2022, and was noticed in the Daily Journal of Commerce ("DJC") on October 17, 2022, and October 21, 2022.

Voluntary pre-proposal meetings were held in-person at the McMinnville Community Development Center, 231 NE 5<sup>th</sup>, on October 25, 2022, at 1 PM and 2 PM.

On Thursday, November 8, 2022, two proposals were received for the AnyDoor Place, a McMinnville Navigation Center CM/GC. The proposers are as follows:

- Integrity Builders, Inc.
- Fackler Construction Company

All of the proposers were complete and met the City's requirements. A detailed breakdown of the received proposals are on file in the Planning Department.

A review panel with representatives from Yamhill Community Action Partnership (2), the project architect firm of FFA (2), and city staff (2) independently reviewed and scored the proposals. After the scores were tabulated, it was determined that due to the scores coming in at "1" point apart, the process would move to interviews.

						Total	Average
Integrity Builders	96	76	90	70	93	425	85
Fackler Construction							
Company	89	70	97	80	94	430	86

The panel of representatives from YCAP (1), FFA (1), and city staff (2) conducted hybrid interviews on November 17, 2022.

					lotal	Average
Integrity Builders	92	72	92	94	350	87.5
Fackler Construction						
Company	91	89	87	89	356	89

After the interviews, the panel determined that a lead finalist was determined. It was recommended that finalist be moved forward for the McMinnville City Council's consideration for contract approval.

The proposal from Fackler Construction Company was deemed to be the most responsive bid.

The project is expected to start approximately May 1, 2023, and be complete by March 8, 2024.

#### Attachments:

Resolution No. 2022-74 Fackler Construction Company RFQ/RFP Response

#### Fiscal Impact:

This contract is for \$174,450.

The Adopted FY22 budget includes \$1,200,000 for the Navigation Center construction in the Affordable Housing 08 Fund.

#### **City Council Options:**

- 1) Approve Resolution No. 2022-74 authorizing the City Manager to sign the contract with Fackler Construction Company
- 2) Request more information.
- 3) Do not approve Resolution No. 2022-74.

#### **Recommendation:**

Staff recommends that the City Council approve Resolution No. 2022-74

#### **RESOLUTION NO. 2022-74**

A Resolution authorizing the City Manager to enter into a contract with Fackler Construction Company for the Construction Manager/General Contract for the AnyDoor Place, a McMinnville Navigation Center.

#### **RECITALS:**

**Whereas**, the AnyDoor Place, a McMinnville Navigation Center, addresses the need for an emergency low barrier shelter and supportive services facility in McMinnville; and

**Whereas**, at 2:00pm on November 8, 2022, two proposals were received for the Construction Manager/General Contractor for the AnyDoor Place, a McMinnville Navigation Center; and

**Whereas**, the proposal from Fackler Construction Company, met all of the proposal requirements and should be considered the responsible and responsive proposal; and

**Whereas**, Funding for this project is included in the adopted FY22 Affordable Housing Fund.

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

- 1. That entry into a contract with Fackler Construction Company for the Construction Manager/General Contractor services for the AnyDoor Place, a McMinnville Navigation Center is hereby approved.
- 2. The City Manager is hereby authorized and directed to execute the Construction Manager/General Contractor Contract per Exhibit A.
- 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 13th day of December 2022 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 13th day of December 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

#### CITY OF McMINNVILLE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") for CM/GC Services for AnyDoor Place McMinnville ("Project") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2022 ("Effective Date") by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the "City"), and <u>Fackler Construction Company</u> a(n) \_\_\_\_\_ [*state*] \_\_\_\_\_ [*corporation/limited liability company, etc.*] (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 master planning services according to the requirements and deliverable dates identified in the Scope of Work for the Project, attached hereto as **Exhibit 1** and incorporated by reference herein (the "Services").

#### Section 2. Term

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 \_\_\_\_\_\_, 20\_\_\_\_, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

#### 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; however, no additional compensation will be provided due to a Force Majeure event. 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 <u>one hundred seventy four thousand, fouor hundred fifty dollars</u> (\$<u>174,450</u>), 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 1**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit 2**. Any Additional work beyond the Scope of Work, or any compensation above the amount shown in **Subsection 4.1**, requires a written Addendum 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, including but not limited to plan checking, land use, zoning, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit 1**.

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

1.1. 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.

1.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. 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 Jody Christensen. 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 \_\_\_\_\_\_. 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 1** 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. The City hereby agrees that Consultant will contract with

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. For all Services performed under subcontract to Consultant, as approved by the City, Consultant shall only charge the compensation rates shown on the approved Rate Schedule (**Exhibit 2**). Rate

schedules for named or unnamed subcontractors, and Consultant markups of subcontractor billings, will only be recognized by the City as set forth in Consultant's Rate Schedule, unless documented and approved, in writing, by the City pursuant to a modification to Consultant's Rate Schedule, per **Section 16** of this Agreement. 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.]

#### Section 12. Indemnity

12.1. <u>Indemnification</u>. 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. <u>Standard of Care</u>. 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 reperformance 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. <u>Insurance Requirements</u>. 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. <u>Commercial General Liability Insurance</u>. 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 **\$10,000**.

All of the foregoing coverages must be carried and maintained at all times during this Agreement.

13.1.2. <u>Professional Errors and Omissions Coverage</u>. 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. <u>Business Automobile Liability Insurance</u>. 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. <u>Workers Compensation Insurance</u>. 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. <u>Insurance Carrier Rating</u>. 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. <u>Additional Insured and Termination Endorsements</u>. 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. <u>Certificates of Insurance</u>. 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. <u>Primary Coverage</u>. 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 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: Jody Christensen, Community Development Special Projects Manager 231 NE Fifth Street McMinnville, OR 97128

To Consultant:

Attn:

#### Section 20. Miscellaneous Provisions

20.1. <u>Integration</u>. 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. <u>Legal Effect and Assignment</u>. 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. <u>No Assignment</u>. 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. <u>Adherence to Law</u>. 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 1**, shall be obtained and maintained throughout the term of this Agreement.

20.5. <u>Governing Law</u>. 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. <u>Nonwaiver</u>. 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. <u>Severability</u>. 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. <u>Modification</u>. This Agreement may not be modified except by written instrument executed by Consultant and the City.

20.11. <u>Time of the Essence</u>. Time is expressly made of the essence in the performance of this Agreement.

20.12. <u>Calculation of Time</u>. 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. <u>Headings</u>. 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. <u>Number, Gender and Captions</u>. 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. <u>Good Faith and Reasonableness</u>. 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. <u>Other Necessary Acts</u>. 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. <u>Interpretation</u>. 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. <u>Entire Agreement</u>. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

20.19. <u>Counterparts</u>. 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. <u>Authority</u>. 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:	CITY:
	CITY OF McMINNVILLE
By:	By:
Print Name:	Print Name:
As Its:	As Its:
Employer I.D. No	

APPROVED AS TO FORM:

City Attorney City of McMinnville, Oregon



#### NOVEMBER 8, 2022

## RESPONSE TO RFP ANYDOOR PLACE, MCMINNVILLE NAVIGATION CENTER

PREPARED BY: FACKLER CONSTRUCTION COMPANY 500 SW Adams St. McMinnville, OR 97128

> Amended on 12.14.2022 393 of 515

#### Fackler Construction Company

PO Box 194 McMinnville, OR 97128 503.479.2058 Fed Tax ID: 26-1676310 State Tax ID: 1336684-0 CCB: 180027

#### **Ben Fackler**

President Project Manager 503.437.4049 Ben@Facklerconstruction.com

November 8, 2022

Jody Christensen Project Manager, City of McMinnville

Dear Ms. Christensen,

Thank you for considering Fackler Construction Company for the Anydoor Place, McMinnville Navigation Center proposal.

With 27 years' of experience within the local community and a proven track record in public and private design and construction, Fackler Construction Company is uniquely suited for this project. Our trusted reputation makes us the ideal candidate for partnering with the city. As an additional benefit, working with a local construction company will ensure that the City of McMinnville's investment supports the local community.

Proposer has received and examined, as part of the Proposal, Addenda No. 1 through 1. Proposer accepts all terms and conditions contained in the Request for Proposal and the Professional Services Agreement, except as otherwise specifically noted as an Exception in the Proposal.

The submitted Proposal is valid for a period of ninety (90) days from the time and date Proposals are due.

All materials and documents acquired or produced by the consultant in conjunction with the resulting contract shall be delivered to and become property of the City of McMinnville, without restriction or limitation of future use.

The legal entity for this proposal is Ben Fackler Construction Inc., dba Fackler Construction Company, an S-Corporation registered in the state of Oregon.

Sincerely

Ben Fackler

#### ATTACHMENT C

#### PROPOSAL FORM - CM/GC - ANYDOOR PLACE:

Proposal Closing Date: Thursday, November 8, 2022, 2:00 pm, McMinnville Community Development Center, 231 NE Fifth Street, McMinnville, Oregon, 97128

The undersigned offers and agrees to provide Construction Manager/ General Contractor [CM/GC] Services to City of McMinnville, in accordance with this Request for Proposals.

#### PROPOSAL SUBMITTAL INCLUDES:

- PART A SECTION 1 THROUGH SECTION (PROPOSAL QUALIFICATIONS)
- PART B SECTION 8 (FEES)

ACKNOWLEDGMENT OF ADDENDUM: No

None \_\_\_\_ 1. \_ 2. \_\_\_\_ 3. \_\_\_\_

The undersigned further certifies that he/she has read, understands, and agrees to abide by all terms and conditions of this Request for Proposals if awarded the contract for these services.

The provisions of this RFP cannot be modified by oral interpretations or statements by the City's representatives or any other person or party. If inquiries or comments by Proposers raise issues that in the City's opinion require clarification by the City, or if the City decides in its sole discretion to revise any part of this RFP, written addenda will be provided to all persons who receive the RFP. Proposer's receipt of an addendum shall be acknowledged by signing it and returning it with the Proposal.

The term of the contract will be from the date executed through the end of the project specified within the contract. The City may amend the contract to include subsequent one- month periods if mutually agreed. The City reserves the right to cancel the contract, after providing thirty days written notice of intent to cancel. The City shall not incur any penalties or damages for cancellation.

Attachment C: Proposal Form

The Proposer certifies that it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, financial ability, age or other non-job-related factors as per ORS Chapter 659 and 42 USC §2000e.

#### NO REIMBURSEMENT FOR PROPOSAL

Proposers responding to this RFP do so solely at their own expense. Under no circumstances whatsoever will the City be responsible or reimburse Proposers for any costs incurred in the preparation and presentation of their proposals or for any related expenses or consequential damages of any kind.

#### ADDITIONAL REPRESENTATIONS

- A. The undersigned certifies the proposal is offered by an independent contractor as defined in ORS 670.600.
- B. The proposer, if an individual, is of lawful age; is the only one interested in this proposal; and that no person, firm, or corporation, other than that named, has any interest in the proposal or in the proposed contract.
- C. The proposal, if submitted by a joint venture is in the name of the joint venture and all parties have examined this RFP including all requirements and contract terms and conditions thereof, and, if successful, the joint venture shall execute a contract, which incorporates the stated requirements, proposal response and terms and conditions.
- D By submitting a response, the proposer certifies that no relationship exists between the proposer and the City that interferes with fair competition or is a Conflict of Interest, and no relationship exists between the proposer and another person or firm that constitutes a Conflict of Interest.
- E. The proposer has examined all parts of this RFP, including all contract requirements and contract terms and general conditions thereof, and,

Attachment C: Proposal Form

if successful, the proposer shall execute a contract, which incorporates the stated requirements, proposal response and terms and conditions.

F. The proposer fully understands and submits its proposal with specific knowledge that in the event the proposer's proposal is accepted and receives all necessary approvals, the proposal will be incorporated into a contract containing general terms and conditions as provided in the RFP.

The undersigned hereby certifies to the truth and accuracy of all statements, answers and data contained in this proposal and application, and hereby authorizes the City to make any necessary examinations or inquiries in order to make a determination as to the qualifications and responsibility of the proposer. The undersigned has examined all parts of this RFP and understands that it is completely discretionary with the Selection Committee whether to accept, reject, or negotiate its proposal submitted pursuant thereto.

11/8/2022 Date

Signature of Proposer

Name

onstruction Company Company

CM/GC Anydoor Place

Attachment C: Proposal Form

Response to RFP & Document Package

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**Ben Fackler** 

## A.2 Key Experience

#### A2.1

## Founding Principal and Lead Project Manager:

As the founding principal of Fackler Construction Company, Ben Fackler started in 1994 from the ground up. Early days were spent on the project sites working hands-on to ensure the craftsmanship for which Fackler Construction has built a reputation.

The past 27 years working in the local community has given Ben the opportunity to develop long standing relationships with local subcontractors and vendors. Many of those relationships started in the beginning are still thriving today. Ben manages a team of employees, subcontractors and vendors within the local community that have the capability of tackling the most complex projects. Working as project manager on select projects, Ben is able to continue to ensure the quality and reputation that we seek to uphold.

Ben's interest in historic preservation has led the team to multiple awards in the industry for restoration and rehabilitation of complex historic projects. Decades of experience in the residential remodeling industry has allowed Ben to develop a proven system in the design/build and CM/GC sector – experience that is directly relevant to the McMinnville Anydoor Place project.

Currently working between offices in McMinnville and Portland, Ben's focus on growth has led Fackler Construction Company into diverse markets – working across the US in the LA area, San Antonio, Tampa and other US markets.

## Assistant Project Manager:

## **Steve Fackler**

Steve has 35 years of management experience in the aerospace industry where he spent most of his carcer working for Meggitt. He was the General Manager and then Vice President of Operations during his first 17 years there. He's had the opportunity to work closely with district personnel and sponsor local projects, including projects for the Yamhill Carlton School District.

Steve transitioned to Director of Continuous Improvement for Meggitt. During his years with the company, Steve was responsible for plants on the East Coast as well as Mexico, China, and the United Kingdom.

Steve served on the Continuous Improvement Council for Meggitt International. This council focused on improving efficiencies and value engineering operational processes. As a senior member of the council, he guided strategic improvements for 52 SBU's.

As Director of Advanced Technology Steve had 21 engineers working under him. The team's focus was to bring technology, like robotics, into manufacturing and provide cost saving and energy efficient solutions to reduce Mcggitt's carbon footprint.

Steve joined the Fackler Construction team as a project manager and is currently managing the Olde Stone Village RV Park Expansion in McMinnville. His years of experience in project management, focus on cost saving and energy efficient solutions, understanding of software such as Pro Core and connection to the local community make him a valuable member of our company, and an asset to the Anydoor Project.

Louie Rincon

**Ray Shulmire** 

## **Assistant Project Manager:**

A recent addition to the Fackler Construction team, Louie joined with over 30 years of management experience in automotive, agriculture, and forestry environments. His focus and expertise in these industries included designing jobs and overseeing them from start to finish.

His current role as assistant project manager for Fackler Construction Company includes reviewing design documents for completeness and quality control. Louie serves as a liaison with general contractors, subcontractors, architects, engineers, and Federal and State local agencies when required.

Besides managing his team and subcontractors, Louie is responsible for reviewing and administering the requirements of contractual project documents. Louie, along with the management team, attends regular weekly meetings to report observations, project conditions, and progress. During these meetings, Louie reviews the budget and schedule to ensure that the project is on track with time and budget. He monitors the Pro Core construction management software routinely and updates any changes as needed to keep the project running smoothly and on course.

Throughout his career, he has promoted teamwork and collaboration with his teams and clients, creating trust and a strong working environment.

## Site Superintendent:

Ray has 18 years of construction experience starting in excavation right out of high school where he was a general laborer, pipe install, and promoted to equipment operator. He made the move to general construction, home building, and remodeling and has been with Fackler Construction for over 8 years. Starting as a general carpenter, he has grown with the company to his current role as lead project superintendent.

As superintendent, Ray manages the day-to-day operations of the construction project. His role in coordinating materials, labor, and equipment on the jobsite allow the project to run smoothly ensuring an on-time and on-budget completion.

## A.3 CM/GC Experience

## A3.1

In business since 1994, the Fackler Construction team takes pride in our diverse project portfolio. These projects vary from fish hatcheries and water processing plants to new residential construction and historical, award-winning renovations. Our extensive background in the high-end residential remodeling market has allowed us to refine our process for design/build and CM/GC projects. We have carried this model into the commercial market as well with great success, both locally in Oregon and throughout the United States. Fackler Construction has the resources to design, permit, finance and execute projects. We have a network of approved local subcontractors at our disposal.

## A3.2

## Pre-Construction Stage

As CM/GC, Fackler Construction will work alongside the design team and provide schedule development, coordinate and update living estimates, perform value engineering and perform ongoing constructability reviews. FCC will also assist with analyzing alternative designs and provide input on construction methods and techniques. FCC will develop a list of qualified subcontractors to participate in the RFQ process. Upon finalization of the design stage, FCC will provide costing and scheduling for the construction stage.

## Construction Stage

Fackler Construction Company will provide the logistics and oversight for construction of the facility as designed in the pre-construction stage. FCC will assemble and manage the labor and applicable subcontractors as well as vendors to maintain project budget and schedules. Owner and design team updates will be provided through periodic review meetings as approved by the ownership team.

Quality assurance will be maintained through oversight by the architect and project management team through a standard submittal process and document control of all applicable supplemental instructions throughout the course of construction.

Fackler Construction's project management team will work to maintain compliance with project documents and state regulations. Health and Safety and environmental requirements will be managed on a daily basis.

## Project Close-Out Stage

At project close-out, Fackler Construction will coordinate the completion of the project through a substantial completion review. Certificate of Occupancy will be coordinated upon completion of all outstanding items and relevant inspections. Close-out documentation will be submitted to include, but not limited to, warranty documentation as well as operation and maintenance manuals. As-built information will be coordinated with the architectural team for final review and distribution.

Fackler Construction Company will address any warranty issues as required during the warranty phase as outlined in the construction contract.

#### A3.3

Our company's database is filled with trusted subcontractors and suppliers. They are licensed and have been vetted on their ability to execute work and services. We check references of any new contractors and look at their quality of work.

A3.3.1

In addition to our portfolio of long-standing subcontractors, we will solicit subcontractor proposals through several means including direct RFQ as well as posting in several bid centers of which we are members. Reputation, professional skill set, and pricing of proposals are all important factors that we consider when selecting a subcontractor to work with us on a project.

#### A3.3.2

The vetting process for quality assurance and licensing requirements is not waived for any conditions. When a subcontractor is engaged for a design/build element of the overall project, the pricing portion of the selection process becomes a secondary element of review.

#### A3.3.3

On select projects, we will utilize our in-house team for various aspects of the work for which we are qualified. RFQ's are still sent to select subcontractors to ascertain the efficiency of performing the work in house.

A3.3.4

If selected, these subcontractors will be notified by email or phone. In addition, notification is sent through our Construction Management Software Platform. Subcontractor selection information is made available to non-selected subcontractors upon request.

A3.3.5

All subcontractors will go through the selection process described above. Non-selected subcontractors can request an in-person meeting with our team to review why their bid was not accepted.

#### A3.4

Fackler Construction's project control process revolves around Pro Core, a web based Construction Management Software Platform. The cloud-based system allows 100% continuation and accessibility for all members of the team.

Within this platform, the following elements are managed:

- Real Time budget reporting & review
- Schedule Management & Control
- RFI Reporting & Tracking
- Submittal Reporting & Tracking
- Change Event Reporting & Tracking
- Change Order Reporting & Tracking
- Document Control
- Daily Logs

Please Find Attached Examples on Page 22.

## А3.5

Fackler Construction Company has a history of executing projects in a high-profile public setting. Our work with the Oregon Christian Convention Center in Turner often allowed us the opportunity to address the membership in person - ~100 individuals – and provide updates as well as provide access to the site for contributing members and donors.

The renovation and new construction work performed by Fackler Construction Company within the historic downtown Dayton area allowed us to interact with local city councilors and the mayor's office as well as the Dayton Community Development Association. Our interactions included allowing access to tour the progress of the project by local city officials and other stakeholders as well as interacting with the general public on a daily basis.

Fackler Construction has performed multiple projects in the McMinnville Historic Downtown district working alongside the city and the McMinnville Downtown Association to coordinate the necessary permits, sidewalk closures, design questions, and managing ongoing site safety with the general public.

Fackler Construction completed the construction of a new facility for the Trask Fish Hatchery in 2019. This working hatchery and education facility was open to the general public and in operation during construction. FCC managed access and coordination of equipment, materials, and workers in a confined worksite with minimal impact to the working crew and coordinating access to public fishing locations adjacent to the site.

#### A3.6

## **Professional References:**

#### Project: Mission Foods - Rancho Cucamonga

Maria Carmen Ozuna – *Electrical Subcontractor* 626.705.8310 carmen@ozunaelectric.com Reference For: Louie Rincon (Assistant Project Manager)

Paul Titoyan – Owner's Representative 469.345.2135 ptitoyan@missionfoods.com Reference For: Louie Rincon (Assistant Project Manager)

### Project: Olde Stone Village RV Park Expansion

Ralph Tahran – Architect 503.539.8802 ralphtahran@comcast.net Reference For: Ben Fackler (Project Manager) and Steve Fackler (Assistant Project Manager)

Stuart Wurdinger – Subcontractor 503.713.7555 stuart@wurdingerexcavating.com Reference For: Ben Fackler (Project Manager) and Steve Fackler (Assistant Project Manager)

#### **Project: Stoller Family Estates Office Rehabilitation**

Steve Caldwell – Owner's Representative 971.545.0009 steve@stollerwinegroup.com Reference For: Ben Fackler (Project Manager) and Ray Shulmire (Site Superintendent)

#### **Project: Chehalem House Guest House Restoration**

Tracy Timmins – Owner's Representative 503.544.3511 tracyt@chehalemwines.com Reference For: Ben Fackler (Project Manager) and Ray Shulmire (Site Superintendent)

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3.	Design Phase	74 days	Tue 12/13/	21Fel 3/24/23													
Ħ	<b>Bid Packages</b>	30 days	Man 2/27/2	23 Fri 4/7/23			1		1								
18	Guaranteed Maximum Price	4 days	Mon 4/10/23	Thu 4/13/23					1								
12	Permitting	40 days	Mon 3/27/.	23 Fri 5/19/23					-								
17	General Conditions	30 days	Mon 5/22/2	23 Fri 6/30/23						7-	4						
14	Mobilization	4 days	Mon 5/22/2	23Thu 5/25/23						x							
15	Excavation/Utilites	45 days	Fri 5/26/23	Thu 7/27/23						e.	1						
15	Footings	10 days	Fri 6/9/23	Thu 6/22/23						-+=							
17	Carpentry	30 days	Fri 6/23/23	Thu 8/3/23							1 H	-					
18	<b>Building</b> Finishes	90 days	Fri 9/15/23	Thu 1/18/24								3	-	-		-1	
19	Plumbing	60 days	Fri 8/4/23	Thu 10/25/23	1						1		-				
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-25	HVAC	60 days	Fri 8/4/23	Thu 10/26/23							2	-					
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### A.4 Schedule

### A4.1

The initial phase of planning and scheduling revolves around potential long lead items and subcontractor availability. Long lead items can be identified and addressed early in the planning stages of the overall project. With two sites being integrated into one, the project will be phased in such a way as to allow multiple trades to work onsite without conflicting workspaces. Project monitoring is completed through daily onsite supervision and daily reporting of schedule conflicts or improvements. Continual real-time communication with subcontractors and vendors ensures that scheduling is maintained and adjusted to accommodate the required completion date.

All of the above documentation is contained within our Construction Management Software – Pro Core. This is accessible to the client and subcontractors at all times. Three week look-ahead schedules will be distributed amongst the construction and ownership team at weekly progress meetings.

#### A4.2

This project allows the city the opportunity to take two solid structures that have served the community since 1916 and 1920 and revitalize them into a community center that can play a vital role in the rehabilitation of the local houseless population.

The opportunity to rehabilitate these structures also presents the primary challenge of remodeling historic properties into one new and modern functional facility. The site presents challenges in terms of topography, and proximity to the state highway.

FCC has extensive experience in working with historic properties as well as the ability to work within the confines listed above. Our current operations base and storage facility is located less than 500 yards from the site allowing ample space for safe and secure storage and staging.

This will allow for efficient and cost-effective execution of the project.

#### A4.3

All site operations are in strict accordance with our health and safety handbook as well as ongoing site reviews. All employees and subcontractors are trained and monitored to address any health and safety concerns immediately. The site is secured to ensure the safety of the general public. FCC complies with OSHA and state guidelines for employee and job site safety.

FCC is experienced in working alongside ODOT for traffic safety including the necessary permitting and bonding required for any highway encroachments.

#### A4.4

Fackler Construction has a track record of finishing on time or ahead of project completion dates, most recently the Polk County Fire Stations and Mission Foods – Rancho Cucamonga.

#### A.5 Project Document Review

#### A5.1

For a project of this scope, Fackler Construction employs the following practice. The Constructability review consists of a Project Initial Document stage and 30%, 60% and 95% design stages.

The PID Stage will consist of both onsite and round table discussion identifying and resolving the critical project issues. The team composition for this meeting consists of the head of design as identified by the city as well as the contractor personnel.

Subsequent design stage meetings will consist of the head of design, the contractor personnel and any issue-specific expertise as deemed necessary.

A "biddability review" will be conducted by the contractor personnel and estimating department at the 60% stage.

QA/QC review as well as verification/correction review is accomplished through the following:

- Document Review technical and project management review approval required before finalization
- Document Modification based on the dissemination of review comments
- The above process repeats until approval is obtained
- Document Approval Design team and project management
- Document Certification architect, engineer, or other professional
- Document Distribution As required

Fackler Construction is uniquely positioned to facilitate the design and constructability of this project with a track record of 27 years of design/build experience in the residential market as well as commercial. We currently have a number of successful projects ongoing which have employed the same design and constructability review outlined above.

## A.6 Budgeting & Cost Accounting

#### A6.1

Fackler Construction Company's financial team monitors project budgets with a series of weekly meetings and ongoing accountability measures. The Ownership team will be updated on the project costing overview on a weekly basis as pertains to the initial budget. Should an issue arise, additional information will be provided for review.

The process outlined in A 5.1 ensures that the design stays on track with the owner budget. Additionally, any constructability issues or methods with a significant cost implication are addressed at the design stage. This mitigates the need for change orders and claims arising from design issues. Any change events are monitored through our Construction Management Software and are addressed early on to remedy any cost implications.

### A6.2

Fackler Construction Company's system as described in A 6.1 has allowed us to consistently deliver projects on or under budget. Fackler Construction has consistently minimized the need for change orders and claims through careful planning and tracking of all site related issues

#### A6.3

#### AFFIDAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX LAWS

Proposer: Fackler Construction Company I state that:

- The correct taxpayer identification numbers are:
   A. Federal Employer ID Number (EIN):<u>26-1676310</u>
   B. Employer's Oregon ID Number:<u>01336684-0</u>
- (2) Proposer is not subject to backup withholding because (i) Proposer is exempt from backup withholding, (ii)

Proposer has not been notified by the IRS that Proposer is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Proposer that Proposer is no longer subject to backup withholding.

- (3) The price(s) and amount of this proposal shall be arrived at independently and without consultation, communication or agreement with any other consultant, proposer or potential proposer.
- (4) That neither the price(s) nor the amount of this proposal, and neither the approximate price(s) nor approximate amount of this proposal, shall be disclosed to any other firm or person who is a proposer or potential proposer, and they will not be disclosed before Contract award.
- (5) No attempt has been made or will be made to induce any firm or person to refrain from proposing on this contract, or to submit any noncompetitive proposal or other complementary proposal.
- (6) The proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- (7) <u>Fackler Construction</u>, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract.

I state that <u>Fackler Construction</u> understands and acknowledges that the above representations are material and important and will be relied on by the City of McMinnville in awarding the contract(s) for which this proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the City of McMinnville of the true facts relating to the submission of proposals for this contract. I am authorized to act on behalf of Proposer and have authority and knowledge regarding Proposer's payment of taxes, and to the best of my knowledge.

(Affiant's Signature) STATE OF OREGON County of Signed and sworn to before me on Nov 8 2022

OFFICIAL SEAL Christine Maria Feasel NOTARY PUBLIC - OREGON COMMISSION NO. 984980 MY COMMISSION EXPIRES March 6, 2023

Ben (Affiant's name) Notary: My Commission Expires: March

## A.7 Projects

A7.1

## Francis Court

Contract Type: Integrated Project Delivery Contract Client: Twin Towers LLC, a division of Stoller Group Project Budget: Allocated to construction \$1,924,891.00 Schedule Duration: 11 months - 2016 Construction Budget: \$1,749,901 Final Construction Costs: \$1,792,800 Number of Change Orders: 3 \$42,899.16 2.39% of total Construction Contingency: 10% Amount of Construction Contingency Used for CM/GC Responsibility Issues: 0% Number of Claims: 0 Owner's Representative: Kelly Haverkate 503.864.2226 Architect: Paul M Falsetto 503.750.5750



Winner of the 2016 DeMuro Award for exemplifying excellence in preservation, adaptive reuse, and community revitalization. "The Francis Court is the first entirely new building to be constructed in downtown Dayton in five decades, sparking great community interest. Perhaps its greatest compliment came from owner of the historic house next door who declared it "a wonderful addition to the neighborhood". The Francis Court added density and vitality, and demonstrates the viability today of the mixed-use model that once defined small town main streets." - Restore Oregon

Francis Court was a "Historic Infill" project incorporating design elements from the adjacent historic properties. Challenges included working within a confined footprint with consideration for not disturbing the historic neighborhood and the recently renovated Block House Café, also by Fackler Construction Company.

In addition, the scope of work required containing a large amount of storm water runoff within underground chambers and flow control systems to accommodate the undersized city storm water system. Staging of construction equipment and materials required phasing of the project to limit the amount of materials and equipment onsite at any given time.

Fackler Construction worked with Paul Falsetto, the architect, to finalize design and constructability of a project that met the needs of the local community and remained within the financial parameters of the ownership team.

In addition to completing the overall construction of the building, Fackler Construction worked with the commercial tenants to complete the tenant improvement work required to accommodate their businesses – wine tasting and a retail establishment.

The upstairs housed two residential units filling a need for downtown livable space in the community.

#### Mission Foods Rancho Cucamonga

Contract Type: CM/GC Client: Mission Foods. Gruma Corporation Project Budget: Allocated to construction \$1,638,882.00 Schedule Duration: 3 months - 2022 Construction Budget: \$1,251,488.00 Final Construction Costs: \$1,689,053.36 Number of Change Orders: 1 \$50,171.36 Construction Contingency: 10% Amount of Construction Contingency Used for CM/GC Responsibility Issues: 0% Number of Claims: 0 Owner's Representative: Paul Titoyan 469.345.2135 Architect: Fackler Construction In-House Design Team



Fackler Construction completed a 125k sq ft renovation to Mission Foods Regional Distribution Center in Rancho Cucamonga, CA The project included the addition of 4,000 sq ft of office space including an additional shipping office, updating all electrical, providing 3 phase 480v electrical capacity to the facility. Other upgrades included a complete HVAC, fire suppression, warehouse lighting, dock lighting, and electrical pallet jack charging system. The scope of work included replacing the dock levelers and canopies in the shipping department and setting up all data points in the offices. We continue to work with Mission Foods on commercial projects throughout the US.

## Brookdale Hillside Retirement Community Renovation

Contract Type: Design/Build Client: Brookdale Assisted Living Project Budget: \$1,200,000 Schedule Duration: 9 months - 2017 Construction Budget: \$1,110,000 Final Construction Costs: \$1,119,205 Number of Change Orders: 1 Construction Contingency: \$90,000 Amount of Construction Contingency Used for CM/GC Responsibility Issues: 0 Number of Claims: 0 Owner's Representative: Dale Pader 503.507.7660 Architect: In House Design Team



Fackler Construction Company participated in a large ongoing renovation project with Brookdale – Hillside. This included a re-roof project of the entire main facility, remodel of 20 rooms in the skilled nursing wing, renovation of the kitchens in the memory care units, installation of a gym facility for residents, resident wine bar and bistro, and remodeled a dining facility into a "1950's" style diner. Fackler Construction Company's design team worked with local residents and facility managers to create spaces that were both functional and appealing to residents. Fackler Construction reviewed design and specifications with a committee made up of residents and staff.

Accommodations were made for ongoing living and work environments while construction was underway, minimizing financial and livability impact to both Brookdale and tenants.

A7.2

## **Public Projects**

#### Project: 20048 - Sutherlin Water System Improvement

Construction of the 2020 Water System. Improvements for the City of Sutherlin. Value of Contract: \$705,749.00 Owner: The City of Sutherlin, Oregon Address: 520 Oak Terrace Ave, Sutherlin, OR 97479 Randy Harris: Phone: 541.315.8139 Email: r.harris@ci.sutherline.or.us

#### Project: 20071 - SW Polk Fire Station

Construction of three Polk County fire stations. Value of Contract: \$3,843,541.42 Owner: Polk County, Oregon <u>Rickreall Fire Station</u> Address: 9105 Rickreall Road, Rickreall, OR 97371 <u>Salt Creek Fire Station</u> Address: 15455 Salt Creek Road, Dallas, OR 97338 <u>Bridgeport Fire Station</u> Address: 6040 South Kings Valley Highway, Dallas, OR 97338 Fred Hertel: Phone: 503.925.4275 Email: fhertel@swpolkfd.org

#### Project: 21034 - Lane County Landfill

Leachate Pond Geomembrane and floating cover replacement Value of Contract: \$161,600.00 Owner: Lane County Address: 84777 Dillard Access Road, Eugene, OR 97405 Jesse Berger: Phone: 541.521.6580 Email: jesse.berger@lanecountyor.gov

#### Project: 21074 - The Dallas Salt Shed

Construction of a pre-engineered metal storage building addition consisting of excavation, backfill, concrete, structure, finishes, grading, paving, utilities, and miscellaneous related items. Value of Contract: \$266,880.55 Owner: ODOT Address: 630558 N. HWY 97, Bldg. L Bend, OR 97703 Jesse Powning: Phone: 541.554.4775 Email: jesse.powning@odot.state.or.us

#### Project: 21028 - JWC Fern Hill Reservoir Hillsboro

Access safety improvements on existing reservoir and adjacent facilities. Value of Contract: \$202.327.07 Owner: Joint Water Commission Address: 150 E. Main Street Hillsboro, OR. 97123 Negar Niakan: Phone: 503.688.0555 Email: Negar.Niakan@hillsboro-oregon.gov

#### Project: 21095 - Silverton Gravity Thickener

The project consisted of replacing the existing thickener's mechanical equipment, walkway structure, maintenance platform, handrail system, rake arms, feed well, skimming mechanism, and other associated equipment. Value of Contract: \$143,787.00 Owner: City of Silverton Public Works Address: 306 S. Water Street, Silverton, OR 97381 Bart Stepp: Phone: 503.932.6215 Email: bstepp@silverton.or.us

#### Project: 21098 - State Library Ramp Renovation

Selective demolition of existing concrete sidewalk ramp components, including salvaging of indicated materials, and reconstruction of the ramps and reinstallation of new and salvaged materials, and placing of new on-grade sidewalks. Accessibility upgrades and correction of non-compliant accessibility ramps. Value of Contract: \$254,900.53 Owner: State of Oregon- DAS Address: 250 Winter Street NE, Salem, OR, 97301 Mark Wright: Phone: 503.932.3706 Email: mark.l.wright@oregon.gov

#### Project: 21133 - Oak Lodge Pump Station 5

Rehabilitation of Pump Station #5, including all electrical work, instrumentation, mechanical work and site work complete with all appurtenant piping, valves. Value of Contract: S691,047.00 Owner: Oak Lodge Water Service District Address: 17560 SE Walta Vista Drive Milwaukie, OR. 97267 Haakon Ogbeidet: Phone: 971.413.0301 Email: haakon@olwsd.org

#### Project: 21206 - Corvallis Washer Compactor

Furnish and install a wash press unit for washing, pressing, and conveying captured screenings.
Value of Contract: \$74,787.00
Owner: City of Corvallis Public Works
Address: 1304 NE 2<sup>ad</sup> Street Corvallis, OR. 97339
Max Hildebrand:
Phone: 541.766.6916 Email: max.hildebrand@corvallisoregon.gov

### Subcontracted Public Projects

#### Project: 186370 - FOVA Fort Vancouver (Doyon)

Wash rack installation of concrete wash rack and an oil/water separator to treat water from both the wash rack and existing maintenance building P400. Value of Contract: \$101,060.00 Owner: Vancouver National Park Services Address: 501 5<sup>th</sup> Street Fort Vancouver NHS Vancouver, WA. 98661 Steve Smith: Phone: 253.778.2497 Email: steven.smith@doyongovgrp.com

#### Project: 21272 - Warm Springs WWTP (Doyon)

Rehabilitate the Warm Springs wastewater treatment plant by replacing failed process equipment for the headworks, aeration basin, air supply, clarification basin, ultraviolet disinfection (UV) treatment, and monitoring equipment. Value of Contract: \$856,619.08 Owner: Confederated Tribes of Warm Springs Address: 2251 Rehab Street Warm Springs, OR. 97761 Steve Smith: Phone: 253.778.2497 Email: steven.smith@doyongovgrp.com

#### A.8 Fees

#### A.8.1 Breakdown of suggested hours allocated to the pre-construction design phase

Hours	Personnel	Rate	Total
120	Project Manager	\$ 98.75	\$ 11,850.00
80	Estimator	\$ 76.50	\$ 6,120.00
120	Asst. Project Manager	\$ 82.50	\$ 9,900.00
40	Superintendent	\$ 76.50	\$ 3,060.00
			\$ 30,930.00

#### A.8.2 - A.8.4

CM/GC Fee	9%
CM/GC General Conditions	\$174,450 Fixed Costs
CM/GC Performance/Payment Bond/	
Liability Insurance	4.9%

#### A.8.5

Personnel	Rate
Carpenter	\$ 93.17
Laborer	\$ 77.22
Painter	\$ 63.11
Equipment Operator	\$ 90.66

#### A.8.6

In the event the City and Fackler Construction Company are unable to agree on a GMP for the project or fail to enter jointly into construction, Fackler Construction intends to invoice the fee of <u>\$48,950.00</u>

## (A.3.4 Control Process Examples)

## **Change Events Line Items**

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Finance Department, 230 NE Second Street • McMinnville, Oregon 97128

## **Staff Report**

DATE:	December 13, 2022
TO:	Mayor and City Councilors
FROM:	Jennifer Cuellar, Finance Director
SUBJECT:	Online Lien Search Fees

### **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 offers online search capacity of liens issued by the city against properties. The direct cost to provide the service increased by 20% respectively in 2018 & 2021. This proposal seeks to increase the per item cost to users by 10% starting on January 1, 2023, in order to cover direct costs.

#### **Background:**

Per Resolution No. 2003-31, it is the belief of the City Council that real estate and mortgage companies and others using the online lien search services should provide cost recovery for the city for the time required to provide accurate information.

Registered users of the online lien search capacity are typically title companies. Since 2003, with the inception of providing City lien information on the internet, direct costs have increased three times, while user fees are now being proposed with a second adjustment. The first user fee adjustment in 2021 was an increase by 20%.

In order to fully recover the incremental increase in the direct cost for providing this online service, the Finance Department seeks to raise the current per item fee charged to users from \$30 to \$33.

Total revenue for this service is as follows:

#### 01-03-013.5310 (General-Finance-Accounting On-Line Lien Search Fees)

	FY19	FY20	FY21	FY22
Actuals	\$20,775	\$28,584	\$27,234	\$26,932

#### **Financial Impact:**

#### Option 1 (Staff's recommendation)

Raising the fees to \$33 an item will have the impact of offsetting the direct costs per item and passing the direct cost increase to the user.

Year	2003	2021	2023
Direct Cost	8.00	12.00	15.00
Staff cost recovery	17.00	18.00	18.00
User Fee	25.00	30.00	33.00

At this time, no increase is proposed for the staff cost recovery since a review and reasonable adjustment was just made in 2021.

This increase is consistent with the 2021 council goal to address sustainable revenues and the ongoing commitment coming out of that process to pursue cost recovery when possible.

Because of timing and ability to get this item before Council, we propose to send out letters to users of the online lien search in December and will institute our increase on February 1, 2023. This will mean one month of going without the additional \$3 in new direct costs in January but we want users to have at least a 30 day notice of this change.

#### Option 2

The Council may opt to leave fees as they are - \$30 per initial search. This would erode our cost recovery footing. However, the revenues are fairly modest so current rate revenue of \$27,000 (900 inquiries in the year), the difference moving to \$33 each would be \$2,700, an amount which does not have a substantial impact on the bottom line of the general fund.

#### Option 3

The Council could opt to have the finance department do a review of the staff cost recovery level to take into consideration the impact of staffing cost increases that have happened since this was last adjusted in 2021. If Council would like to do this, Finance will take this back and do more study on this cost component. This would likely result in a recommended delay in implementation to give a minimum of 30 days notice to the firms that use the service.

#### **Attachments:**

1. Resolution with proposed fee increase

#### **Recommendation:**

Staff recommend approval of the Resolution and increase in the online lien search fee from \$30 to \$33 starting February 1, 2023.

#### **RESOLUTION NO. 2022-75**

A Resolution adopting an increase in online lien search fees and repealing all previous resolutions regarding this fee at the time this becomes effective.

#### **RECITALS:**

The City of McMinnville collects online lien search fees to fund the cost of providing online lien search fees; and

Per Resolution No. 2003-31, it is the belief of the City Council that real estate and mortgage companies and others using the online lien search services should provide cost recovery for the City for the time required to provide accurate information; and

In 2018, the City's direct costs were increased for the first time since launching the online service, at this time by 20%; and

In 2021, the City's direct costs were increased for a second time since launching the online service, at this time by 20%; and

This fee increase of 10%, \$3 per item, from \$30 to \$33 results to offset the third direct costs charge increase.

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

- 1. That the City of McMinnville's online lien search fee will be \$33.
- 2. That this fee will take effect February 1, 2023.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 13<sup>th</sup> day of December, 2022 by the following votes:

Ayes: \_\_\_\_\_

Nays:

Approved this  $13^{th}$  day of December 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

Resolution No. 2022-75 Effective Date: December 13, 2022 Page 1 of 1



City of McMinnville Municipal Airport 231 NE 5<sup>th</sup> Street McMinnville, OR 97128 (971) 387-1125 www.mcminnvilleoregon.gov

## **STAFF REPORT**

DATE:November 28, 2022TO:Jeff Towery, City ManagerFROM:Willy Williamson, Airport AdministratorSUBJECT:Appointment and Reappointment of Airport Commissioners

### Report in Brief:

This action is the consideration of a resolution to appoint two and reappoint one member(s) to the Airport Commission.

#### **Background:**

There are three vacancies on the Airport Commission that need to be filled. Airport Commissioners typically hold a 4-year term (full-term), and may be reappointed for an additional 2 terms, with 3 terms being the maximum.

One current Airport Commissioner has requested and is eligible for reappointment for another full term.

One current Airport Commissioner has been on the Commission for three full terms, which is the limiting time. An applicant will be appointed to this position for a full term.

There is one part term vacancy on the Airport Commission that was vacated in the past year through resignation. This vacancy will be filled for the year remaining on the term. The person who is appointed will be eligible for reappointment at the end of this term.

There were a total of 19 applicants for the three open positions on the Airport Commission and 15 applicants were interviewed. The interview panel selected one applicant for reappointment to a full term, one applicant for appointment to a full term, and one applicant for a partial term. The panel also selected one person as an alternate in case an appointee declines the position.

## Attachments:

- 1. Resolution 2022-76
- 2. Applications and resumes for selected applicants
- 3. Ordinance 4933, Airport Commission

## **Recommendation:**

Staff recommends that the City Council adopt the attached resolution, appointing three applicants to the Airport Commission.

#### **RESOLUTION NO. 2022 – 76**

A Resolution appointing and re-appointing members to the City's Airport Commission.

#### **RECITALS:**

**WHEREAS**, the City of McMinnville has an Airport Commission made up of volunteers; and

**WHEREAS**, the City Council is responsible for making appointments and reappointments; and

**WHEREAS,** an interview panel has selected candidates for appointment and reappointment;

#### 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 Airport Commission.
  - Mark Fowle (full term)
  - Michael Griffiths (full term)
  - Daniel Hickox (partial term)
  - Ronald Black (alternate)

Expires December 31, 2026 Expires December 31, 2026 Expires December 31, 2023 Alternate

2. This Resolution and these appointments will take effect January 1st, 2023.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 13th day of December 2022 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 13th day of December 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

Resolution No. 2022-76 Effective Date: December 13, 2022 Page 1 of 1



#### 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.

lame: Daniel Hickox	Home Phone:
ddress:	Cell Phone: Work Phone: n/a
mail:	
Board, Commission or Committee for whic	h you are an applicant:
Advisory Board	
Airport Commission	Landscape Review Committee
Board of Appeals	McMinnville Affordable Housing
Budget Committee	Task Force
Citizens' Advisory Committee	McMinnville Urban Renewal
Historic Landmark Committee	Advisory Committee (MURAC)
	Planning Commission
Ward in which you reside (if applicable)	· · · · · · · · · · · · · · · · · · ·

How many years have you lived in McMinnville? 3

Date 09/09/2022

Signed

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

## **DANIEL P. HICKOX**

### **OBJECTIVE:** Contract or Consulting Opportunities / Short Term

#### **QUALIFIED BY:**

- Forty-six years of aviation experience with consistently increasing responsibilities in maintenance operations, modifications and special project planning and execution.
- Demonstrated strength as an effective leader. Proven history of problem solving, project management, operational safety, facility startup and improvements, exceeding operational goals and span times.
- Aircraft type experience: B727, B737, B747, B757, B767, B777, DC10, MD11, MD10, DC8, MD80, A300-600, A310, Bae146 and Lockheed C5, C141 and L382 aircraft.
- Experienced in all areas of Aircraft Maintenance and all aspects of managing large work groups in diverse operational situations.

#### **EXPERIENCE:**

12/2019-06/2020	HAECO, Greensboro NC, Contract Consultant, FDX 767, A300 Heavy Checks	
09/1997-01/2018	<ul> <li>FedEx, Manager / Senior Manager Base Maintenance / Avionics</li> <li>Manager of Avionics department: three Hangar operation and Mod lines</li> <li>"B" checks and Special Visits on all FedEx fleets</li> <li>Deliveries/ Pre-service of 777 &amp; 767 LDS / HUD / SATCOM Modifications</li> <li>Special Projects</li> <li>Staff of 100+ and all associated functions and responsibilities</li> <li>Facilitator – FedEx Management entry program / AIM – 1998 to 2017</li> <li>LEAN Black Belt, Six Sigma Green Belt</li> </ul>	
10/86-09/97	American Airlines, Production Supervisor 767/757 MBV, Line Maintenance and "B" check operations MD80, 727 Mods, Numerous Special Projects and modifications	
12/91-09/97	<ul> <li>American Airlines AFW:</li> <li>12/91 AFW start-up of new Heavy Maintenance Base for 767/757 "C" Checks</li> </ul>	
3/91-11/91	<ul> <li>American Airlines SJC/LHR:</li> <li>Line Maintenance Supervisor, Station openings, MD11 Introduction / LHR Start up</li> </ul>	
10/86-3/91	<ul> <li>American Airlines SFO:</li> <li>Hangar / Line Maintenance Supervisor for all fleets / 767 "B" Check Supervisor</li> </ul>	
01/84-10/86	<ul> <li>Transamerica Airlines, Maintenance Coordinator, OAK, Lead Maintenance Rep, FRA</li> <li>OAK - Maintenance Control for fleet of L382, 747, DC10 and DC8 aircraft.</li> <li>FRA - Maintenance Rep. for all fleets, based in Frankfurt. Primarily worked in Africa and Middle East in support of L382 operations.</li> </ul>	
MILITARY	<ul> <li>United States Air Force, Honorable Discharge, 1976-1983</li> <li>Engine Overhaul Shop, Test Cell, Line Maintenance on C5, C141 and C130 aircraft.</li> </ul>	
REFERENCES	Furnished upon request	



#### 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.

ame: MICHAEL GRIFFITHS	Home Phone:
ddress:_	Cell Phone:
nail:	Work Phone:
Board, Commission or Committee for which	you are an applicant:
Advisory Board	
	Landscape Review Committee
Board of Appeals  Rudget Committee	McMinnville Affordable Housing     Tack Force
Budget Committee     Citizees' Advisery Committee	Task Force McMinnville Urban Renewal
Citizens' Advisory Committee     Historic Landmark Committee	
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How many years have you lived in McMinnville? // /#
Educational and occupational background: DEGRESS IN BUSINESS
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NAVY INCLUDING SERVICE ON THE AIRCRAFT CARRIER
USS FORRESTAL. CEO OF LIFE FULLET NETWORK FROM
2007 - 2021, FULLET NURSE FOR OVER 20 YEARS.
Why are you interested in serving? LIFELONG PASSION FOR AVIATION,
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16 YEARS. HAVE SERVED ON FOUR BOARDS OF
DILECTOLS. VESTED INTEREST IN MEMINNVILLE.
CO-OWNER OF BLUE MOON LOUNEE ! WILD WOOD
CAFE.
Date 9-14-22 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.

ner MARK A. FOWLE	Home Phone:
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Advisory Board	
X Airport Commission	Landscape Review Committee
Board of Appeals	McMinnville Affordable Housing
Budget Committee	Task Force
Citizens' Advisory Committee	McMinnville Urban Renewal
Historic Landmark Committee	Advisory Committee (MURAC)
	Planning Commission
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An Ordinance amending McMinnville Municipal Code (MMC) Chapter 2.28 as created by Ordinance No. 2145 and amended by Ordinance No. 3200 and Ordinance No. 4387.

RECITALS

The McMinnville Airport Commission was created in 1945 by Ordinance No. 2145. The ordinance also provided duties, powers, and authority for the Commission and its members.

In 1965, Ordinance No. 3200 amended Ordinance No. 2145 by changing the clerk of the Commission from the City Recorder to the City Administrator.

In 1986, Ordinance 4387 amended Ordinance No. 2145 by changing the meeting dates from monthly to quarterly.

No other amendments have been made to the ordinances setting out the duties, powers, and authority of the Commission. However, within the last year, members of the current Commission requested various modifications to the ordinances, both to enact changes which the members felt were valuable and to bring the requirements of the ordinances in line with current practices.

On November 9, 2010, the Commission voted to recommend to the City Council that the Council approve revisions to MMC Chapter 2.28. The revisions consist of a) increasing the number of Commissioners from five to seven, b) allowing two of the Commissioners to be non-residents of the City provided they are Yamhill County residents (whereas, before, all Commissioners had to be City residents). c) allowing the Mayor to name either him/herself to the Commission or to name a City Councilor in his/her place (whereas, before, the Mayor was named in the Code as being one of the Commissioners), d) placing a term limit of three full terms on all Commissioners (except the Mayor or City Councilor position), e) naming the Airport Manager (rather than the City Manager) to be the clerk of the Commission, f) naming the staff of the Community Development Department to assist and coordinate services for the Commission, g) establishing a meeting schedule of every two months (rather than quarterly), h) creating a position of vice chairperson, and i) establishing that the Commission has the power and authority to make a variety of recommendations to the City Council (rather than the Commission having the power and authority to do all things necessary for the operation and maintenance of the airport).

Now, therefore, THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS.

Section 1 The McMinnville Municipal Code Chapter 2.28 is hereby amended to read as follows:

## Chapter 2.28

## AIRPORT COMMISSION

Sections:

2.28.010	Creation, Membership, Terms of Office
2.28.020	Organization and Meetings
2.28.030	Powers and Duties Generally
2.28.040	Financial Responsibilities
2.28.010	Creation, Membership, Terms of Office

A. The Airport Commission was created by Ordinance 2145 in 1945, under the authority of ORS 492.330 (renumbered 836.210 in 1989) and has continued in existence since that time.

B. The Commission consists of seven Commissioners: six public members and one liaison member. A minimum of four public member Commissioners shall be citizens, residents, and taxpayers of the City. A maximum of two public member Commissioners may be non-residents of the City, but must be residents of Yamhill County. The Mayor of the City, or, at the Mayor's direction, a City Councilor, shall be the liaison member Commissioner, and shall have full voting rights.

C. The public member Commissioners shall be appointed by the Mayor with confirmation by the City Council The public member Commissioners' terms shall be four years and shall be staggered so that two Commissioners' terms end on December 31 each even numbered year and one Commissioner's term ends on December 31 each odd numbered year. The liaison member Commissioner's term shall be determined by the Mayor. Upon the expiration of the term of any Commissioner, the Mayor shall either re-appoint that Commissioner or shall appoint a successor. No Commissioner may serve more than three full terms. Each Commissioner shall hold office until his or her successor is appointed and qualified. Vacancies on the Commission shall be filled by appointment to be made by the Mayor for the unexpired term, which appointment shall also be confirmed by the City Council. The Commissioners shall serve without compensation.

D. The Airport Manager shall be the clerk of the Commission. The staff of the Community Development Department shall provide assistance and coordination services for the Commission. including all budget and document preparation.

E. Any Commissioner may be removed for cause by the Mayor. The Mayor shall present written findings showing cause to the Commissioner to be removed. The Commissioner being removed may appeal his or her removal to the City Council.

## 2.28.020 Organization and Meetings

A. Airport Commission meetings are public meetings and shall conform to the requirements of the Oregon Public Meetings Law. The Commission shall meet every two months and may hold special meetings as deemed necessary, advisable, or convenient at the discretion of the Commission. Special meetings may be called upon the request of the chairperson or any member of the Commission.

B. Four Commissioners shall constitute a quorum for the transaction of business.

C. Each Commissioner, including the chairperson, shall have one vote on matters before the Airport Commission.

D. At its first meeting each year, the Commission shall elect from among its members a chairperson and a vice chairperson. The chairperson shall preside over all meetings and shall sign the minutes. The chairperson may not delegate the duties of the position but may assign administrative tasks to others. The vice chairperson shall have all the authority of the chairperson in the absence of the chairperson.

## 2.28.030 Powers and Duties Generally

A. The City Council has delegated to the Airport Commission the power and authority to make recommendations to the City Council on:

1. All necessary rules and regulations for the conduct, management, and operation of the Airport;

2. All charges, fees, and tolls for the use of the Airport;

3. Leasing the Airport or any part thereof and on entering into contracts for the operation and management thereof upon such terms and conditions and for such a length of time as the Airport Commission shall deem best for the benefit of the inhabitants of the City and the public generally.

4. The annual budget for the Airport. Consideration and a recommendation on the budget shall take place in a manner that results in the City Council having the recommendation in time to incorporate the Airport budget into the City budget.

B. The City Counci' has delegated to the Airport Commission the power and authority to promulgate and enforce police regulations at the Airport and provide for civil penalties for the violations of these regulations.

Section 2. This Ordinance shall become effective thirty days after passage by the City Council.

Passed by the Council this  $\underline{14^{10}}$  day of December 2010, by the following votes:

Ayes: Mapsen, Nill, Jeffries, May, Menke, Yoder

Nays: \_\_\_\_\_

Approved this <u>14<sup>th</sup></u> day of December 2010.

Attest:

Approved as to form:

CITY ATTORNEY



231 NE Fifth Street McMinnville, OR 97128 (503) 434-7312 www.mcminnvilleoregon.gov

# **STAFF REPORT**

DATE:December 1, 2022TO:Jeff Towery, City ManagerFROM:Jeff Gooden, Project ManagerSUBJECT:Design Services – Various Sanitary Sewer Rehab Projects

#### Council Goal:

Plan and Construct Capital Projects

#### Report in Brief:

This action is the consideration of a resolution to award a Professional Services Agreement to Century West Engineering Corporation for the design of the Chandlers Addition Sanitary Sewer Project.

#### Background:

Four project areas were identified for sewer rehabilitation by City Staff reviewing the pipe conditions and selecting the project areas:

- 12<sup>th</sup> Street Sanitary Sewer Project;
- NE High School Sanitary Sewer Rehabilitation Project;
- Chandlers Addition Sanitary Sewer Project.
- NW High School Sanitary Sewer Rehabilitation Project; and

On January 18, 2017, Qualification Based proposals were received for the design of Various Sanitary Sewer Projects listed above. At their meeting on February 14, 2017, the City Council adopted Resolution 2017-12 approving a list of four consultants for sewer design work: Carollo Engineers, Murray, Smith & Associates, Inc., AKS Engineering & Forestry LLC, and Century West Engineering Corporation.

Since 2017, the first two projects listed above have been completed. The City requested fee proposals from the four consultants for the next project, the Chandler's Addition Sanitary Sewer Project.



The City received fee estimates from each firm to design the Chandlers Addition Sanitary Sewer Project as follows;

- Carollo Engineers ------\$631,808
   Murray, Smith & Associates, Inc -----\$497,489
   AKS Engineering & Forestry LLC -----\$298,000
- Century West Engineering Corporation ------\$274,962

Century West Engineering was determined to be the best value to the City for the design of this project.

Portions of the Chandlers Addition Sanitary Sewer Project overlap with the paving work that has been selected by Public Works Operations. To ensure proper coordination between the sewer work and street repaving, the street repaving design work has been included in the scope of work prepared by Century West Engineering Corp.

The design of the Chandlers Addition Sanitary Sewer Project is anticipated to be completed in early 2024, and the project construction work is expected to begin in March 2024.

See attached vicinity map for the area of the Chandlers Addition Sanitary Sewer Project.

#### **Discussion:**

The Chandlers Addition Sanitary Sewer Project will rehabilitate 5,300 lineal feet of aging sanitary sewer pipelines, ranging in size from 6 inch diameter to 10 inch diameter. The pipes will be rehabilitated with an assortment of techniques including open cut, pipe bursting and cured in place pipe (CIPP) lining. As part of the design project, pavement preservation and curb ramp improvement plans will be prepared for approximately 8,200 lineal feet of city streets. The pavement and accessibility work will be included in the project construction contract and will occur after the sanitary sewer rehabilitation work is completed.

The design estimate for the scope of work is \$274,962.00 (see attached Scope of Work).

#### Attachments:

- 1. Proposed Resolution 2022-77
- 2. Scope of Work, Estimate, Vicinity Map, and Contract
- 3. Resolution 2017-12

#### Fiscal Impact:

Funds for the design work are included in the adopted FY23 Wastewater Capital Fund (77) and Transportation Fund (45) budgets.

#### Recommendation:

Staff recommends that the City Council adopt the attached resolution approving the Professional Services Agreement with Century West Engineering Corporation for the design of the Chandlers Addition Sanitary Sewer Project.

A Resolution awarding the contract for the design of the Chandlers Addition Sanitary Sewer Project.

### **RECITALS:**

**Whereas**, At their meeting on February 14, 2017, the City Council adopted Resolution 2017-12 approving a list of four consultants for design of sewer rehabilitation design work. From that list, Century West Engineering Corporation was determined to be the best value to the City for the third project to be constructed: Chandlers Addition Sanitary Sewer Project; and

**Whereas**, The Chandlers Addition Sanitary Sewer Project will rehabilitate 5,300 lineal feet of aging sanitary sewer pipelines, ranging in size from 6 inch diameter to 10 inch diameter. The pipes will be rehabilitated with an assortment of techniques including open cut, pipe bursting and cured in place pipe (CIPP) lining; and

**Whereas**, As part of the design project, pavement preservation and curb ramp improvement plans will be prepared for approximately 8,200 lineal feet of city streets. The pavement and accessibility work will be included in the project construction contract and will occur after the sanitary sewer rehabilitation work is completed. and

**Whereas**, Funds for the design work are included in the adopted FY23 Wastewater Capital Fund (77) and Transportation Fund (45) budgets.

# 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 with Century West Engineering Corporation in the amount of \$274,962.00, for the Chandlers Addition Sanitary Sewer Project, is hereby approved.
- 2. 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 <u>13th</u> day of December, 2022 by the following votes:

Ayes:			

Nays: \_\_\_\_\_

Approved this <u>13th</u> day of December, 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

# CITY OF McMINNVILLE PROFESSIONAL SERVICES AGREEMENT Chandlers Addition Sewer Rehab Project

This Professional Services Agreement ("Agreement") for the <u>Chandlers Addition Sewer Rehab</u> Project ("Project") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2022 ("Effective Date") by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the "City"), and <u>Century West Engineering</u> <u>Corporation</u> an <u>Oregon</u> *corporation* (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 project design, public involvement, bid award and support services, utility coordination, engineering services during construction and post-construction engineering services according to the requirements and deliverable dates identified in the Scope of Work for the Project, attached hereto as Exhibit A and incorporated by reference herein (the "Services").

# Section 2. Term

The term of this Agreement shall be from the Effective Date until <u>all Services required</u> to be performed hereunder are completed and accepted, or no later than December 31st, <u>2024</u>, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

# 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 a not-to-exceed amount of **TWO** <u>HUNDRED</u> **SEVENTY-FOUR THOUSAND NINE HUNDRED SIXTY-TWO** DOLLARS (\$274,962) 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 establishing the scope and cost of such additional services must be executed in compliance with the provisions of **Section 19**.

4.3. Periodic payment will be made within thirty (30) days of completion or partial completion of the Services based on the schedule of costs included as a part of Exhibit A attached hereto. The Services shall be deemed completed when accepted by the City, in writing.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project, 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. Prevailing Wages

This is a contract for a Public Works Project subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this Project are those published by the Bureau of Labor and Industries (BOLI), effective July 1, 2021, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can found following be the http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\_state.aspx. website: Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Services, either by Consultant, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Services, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Consultant must comply with all public contracting wages required by law. Consultant and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Consultant an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the contract for breach. Consultant shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Consultant shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

# Section 6. City's Rights and Responsibilities

The City will designate a Project Manager to facilitate day-to-day 6.1. 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.

6.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2022-23. 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 17.

# Section 7. City's Project Manager

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

# Section 8. Consultant's Project Manager

Consultant's Project Manager is \_\_Rawley Voorhies\_\_\_\_. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification Recognizing the need for consistency and knowledge in the of such re-designation. 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. Professional Services Agreement – (Chandler's Addition Sewer Rehab Project)

### Section 9. 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 10. Duty to Inform

If at any time during the performance of this Agreement or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults, or defects in the Project or Scope of Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Consultant has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of the City's rights.

### Section 11. Subcontractors and Assignments

11.1. Unless expressly authorized in *Exhibit A* or *Section 12* 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 advises 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.

11.2. 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.

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

#### Section 12. Consultant Is Independent Contractor

12.1. 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.

12.2. 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.

12.3. 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 12** and meet the same insurance requirements of Consultant under this Agreement.

# Section 13. Consultant Responsibilities

13.1. 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.

13.2. 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.

13.3. 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.

### Section 14. Indemnity

14.1. 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 14.2**. 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.

14.2. <u>Standard of Care</u>. 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 reperformance 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 15. Insurance

15.1. <u>Insurance Requirements</u>. 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:

15.1.1. <u>Commercial General Liability Insurance</u>. 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 **\$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.

15.1.2. <u>Professional Errors and Omissions Coverage</u>. 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.

15.1.3. <u>Business Automobile Liability Insurance</u>. 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**.

15.1.4. <u>Workers Compensation Insurance</u>. 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.

15.1.5. <u>Insurance Carrier Rating</u>. 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.

15.1.6. 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.

15.1.7. <u>Certificates of Insurance</u>. 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.

15.2. <u>Primary Coverage</u>. 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 16. Early Termination; Default

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

16.1.1. By mutual written consent of the parties;

16.1.2. 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

16.1.3. 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.

16.2. 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.

16.3. 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.

16.4. 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 21**, for which Consultant has received payment or the City has made payment.

# Section 17. 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 18. 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 19. 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 20. Property of the City

20.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Consultant under this Agreement 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. Upon the City's written approval, and provided the City is identified in connection therewith, Consultant may include Consultant's work in its promotional materials. Drawings may bear a disclaimer releasing Consultant from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

20.2. 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 21. 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: Jeff Gooden					
	230 NE Second Street					
	McMinnville, OR 97128					
To Consultant:	Century West Engineering Corporation					
	Attn: Rawley Voorhies					
	5500 Meadows Road, Ste. 259					
	Lake Oswego Oregon 97035					

### Section 22. Miscellaneous Provisions

22.1. <u>Integration</u>. 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.

22.2. <u>Legal Effect and Assignment</u>. 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.

22.3. <u>No Assignment</u>. 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.

22.4. <u>Adherence to Law</u>. 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.

22.5. <u>Governing Law</u>. 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.

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

22.7. <u>Legal Action/Attorney Fees</u>. 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.

22.8. <u>Nonwaiver</u>. 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.

22.9. <u>Severability</u>. 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.

22.10. <u>Modification</u>. This Agreement may not be modified except by written instrument executed by Consultant and the City.

22.11. <u>Time of the Essence</u>. Time is expressly made of the essence in the performance of this Agreement.

22.12. <u>Calculation of Time</u>. 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.

22.13. <u>Headings</u>. 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.

22.14. <u>Number, Gender and Captions</u>. 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.

22.15. <u>Good Faith and Reasonableness</u>. 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."

22.16. <u>Other Necessary Acts</u>. 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.

22.17. <u>Interpretation</u>. 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.

22.18. <u>Entire Agreement</u>. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

22.19. <u>Counterparts</u>. 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.

22.20. <u>Authority</u>. 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:**

#### CITY:

CITY OF McMINNVILLE

By:\_\_\_\_\_

Print Name:

As Its:

Print Name:

As Its:

Employer I.D. No.\_\_\_\_\_

# APPROVED AS TO FORM:

City Attorney City of McMinnville, Oregon

# Exhibit A

#### McMINNVILLE | CHANDLERS ADDITION SANITARY SEWER REHABILITATION

# SCOPE OF WORK

This document summarizes the project scope of work, background and assumptions required to provide engineering services to support the reconstruction and/or rehabilitation of a number of existing sanitary sewer system lines and appurtenances within the City of McMinnville. The City of McMinnville (Agency) has overall project management responsibility for this project with Century West Engineering (CWE) providing assistance with project management, design, engineering services and construction support.

### **Existing Conditions**

The City of McMinnville's Chandlers Addition Sanitary Sewer Rehabilitation Project provides improvements to approximately 5,300 feet of aging sanitary sewer infrastructure ranging in size from 6-inch to 10-inch diameter.

The project is located in the SE quadrant and the NE quadrant of McMinnville, Oregon. The project within the NE quadrant is at the intersection of NE 19th St and NE Lafayette Ave. The project within the SE quadrant is at the north terminus of SE Rummel St and ends at the intersection of SE Villard St and Morgan Ln. The west limit of the project is at SW Davis St, the east end is at SE Willow St. It is located within the subdivisions of Chandlers 1st Addition, Chandlers 2nd Addition, Chandlers 3rd Addition, Daniels Addition, and Koch Addition. See Project Map in Exhibit A.

### **Proposed Conditions**

The mainline sewers will be rehabilitated by a combination of open cut replacement, pipe bursting, or cured in place pipe (CIPP) repair methods. Existing laterals within the project limits will be evaluated and appropriate improvements within City right-of-way or easement will be included in the project. The Consultant shall assist the City with the engineering services for point repair of a failed sewer line at 708 SE Davis.

Curb ramp and paving improvements will also be completed in the project area.

CWE staff and sub-consultants will provide the following services for the design and bidding phases of the project. The deliverables and assumptions are listed for each task. The tasks below are the result of coordination with the City during scoping and efforts as we understand them to be. All work performed under this scope of work will be done in accordance with City of McMinnville design standards and supplemented with local, state, and federal standards when applicable.

- Task 1 Project Management
- Task 2 Design Survey
- Task 3 Preliminary Design
- Task 4 Final Design
- Task 5 Agency Coordination and Permit Applications
- Task 6 Public Involvement Assistance
- Task 7 Utility Coordination
- Task 8 Bid and Award Support Services
- Task 9 Engineering Services During Construction (ESDC)
- Task 10 Post-Construction Engineering

It is anticipated that design will begin in January of 2023 and continue throughout 2023, with construction planned to begin in spring of 2024.

#### **City Responsibilities**

The City of McMinnville (City) will be responsible for the following:

- Providing staff time to attend project meetings and review project deliverables.
- Providing staff time to review sewer conveyance system improvement designs in accordance with DEQ sewer design review requirements.
- Furnish available studies, reports, and other data pertinent to the project including available tax lot, easement, sewer, and storm sewer system information, such as storm and sanitary TV inspections, sewer lateral inspections, subdivision plats and easements. The City shall obtain or authorize the Consultant to obtain or provide additional reports and data as required. The Consultant shall be entitled to use and rely upon all such
- information and services provided by the City or others in performing the Consultant's services under this Agreement.
- Provide staff, CCTV equipment, and dye for dye testing operations. Consultant will be on-site to record the results of the dye testing and summarize results in a lateral review spreadsheet.
- Assistance with coordination with significant stakeholders such as business community, residents, and utilities.
- Arranging for access to and notifying residents when the Consultant may be entering upon public and private property as required for Consultant to perform services.
- Providing current "front-end" documents to be used in developing the contract documents.
- Providing current AutoCAD standards to be used in the development of the contract plans.
- Payment for all permit application fees.

# Task 1 - Project Management and Coordination

The objective of this task is to provide overall management, direction, coordination for the engineering and related services required for Project completion in accordance with the schedule, budget, and quality expectations that are established. Task 1 includes the following subtasks:

# 1.1 Project Kickoff Meeting

Schedule, prepare for, and conduct a project kick-off meeting to review the purpose and scope of the
project and identify and confirm project criteria and required deliverables. This meeting may include
representatives from City staff and other stakeholders as invited by the City.

# **1.2 Project Schedule**

• Consultant shall prepare a detailed overall project schedule within 14 days of Notice to Proceed and update the schedule as required. It is anticipated that the design will begin in January of 2023 and continue throughout 2023, with construction planned to begin in spring of 2024.

# 1.3 – Progress Reports and Invoicing

This subtask will manage and report scope, schedule, and budget. This will include the following:

- Manage the Project team to track time and budget, work elements accomplished, work items planned for the next period, manpower, scope changes, and time and budget needed to complete this Scope of Services.
- Prepare monthly project status reports that compare work accomplished with scheduled activities, compare expenditures with task budgets, and submit reports to the City's Project Manager with monthly invoices.

#### 1.4 – Overall Project Coordination

 Consultant shall coordinate with subconsultants, assign and manage appropriate level of staff expertise for the project at each phase of design, coordinate design reviews and the implementation of design review comments, and perform other project coordination as required. For each submittal, review comments provided by the City and other involved parties will be compiled, along with a proposed response to each comment received.

#### Task 1 Assumptions

- 1) Eighteen (18) monthly invoices and progress reports.
- 2) Consultant will develop meeting materials, agenda, attend meetings, and develop meeting minutes.

#### **Task 1 Deliverables**

- 1) Monthly invoices and progress reports in PDF format.
- 2) Initial project schedule and updated project schedules as required in PDF format.
- 3) Meeting agendas and minutes as required in Word or PDF format.

#### Task 2 – Design Survey

Consultant shall complete surveying services necessary for design of the estimated 5,300 feet of sanitary sewer mains and associated laterals within the project limits.

Aerial imagery for the purposes of design is also included for the Paving Limits extents shown in the Project Map in Exhibit A. Topographic survey will be provided for up to ten (10) corners identified in Exhibit B for the purposes of curb ramp 2D detailed design.

Survey will include the following:

#### 2.1 - Survey Control

 Throughout the project limits, Consultant shall establish horizontal control on the Oregon Coordinate Reference System, Salem Zone and vertical control on the NAVD88 datum, unless otherwise directed by the City. Consultant shall run conventional levels through all primary survey control. Control shall be analyzed and adjusted as needed using industry accepted methods.

#### 2.2 - Survey Existing Utilities and Develop Base Map

- Consultant shall call for one-call utility locate paint marks and as-built maps and field located the existing
  utility marks throughout the project limits using conventional survey methods.
- Consultant shall develop an AutoCAD survey base map drawing with existing utilities and manhole data to be used for the development of plan sheets for the project design. Consultant shall map visible improvements within easements discovered as part of Subtask 2.6.
- Consultant shall complete a topographic survey of roadways and street corners which includes utilities, street trees, curb, sidewalk, driveways, right of way lines, structures, sanitary, storm, and existing lateral locations.
  - Streets shall be cross sectioned on 50-foot intervals and include the full right of way width.
  - Street corners subject to 2D curb ramp design shall include full topographic survey 30 feet along the street from the corner along the street alignment and 10 feet behind the face of curb and 5 feet into the street. This is assumed to include the ten (10) corners shown in the Project Maps in Exhibit B.
  - On private properties with backyard sewer mains which includes approximately ten (10) properties located at NE 19th St and NE 18th St and NE Lafayette Ave, and at 708 SE Davis St, consultant shall collect topographic data within 10 feet each side of the existing sewer line which may include fences, trees, buildings, utilities, and topography and include this information on the base map.
  - To supplement the survey items above, the City will provide existing GIS data files including, existing roads, curb, sidewalk, driveways, property lines, structures, sanitary, storm, and existing lateral locations.

- Consultant shall develop an AutoCAD survey base map drawing with existing utilities, topographic survey
  data and manhole data to be used for the development of plan sheets for the project design. Base map
  shall include 1-foot interval contours.
- Consultant shall provide aerial imagery:
  - Fly the pavement rehabilitation/curb ramp reconstruction limits.
  - o Produce ortho-images, georeferenced to overlay topographic survey.

#### 2.3 - Sanitary Sewer Manhole Ties

 Using industry accepted survey methods, Consultant shall locate and "dip" all sanitary sewer manholes and mains within the project limits and record rim and invert elevations for developing accurate profiles. Measurement to manholes shall be made from adjusted survey control.

#### 2.4 - Storm Sewer Manhole Ties

Using industry accepted survey methods, Consultant shall locate and dip storm sewer manholes and mains
to record rim and invert elevations at up to 25 locations of potential conflict with the sanitary sewer
rehabilitation work. Measurements to manholes shall be made from adjusted survey control. Consultant
to confirm how many days will be needed to complete this task.

### 2.5 – Right-of-Way Retracement

- Consultant shall obtain available Yamhill County survey records and perform necessary field and office survey work to locate the road right-of-way within the project area. Consultant shall place three (3) centerline staking locations throughout each block to identify the location of the easement. Additional right-of-way dedications depicted on assessor maps shall be identified. Title reports for private properties will not be reviewed as part of this task. Except as noted below for work on backyard sewer line locations, title reports will not be reviewed for the resolution of the road right-of-way location or to identify easements adjacent to the road right-of-way.
- Review Title Reports for up to ten (10) properties noted above with backyard sewer lines and resolve the location of property lines within 20 feet of the sewer line. Consultant shall identify and record survey monuments to be protected during design and construction.

#### 2.6 – Easements and Obstructions

- Consultant shall research easements within the project limits which are shown on subdivision plats, Records of Surveys, or City GIS layers and include the limits of those easements within the topographic survey in Task 2. Title reports for private property will not be reviewed for easements.
- Review Title Reports for up to ten (10) properties noted above with backyard sewer lines and identify easements shown on the said title reports within 20 feet of the sewer location.

#### 2.7 - Pre-Construction Record of Survey

 Prior to construction, Consultant shall perform field work to locate survey monuments which may be subject to destruction during construction and shall prepare and file with the Yamhill County Surveyor, a Pre-Construction Record of Survey in accordance with ORS 209.155.

#### 2.8- Survey Monument Replacement

• Consultant shall replace up to six (6) survey monuments that were destructed during construction, in accordance with the Pre-Construction Record of Survey listed in Subtask 2.7.

#### **Task 2 Assumptions**

- Topographical surveying will be completed primarily using conventional ground surveying to pick up visible utility markings, sewer manholes and cleanouts, including invert measurements when accessible, and supplemented with aerial imagery.
- 2) Base mapping will include 1"=50' scale with 1-foot contours.
- 3) No potholing field work is included in this scope of work.
- 4) No flagging, permitting, or traffic control will be required for surveying tasks.
- 5) Except as noted above for properties with a backyard sewer lines, no title reports will be obtained or reviewed as part of this project.
- 6) Monuments impacted to be reset due to construction impact can be performed in a single visit following the conclusion of construction activities.

#### **Task 2 Deliverables**

- 1) CAD files to be provided to the City.
- 2) Title reports obtained for back yard sewer line areas .
- 3) Pre-Construction Record of Survey filed with Yamhill County.
- 4) Post-construction monumentation for up to six (6) monuments.

# Task 3 – Preliminary Design

#### 3.1 - Review Sewer Service Reports for Existing Laterals

- Consultant shall review existing sewer service reports for work previously completed on existing laterals (to be provided by City). Approximately 88 of the 108 properties within the project limits have sewer service reports available. The review of each lateral will be cataloged in a lateral review spreadsheet, noting the date of most recent repairs, size, material, alignment, and other notable items for each lateral. This review will be used to make appropriate recommendations for modifications to laterals during final design.
- Consultant shall complete review of existing data to identify gaps in information required for the completion of the design of the project.
- Consultant shall provide sewer lateral launch CCTV for up to twenty (20) sewer laterals.

#### 3.2 - Mainline Pipe Condition Assessment, Documentation and Recommendations

 Consultant shall review CCTV video of existing mains (approximately 25 main runs), document the pipe size, material, condition, location of existing lateral connections and rehabilitation or replacement recommendations in spreadsheet format. Only main line CCTV will be reviewed. Lateral videos are not available, and review of lateral CCTV is not included.

#### 3.3 – On-site Lateral Investigations

 Consultant shall conduct on-site investigations for each property in the project limits to locate the private lateral connection(s) at the house and perform lateral launches. The City will send out notifications to property owners and residents prior to conducting the on-site investigations and obtain rights-of-entry, if necessary. Consultant will walk the property to search for connection points, cleanouts, area drains, and other applicable information. Results of the on-site investigations will be documented with photographs and field notes and summarized in the lateral review spreadsheet referenced in Subtask 3.2.

#### 3.4 - Dye Testing Laterals on Individual Properties

Based on the results of investigations under Subtasks 3.2 and 3.3, Consultant shall identify which
properties' laterals to mainline connection locations are unknown. Consultant shall develop a list of
properties to conduct dye testing to confirm the lateral to mainline connection point. The City will send

out notifications to property owners where dye testing is required.

- The City will provide staff, CCTV equipment, and dye for dye testing operations. Consultant staff will not be on-site full-time for the dye testing operations. It is assumed the Consultant will be on-site for three (3) days worth of dye testing work, to provide general coordination with the City.
- The project scope of work includes dye testing on up to twenty (20) properties.

#### 3.5 - On-site Manhole Investigations

 Consultant shall conduct on-site investigations for each manhole in the project limits, document size, material, condition, and rehabilitation or replacement recommendations. Results of the on-site investigations will be documented with photographs and field notes and summarized in a manhole condition assessment spreadsheet.

### 3.6 - Curb Ramp and Paving

- Provide geotechnical services to include the following:
  - Review design documentation to be provided by the City and project team.
  - o Provide an exploration work plan to the project team detailing location and depth of explorations.
  - Complete a right of way access permit through the City. We assume that any permit fees will be waived.
  - Complete 10 borings to depths of up to 3 feet below ground surface (BGS) within the limits of the utility trenching and pavement rehabilitation limits.
  - o Complete dynamic cone penetrometer testing at each exploration location.
  - Maintain a detailed log of the explorations. Collect samples of the subsurface materials encountered.
  - Perform laboratory testing including moisture content, sieve analysis, and Atterberg limits testing. The number and types of tests will be determined based on the subgrade materials encountered.
  - Provide recommendations for new and rehabilitated pavement, material and construction specifications.
- Complete a pavement evaluation report and make preliminary recommendations for curb ramp and paving scope.
- Consultant will identify where curb ramps will be required to be upgraded to meet Public Right-of-Way Accessibility Guidelines (PROWAG).

#### Task 3 Assumptions:

- 1) There are 108 properties in the project limits.
- 2) Data review will only be performed for laterals and sections of sanitary sewer within the project scope.
- 3) City will obtain all necessary rights-of-entry for on-site lateral investigations.
- Sewer lateral launch CCTV will be provided for up to twenty (20) laterals. Lateral launches will be completed in one visit.
- 5) City will provide staff, CCTV and dye required for dye testing. For the purposes of this scope of work, it is assumed that the dye testing of the twenty (20) properties can be completed in one work week (or five (5), eight (8) hour days). Consultant will be onsite for three (3) of these days.
- Inspection videos provided by the City will be complete and of sufficient quality to allow selection of R/R methods.
- 7) Distances from referenced manhole to each active service lateral provided by City's TV inspection reports are reasonably accurate.
- 7) Manhole inspections will consist of a street-level visual inspection (Level 1) using lights and a digital camera to assess and document the structural integrity of the manhole and the presence of infiltration sources. Detailed measurements and/or man-entry into manhole for more detailed (Level 2) inspections, if warranted, will be completed by City staff.

- 8) City will provide supporting data and information items for select reaches if currently available, such as:
  - a. Pipe maintenance history
  - b. Hydraulic capacity/known surcharge areas
  - c. Other data as appropriate to assist in R&R method selection and identification of areas that may require further investigations, such as survey or geotechnical explorations.
  - d. Relevant maps, GIS data, as-built drawings, video tapes and inspection reports
- 9) No flagging or traffic control will be required for the on-site manhole investigations.
- 10) Consultant will provide necessary flagging and traffic control for geotechnical investigations.

# Task 3 Deliverables:

- 1) Mainline pipe condition assessment spreadsheet.
- 2) Lateral review spreadsheet.
- 3) List of laterals recommended for dye testing.
- 4) Manhole condition assessment spreadsheet.
- 5) Geotechnical paving recommendations.
- 6) Preliminary curb ramp and paving scoping exhibits.

# <u> Task 4 – Final Design</u>

The purpose of this task is to develop plans, specifications, and opinions of probable construction cost (OPCC) for bidding and construction of the Project. The design process will include submittal packages at 50%, 90% and final phases. The construction documents will be prepared in a manner suitable to meet the City of McMinnville electronic bidding requirements.

The City will supply Consultant with the required mapping data for the project such as GIS data, sewer service reports, and as-built drawings. Design base mapping will be based on GIS data provided by the City and supplemented with additional survey described in Task 2. City staff will review and comment on the 50% design and the 90% design milestones. After comments are made, the City will conduct a design review meeting with the Consultant at each phase. The detailed subtasks are as follows:

# 4.1 – 50 Percent Design

- Prepare 50% design documents to include drawings, specifications, and Engineer's OPCC. The 50% plans
  will not include erosion control, traffic control, and detail sheets.
- Identify locations of utility conflicts for curb ramp and paving improvement.
- Attend 50% design review meeting.

# 4.2 – 90 Percent Design

- Prepare 90% design documents to include drawings, specifications, and Engineer's OPCC. The 90% plans shall include all proposed plan sheets required for construction, including erosion control, traffic control, and detail sheets.
- Incorporate City's review comments on the 50% deliverable and prepare the comment response log.
- Attend 90% design review meeting.

# 4.3 – 100 Percent Final Design

- Prepare 100% design documents to include final stamped and signed drawings, City's standard contract documents, front-end specifications and general requirements, final technical specifications, and Engineer's OPCC with appropriate contingencies.
- Incorporate City's review comments on 90% deliverable and prepare the comment response log.

#### 4.4 - Curb Ramp Design (50%, 90%, Final)

- Provide a two-dimensional layout for up to ten (10) corners for curb ramp design. This shall include any
  constraints (such as utilities that need to be relocated) and amenities (such as vegetation) that is present
  or in conflict. The remaining corners will be identified in plan view and noted to construct per the
  appropriate curb ramp standard detail.
- Incorporate City's review comments and prepare the comment response log in conjunction with each milestone submittal.

### 4.5 – Project Team Meetings

 In addition to the project kickoff meeting and design review meetings, the scope of work assumes up to three (3) project meetings will be required, to be held at City offices in McMinnville. Consultant shall schedule and lead project meetings and prepare agendas and minutes.

#### **Task 4 Assumptions**

- Design meetings and additional project meetings will be held at the City offices and will be attended by up to two (2) consultants and are anticipated to be four (4) hours in length including travel time. Consultant will provide agenda and meeting minutes.
- Technical specifications will use the City's adopted ODOT/APWA Oregon Standard Specifications for Construction.
- City will supply Consultant with the required mapping data for the project such as GIS data, sewer service reports, and as-built drawings.
- 4) City will provide review comments on 50% and 90% design packages.
- 5) Consultant will use City standard contract documents including front-end specifications and general requirements.
- 6) City standard is to include a cleanout for every lateral (if required). Cleanouts shall stay within City right-ofway.
- 7) Plan-view only sheets will be utilized for CIPP rehabilitation sewer main segments.
- Plan and profile sheets will be provided for pipe burst and open-cut rehabilitation/reconstruction sewer main segments.
- 9) Profile views will not be provided for sewer laterals.
- 10) Assumes no detailed grading for features impacted by construction (driveways, landscape, curb ramps, etc.).
- 11) Sewer bypass analysis will be based on surface observations of pipe flow depth where possible and sewer video review. No flow metering is anticipated.
- 12) Consultant will provide a two-dimensional layout for up to ten (10) corners for curb ramp design. This shall include any constraints (such as utilities that need to be relocated) and amenities (such as vegetation) that is present or in conflict. The remaining corners will be identified in plan view and noted to construct per the appropriate curb ramp standard detail.
- 13) ODOT Traffic Control standard drawings can be included in the bid document appendices as a guide for Contractor to prepare their own site-specific traffic control plans.

#### **Task 4 Deliverables**

- Completed CAD base map, using AutoCAD Civil 3D 2021, including all line-work, trees, rim and invert elevations, marked laterals, and other relevant surface features that may be required to assemble contract drawings.
- 2) 50% Preliminary Design Plans (22"x34") plans for review in PDF format. Plan sheets are anticipated to be completed at a scale of 1"=30' horizontal. Profile views are anticipated to be completed at a scale of 1"=5' vertical. Plan sheets anticipated:
  - a. Cover Sheet, Survey Control, Index, Legend, Abbreviations, Key Map (4 sheets)
  - b. Sanitary Sewer Pipe Rehabilitation Sheets (15 sheets)
  - c. Paving Sheets (8 sheets)

- d. Curb Ramp Sheets (4 sheets)
- e. Manhole Details (2 sheets)
- f. Sewer, Street Details (5 sheets)
- g. Erosion Control Cover and Details (2 sheets)
- h. Traffic Control Details (2 sheets)
- 3) 50% OPCC in PDF format
- 4) One Word document and PDF version of the 50% specifications.
- 5) 90% Design Milestone:
  - a. Response memo to 50% redline review comments.
  - b. 90% Design Plans (22"x34") plans for review in PDF format.
  - c. 90% Special Provisions and front-end contract documents in Word and PDF format. Track changes versions to be provided.
  - d. 90% OPCC in PDF format.
- 6) Final bid/construction-ready plans, specifications, erosion control plan and cost estimate:
  - a. Final Design Plans (22"x34") plans in PDF format, digitally signed by the Engineer of Record registered in the state of Oregon.
  - b. Final Special Provisions and front-end contract documents in Word and PDF format. Track changes Word version can be provided as necessary.
  - c. Final Construction Cost Estimate in excel and PDF format.
- 7) Meeting agendas and minutes for design review meetings and project team meetings.

# Task 5 – Agency Coordination and Permit Applications

The purpose of this task is to identify the permits required to complete the proposed project improvements and to begin coordination with the corresponding agencies in preparation for submitting permits following the completion of the design. This task assumes the following:

• Coordinate with permitting agencies and prepare, file, and obtain the necessary permits for the project

# Task 5 Assumptions

- 1) The City will be the "applicant" on all permits and will pay all permit fees required by regulatory agencies.
- Erosion control for construction activities will be completed under the City's DEQ NPDES General 1200-CA permit. A copy of the City's 1200-CA permit will be included in the contract documents.

# **Task 5 Deliverables**

- 1) Draft permit applications for City review.
- 2) Final executed permits to be included in the final bid package.

# Task 6 – Public Involvement Assistance

Consultant shall assist the City with public outreach efforts which will include the following:

- Prepare for up to three (3) electronic project information and/or notification mailings for City distribution.
- Catalog comments and responses to inquiries received at up to five (5) public meetings with the business community, and "open house" information events attended by City staff.
- Design and facilitate one (1) public meeting prior to construction for the purpose of providing project information to the public. Prepare materials needed for the public meeting. Up to three (3) consultant team members will attend.

The City will serve as the point of contact for the public which will include the following:

• Provide notifications for public meetings, meetings with the business community, and "open house"

information events; provide City staff to attend; provide a venue for such events; collect comments and responses for cataloging by the Consultant team.

- Distribute project information and/or notification mailings to property owners in the affected areas, as necessary.
- Assist with coordination with significant stakeholders such as the business community, residents, and utilities.
- Respond to public inquiries.
- Provide property owner and tenant information for properties in the project area to the Consultant team.

#### Task 6 Assumptions

- 1) Up to three (3) consultant staff will attend one (1) public meeting.
- 2) Consultant will catalog comments/response on up to five (5) City-led outreach meetings.

#### **Task 6 Deliverables**

- 1) Three (3) electronic project information and/or notification mailings.
- 2) Catalog comments and responses to inquiries received at City-led meetings.
- 3) Design, facilitate, and prepare materials for one (1) pre-construction public meeting.

#### Task 7 – Utility Coordination

Consultant shall perform utility coordination work related to the following franchise and private utilities: water, power, communications, gas, cable television, and other private utilities that may be present within the project limits. Consultant shall identify utilities within the project limits, evaluate potential utility conflicts, and coordinate utility efforts for relocation of impacted facilities.

#### 7.1 - Impact Assessment and Notifications

- Develop a utility contact information list and send project information correspondence to all utility companies involved to explain the nature of the work.
- Provide project preliminary plans to each utility.
- Maintain a record of correspondence with utility companies.
- Obtain utility-provided as-built information and compare with project base-mapping. Identify design conflicts.
- Issue conflict notices to impacted utilities.

#### 7.2 – Coordinate and Review Utility Relocation Designs

Consultant shall coordinate with private utilities to resolve utility conflicts and finalize utility relocation
requirements as appropriate. Affected utilities will be responsible for developing their relocation designs.
Consultant shall review each utility's relocation plans and proposed schedule and provide written
comments. The City will issue approval for any utility relocation. Consultant shall provide up to two (2)
design review iterations per utility.

#### 7.3 - Utility Coordination Meetings

Consultant shall coordinate, attend, and conduct up to five (5) on-site meetings with utilities to discuss
preliminary relocation concepts, identify potential utility conflicts to be resolved, discuss the project
schedule, and discuss relocation plans. Utility coordination meetings will be attended by up to two (2)
Consultant team members.

#### **Task 7 Assumptions**

1) Affected utilities will be responsible for developing their own utility relocation designs.

- On-site utility coordination meetings are assume to take four (4) hours each including travel time. This scope of services assumes up to five (5) utility coordination meetings, one for each known utility (water, power, gas, communications, and cable television).
- 3) City will provide list of known utility contacts for the project area.

### **Task 7 Deliverables**

- 1) Utility contact list.
- 2) Utility conflict plans sheets and spreadsheet.
- 3) Conflict notices to each affected utility.
- 4) Reviewed utility relocation plans with comments and recommendations.
- 5) Meeting notes for utility coordination meetings.

### Task 8 – Bid Award and Support Services

- Respond to bidder inquiries.
- Prepare addenda, including plans, specifications and/or bid clarifications, during the bidding process. Assumed to include up to two (2) addenda/clarifications.
- Compile bid tabulations spreadsheet.
- Review bid pricing with City project manager during the protest periods.
- Assist City in bid award recommendations.

### **Task 8 Assumptions**

1) Pre-bid meeting shall be organized and led by the City.

### **Task 8 Deliverables**

- 1) Bidder or City question responses.
- 2) Up to two (2) addenda and/or bid clarification in electronic format (pdf).
- 3) The Consultant will update the contract documents to include addenda items issued during the bidding process. Consultant will provide an electronic PDF version of "As-Bid" documents to the City.

# Task 9 – Engineering Services During Construction (ESDC)

The purpose of this task is to prepare for, conduct, and document decisions and action items arising from construction of the project. This task includes the following:

- Prepare for and attend the pre-construction conference.
- Prepare for and attend periodic construction meetings (as needed).
- Review and respond to construction submittals. This task assumes that the City will coordinate and
  manage the shop drawing and submittal review process and will distribute specific submittals for the
  Consultant to review. Consultant will complete reviews of submittals and resubmittals and provide the
  City with a response on the City's submittal form.
- Review and respond to Contractor Requests for Information (RFI). This task assumes that the City will
  coordinate and manage the RFI process between the City and the Contractor. Consultant will complete
  reviews of the RFI and provide the City with a response.

#### **Task 9 Assumptions**

The City will lead the construction management of the project. The City will have Consultant perform ESDC tasks on an as-needed basis up to the proposed budget amount. Efforts required beyond the budgeted amount will require a budget amendment to be authorized by the City.

- 2) Consultant shall review submittals on an as needed basis, determined by the City. The level of effort estimated for this task is based on 30 submittals requiring Consultant review. This task assumes that on average, each submittal will require one (1) resubmittal. Budget is based on two (2) hours per submittal inclusive of time for processing through the City's submittal tracking process and preparing responses.
- 3) When requested by the City, Consultant shall respond to the City's or the Contractor's requests for information and/or clarification of the contract documents. The level of effort estimated for this task is based on 30 requests for information and/or clarification and is based on two (2) hours per RFI inclusive of time for research, processing through the tracking database, and providing a response to the Contractor.

### **Task 9 Deliverables**

- 1) Submittal review responses.
- 2) Responses to RFI's and/or clarifications.

### Task 10 – Post-Construction Engineering

The purpose of this task is to provide post-construction record drawings (CRDs). Consultant will review the Contractor supplied as-built redline drawings and will prepare draft CRDs. The draft CRDs will be reviewed by the internal QA/QC team and then submitted to the City for review. One revision of the draft CRDs will be completed based on City comment and a final copy of the CRDs will be submitted to the City.

#### Task 10 Assumptions

- Contractor will be responsible for maintaining accurate as-built information throughout construction and will provide information to the City and Consultant in a timely manner in accordance with the Contract Documents.
- Budget is based on the need to make CRDs in AutoCAD to a total of 27 drawings, which generally excludes general and typical detail sheets, and temporary construction sheets such as traffic control and erosion control.
- Consultant shall submit draft and final CRDs to the City in PDF format. The final CRDs will also be provided in AutoCAD format.

#### Task 10 Deliverables

- 1) Consultant to provide draft and final CRDs to the City. Assumed to include the following sheets:
  - a. Sheet, Survey Control, Index, Legend, Abbreviations, Key Map (4 sheets)
  - b. Sanitary Sewer Pipe Rehabilitation Sheets (15 sheets)
  - c. Paving Sheets (8 sheets)

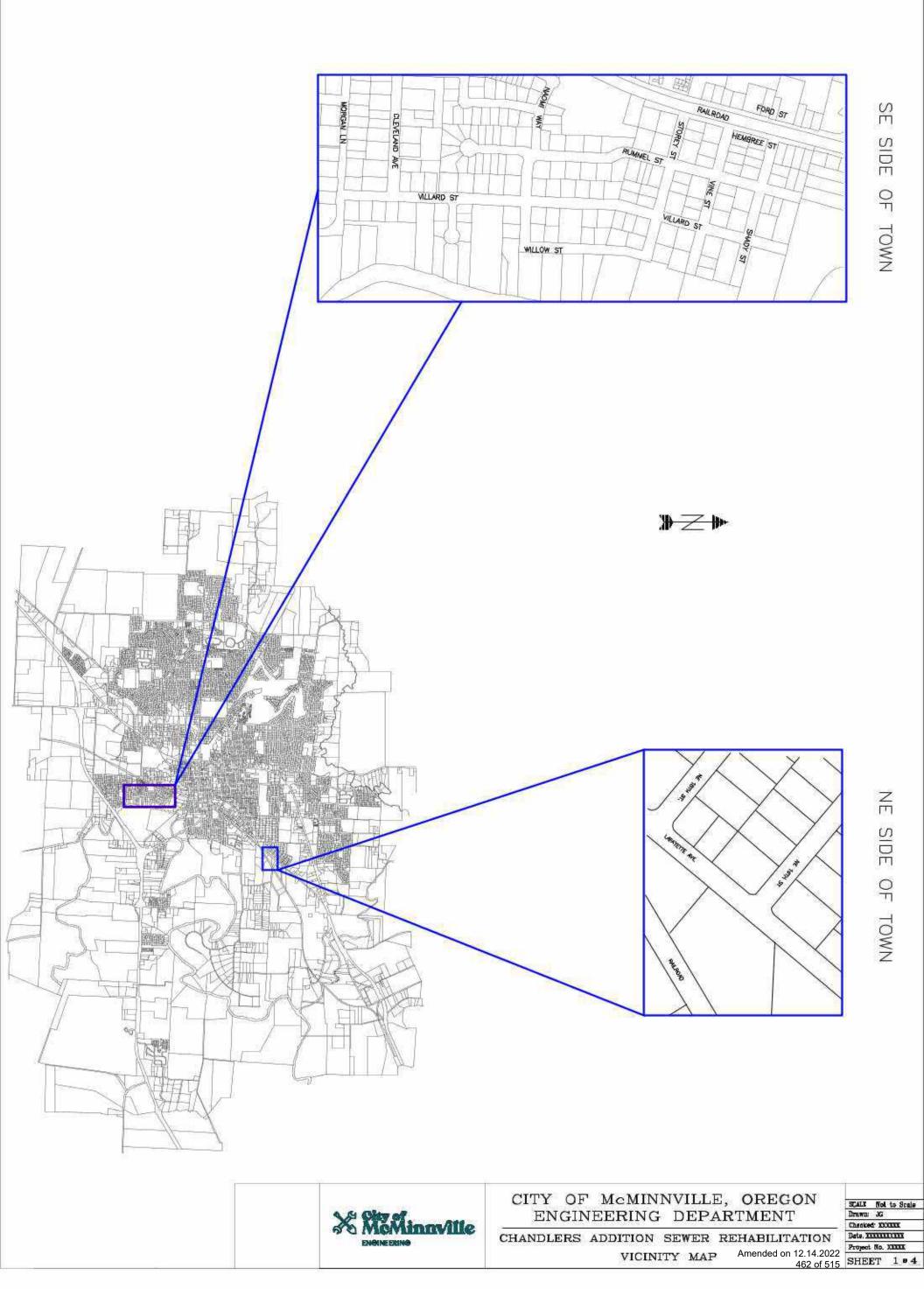
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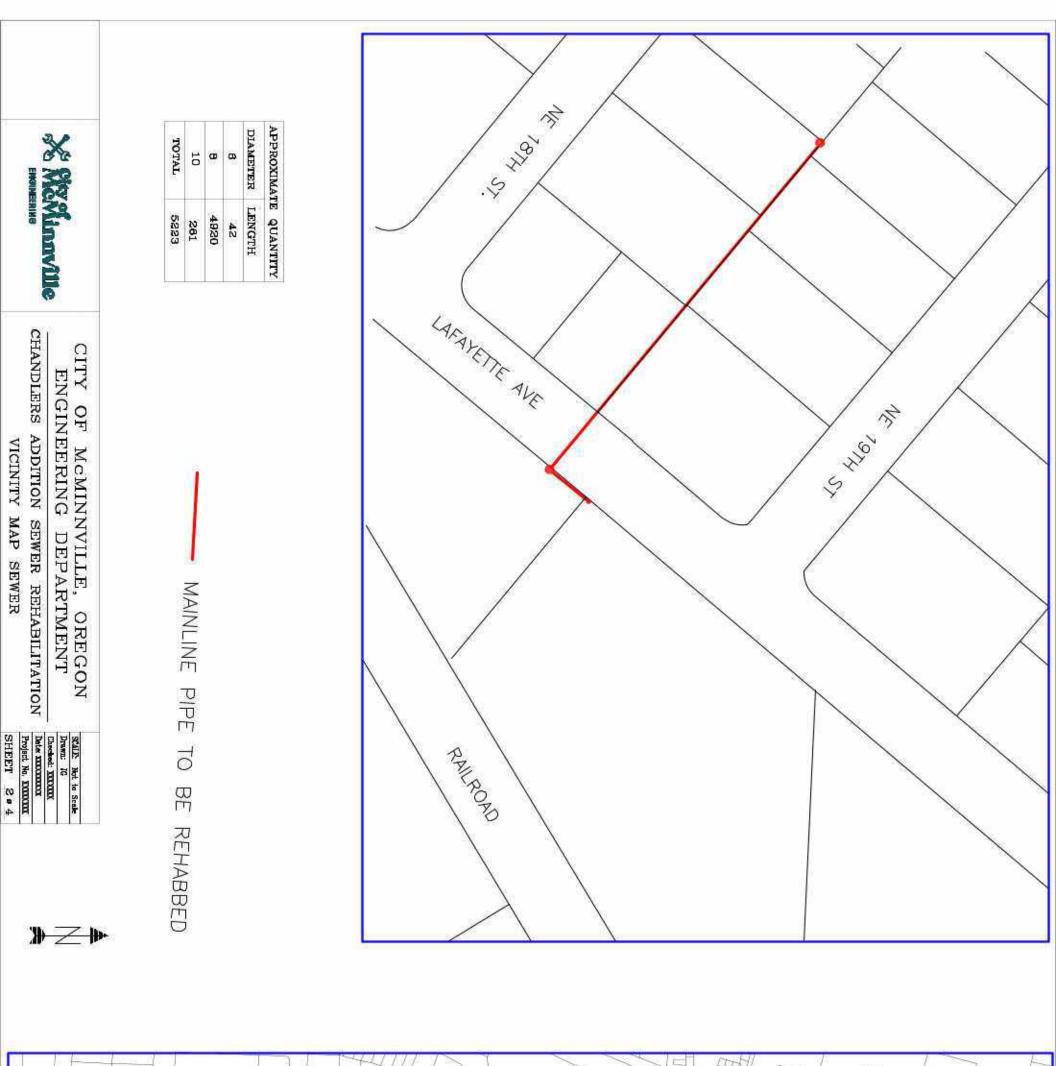
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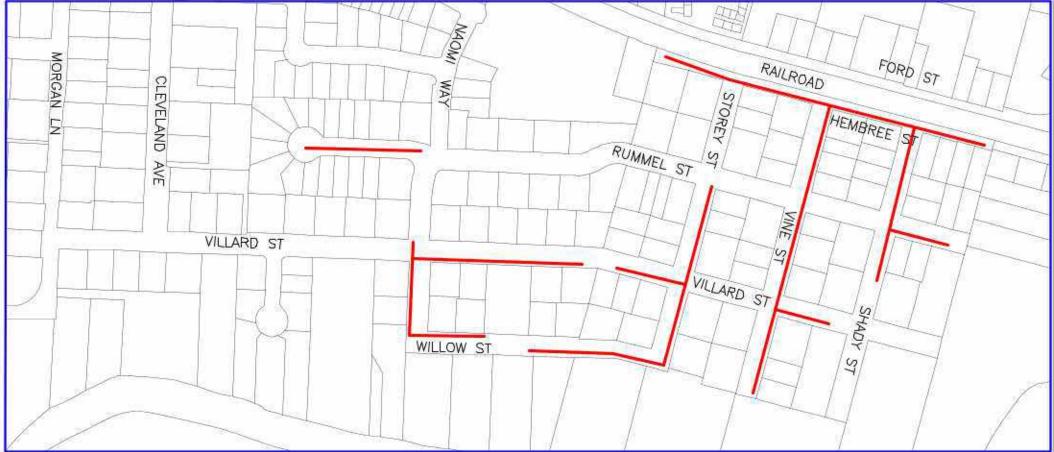
#### City of McMinville Chandlers Addition Sanitary Sewer Rehabilitation

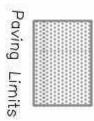
Century West Engineering CWE Expiritue: No. 40228-010-01 November 29, 2023	Sr. Piol. Mar \$210	Project Emphose \$125	Civi Doskanor \$125	Enginime In-Tigming \$105	Protect Goard 1 \$97	Surveying Subconsultant S&F Land Survey	Geolochmiai Subconsultant Gentral Geo	Tatal Haure	Tasal Fass
Task 1: Project Management 1.1 - Project Kickoff Meeting 1.2 - Project Schedule 1.3 - Progress Reports and Invoking 1.4 - Overall Project Coordination	12 2 18 48	6 6 0 18	0 0 0 0	0 0 0	0 0 0			18 8 27 66	\$3,330 \$1,230 \$4,563 \$12,510
Subtotal Task 1:	60	30	0	( <b>0</b> )		10	\$0	119	\$21,633
Task 2: Condition Assessment 2.1 - Survey Control 2.2 - Survey Existing Utilities and Develop Base Map 2.3 - Samtary Sever Manhole Ties 2.4 - Storm Sever Manhole Ties 2.5 - Richri-of-Weiv Retracement 2.5 - Entements and Obstructions 2.7 - Pre-Construction Record of Survey 2.8 - Survey Monument Replacement		021110202	0 4 0 0 0 2 0 2 2 2	0 0 0 0 0 0 0 0 0	00000000	\$1.860 \$13.185 \$4.275 \$5.420 \$8.100 \$8.475 \$4.490	000000000000000000000000000000000000000	0 6 1 0 4 0 4	\$1,860 \$13,955 \$4,410 \$4,410 \$5,420 \$6,820 \$6,820 \$6,820 \$6,820 \$6,910
Subtotni Task Z	- 6	6	6	0	P	\$45,080	\$0	16	\$40,100
Task 3: Preliminary Design 3.1 - Review Service Reports for Existing Laterels 3.2 - Marrine Pipe Condition Assessment, Documentation and Recommendations 3.3 - On-site Laterel Investigations 3.4 - Dive Testing Laterals on Individual Properties 3.5 - On-site Marrinole Investigations 3.6 - Curb Ramp and Paving	6 4 2 8 8	54 48 32 30 8 4	000000000000000000000000000000000000000	4 8 24 0 4 8	N D O D D O	\$6,870	\$14,675	66 62 60 32 20 20	\$9.144 \$8.580 \$7.680 \$4.470 \$3.180 \$24.605
Sabtotal Task 3:	34	175	0	(48)	2	\$5.870	\$0	260	\$57,659
Task 4: Final Design 4.1 - 50% Design 4.2 - 90% Design 4.3 - 100% Final Design 4.4 - Curb Ramp and Paving Design (50%, 90%, Final) 4.4 - Curb Ramp and Paving Design (50%, 90%, Final) 4.5 - Project Team Meetings	19 23 15 9 16	56 56 22 42 24	40 24 16 0 0	96 88 58 54 0	000000000000000000000000000000000000000			211 191 109 105 40	\$26.630 \$24.630 \$14.000 \$13,230 \$6.600
Subtotal Task 4.	62	200	- 10	296	0	50	\$0	456	\$85,090
Task 5: Agency Coordination and Permit Applications 5.1 - Miscellanecus Permits and Applications	8	16	0	4	D			28	\$4,260
Subtotal Task 5:		- <del>10</del>	-0-		0	\$0	\$0		54,260
Task 6: Public Involvement Assistance 6.1 - Public Involvement	12	10	4	8	12			46	\$8.254
Subtotal Task 6:			4		12	50	50	48	\$6,254
Task 7: Utility Coordination 7.1 - Impact Assessment and Notifications 7.2 - Coordinate and Review Utility Relocation Designs 7.3 - Utility Coordination Meetings	2 2 20	16 16 20	0 0 0	0 0 0	2 2 2			20 20 42	\$2,754 \$2,754 \$7,074
Subtotal Task 7	-24	- 52	0	0	- 0-	- 10	\$0	82	\$12,682
Task 8: Bid and Award Support Services 8.1 - Bid and Award Support Services	10	14	Ø	8	D			32	\$4,830
Subtotal Task 8:::	-10	- 14	0	0	0	\$0	\$0	-32	\$4,830
Task 9: Engineering Services During Construction (ESDC) 9.1 - Engineering Services During Construction (ESDC)	22	108	0	30	2			162	\$22.52
Subtotal Task 9:	-22	-108	-0	- 30	2	50	50	162	\$22,52
Task 10: Post-Construction Engineering 10.1 - Post-Construction Engineering	4	8	0	30	D			42	\$5,070
Subtotal Taak 10	4	8	0	- 30	0	\$0	\$0	42	\$5,070
Expenses - Mileage, Printing, and Misc. Expenses - Sewer lateral CCTV (up to 20 properties)									\$1,900 \$5,000
Shotion Expension Subtotal Sewer Design (Tasks 1 - 7) - (Subtasks 3.6 & 4.4) Subtotal Ramp and Pavement Design (Subtasks 3.6 & 4.4) Subtotal Bid Period and Construction Services (Tasks 8-10)	223 17 36	446 46 130	92 0 0	292 62 68	29 0 2			12124310	\$6,900 \$197,80 \$37,83 \$32,424
Total Hours Total Fees and Expenses	276 \$57,960	622 \$83,970	92 \$11,500	422	31	\$46,060	\$14,675	1443	\$274,90

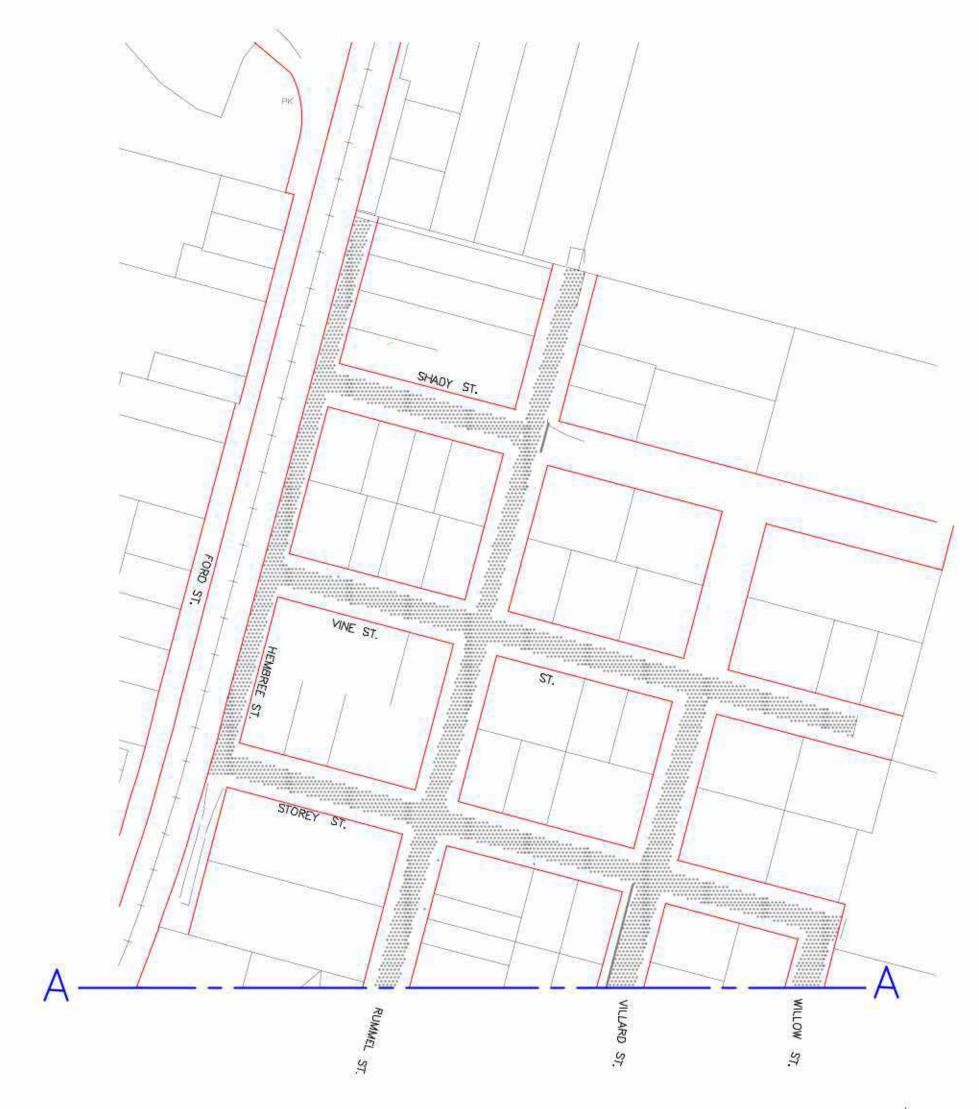
# Exhibit A



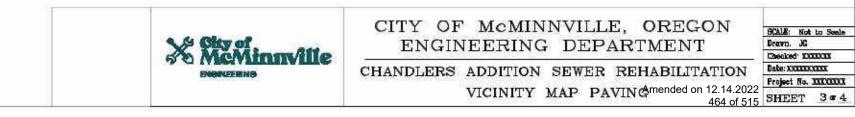




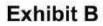


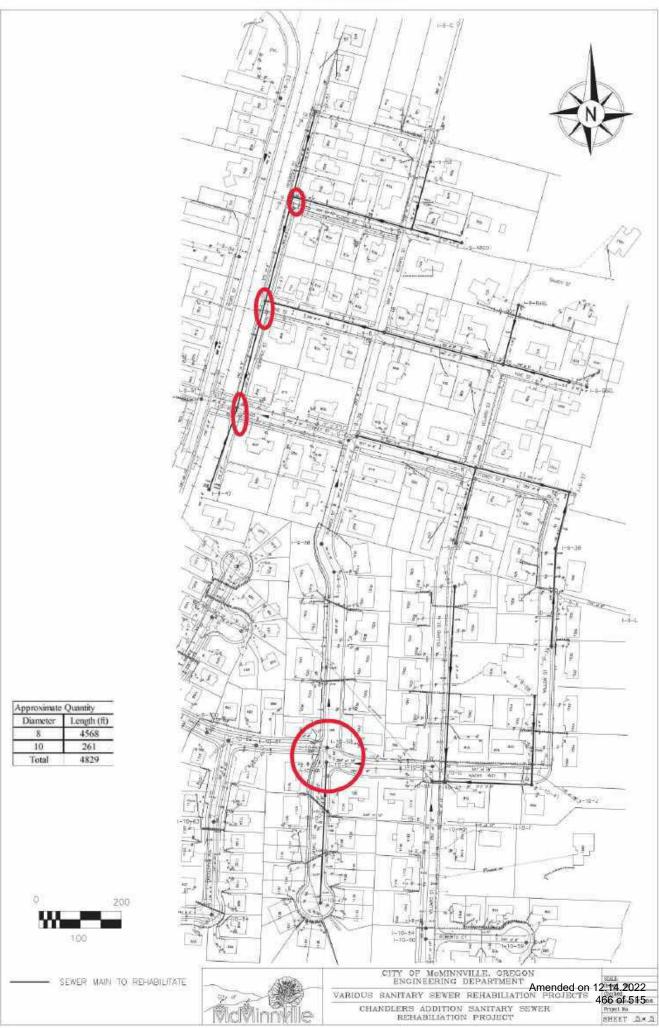












A Resolution establishing a list of firms qualified to provide consulting services related to the design and construction of sanitary sewer rehabilitation and repair projects.

#### RECITALS:

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

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

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

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

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

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

Ayes: Drabkin, Garvin, Jeffries, Menke, Stassens, Ruden

Nays:

Approved this 14th day of February, 2017.

Approved as to form:

CITY ATTORNEY



City of McMinnville Administration 230 NE Second Street McMinnville, OR 97128 (503) 434-7303

www.mcminnvilleoregon.gov

#### MEMORANDUM

DATE:	December 5, 2022
TO:	City Council
FROM:	Claudia Cisneros, City Recorder Certificate of Canvass of the November 8th, 2022 General Election Results

#### Report in Brief:

A General Election was held on November 8th, 2022. The City Recorder's office has received the attached certified canvass report. The resolution reflecting the results is a housekeeping item required by the City Charter.

#### Background:

Pursuant to chapter VI, section 28 of the charter, election results "shall be made a matter of record in the record of the proceedings of the Council." Accordingly, the city elections officer requests that the Council adopt a resolution acknowledging and certifying the results of the November 8, 2022 election.

Further, the charter also directs that certificates of election be issued to each elected person. Therefore, the city elections officer will issue the attached (Attachments 4) certificates to the elected individuals.

#### Attachments:

- 1. Resolution No. 2022-78.
  - Exhibit A: Notice of Election Canvass Memorandum (County Election Results Reports)
  - Exhibit B: Certificates of Election

#### Fiscal Impact:

None

#### **Recommendation:**

Staff recommends that Council approve Resolution No. 2022-78 and certify the results of the November 8, 2022 election in accordance with the charter directive to make the results a part of the Council record.

#### **RESOLUTION NO. 2022-78**

A Resolution approving the issuance of the certificate for the canvass of the returns of the votes cast at the General Election conducted on November 8, 2022, in regard to Measure 36-215 "Prohibits psilocybinrelated businesses within McMinnville. Prohibition sunsets after two years" and the election of three City Councilors and the Mayor.

**WHEREAS**, Chapter VI, Section 28 of the McMinnville City Charter requires election results to be included in the proceedings of the City Council; and

**WHEREAS**, the election results from the November 8, 2022 General Election have been certified by the Yamhill County Elections Division and received on December 2, 2022, by the City of McMinnville.

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

Section 1. That the Common Council in this regular Council meeting on December 13, 2022, in accordance with the Charter of the City of McMinnville, has received, canvassed, and approved the returns of the votes cast in the General Election conducted on November 8, 2022, in regard to the Measure 36-215 "Prohibits psilocybin-related businesses within McMinnville. Prohibition sunsets after two years" as more fully set forth in the Notice of Election Canvass attached hereto and by this reference incorporated herein, and such election results are hereby spread on the official records of the City of McMinnville.

Section 2. That the Common Council in this regular Council meeting on December 13, 2022, in accordance with the Charter of the City of McMinnville, has received, canvassed, and approved the returns of the votes cast in the General Election conducted on November 8, 2022, in regard to the election of three City Councilors and Mayor, as more fully set forth in the Notice of Election Canvass attached hereto and by this reference incorporated herein, and such election results are hereby spread on the official records of the City of McMinnville.

Section 3. That the Common Council and Recorder have received the certified County Election Results Reports attached hereto as "Exhibit A".

Section 4. That the Common Council and Recorder are hereby authorized and directed to execute and deliver appropriate Certificates of Election pursuant to "Exhibit B".

Adopted by the Common Council of the City of McMinnville at a meeting held the 13<sup>th</sup> day of December 2022 by the following votes:

Ayes: \_\_\_\_\_

Nays:

Approved this 13<sup>th</sup> day of December 2022.

\_\_\_\_

MAYOR

Approved as to form: Attest:

City Attorney

City Recorder

EXHIBIT:

- A. Notice of Election Canvass Memorandum (County Election Results Reports)
- B. Certificate of Election



### Keri Hinton Yamhill County Clerk

414 NE Evans St, McMinnville, OR 97128-4607 • Ph. 503.434.7518 • Fax 503.434.7520 • clerk@co.yamhill.or.us

Board of Property Tax Appeals • Business Licenses • Elections • Marriage Licenses • Passports • Recording • Voter Registration

#### Notice of Election Canvass Memorandum

To: Claudia Cisneros, City of McMinnville

From: Keri Hinton, Yamhill County Clerk

Date: December 2, 2022

RE: Certified Contest Results

Enclosed please find the certified results from the November 8, 2022, General Election.

These items include:

- Yamhill County's certified Cumulative Results Report (Summarized statement of votes cast)
- Yamhill County's certified Canvass Results Report (Statement of votes cast by precinct)
- This Notice of Election Canvass memorandum

If you have any questions, please do not hesitate to contact our office.

Sincerely,

They the

Keri Hinton Yamhill County Clerk

City of McMin Cumulative Re	
Run Time	10.58 AM
Run Date	12/02/2022

#### Yamhill County, Oregon

November 8, 2022 General Election

11/8/2022

Page 1

#### City of McMinnville, Mayor - 2 Year Unexpired Term Vote for one

P	recinct	5		Voters	
Counted	Total	Percent	Ballots	Registered	Percent
6	6	100.00%	14,272	23,066	61.87%

Choice	Party	Vote by Mail		Total	
Remy Drabkin		8,947	100.00%	8,947	100.00%
0	Cast Votes:	8,947	100.00%	8,947	100.00%
	Undervotes:	4,631		4,631	
	Overvotes:	0		0	
	Misc. Write-ins:	694		694	

#### City of McMinnville, Councilor, Ward 1 - 4 Year Term - Vote for one

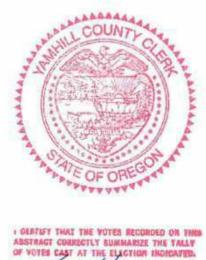
P	recinct	5		Voters	
Counted	Total	Percent	Ballots	Registered	Percent
2	2	100.00%	3,971	6,659	59,63%

Choice	Party	Vote by Mail		Total	
Sal Peralta		2,398 100	0.00%	2,398	100.00%
	Cast Votes:	2,398 100	0.00%	2,398	100.00%
	Undervotes:	1,458		1,458	
	Overvotes:	0		0	
	Misc. Write-ins:	115		115	

#### City of McMinnville, Councilor, Ward 2 - 4 Year Term - Vote for one

	recinct			Voters	
Counted	Total	Percent	Ballots	Registered	Percent
2	2	100.00%	5,993	8,918	67.20%

Choice	Party	Vote	by Mail		Total
Zack Geary	1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 - 1000 -	2,730	51.69%	2,730	51,69%
George Humlie		2,551	48.31%	2,551	48.31%
	Cast Votes:	5,281	100.00%	5,281	100.00%
	Undervotes:	702		702	
	Overvotes:	1		1	
	Misc. Write-ins:	9		9	



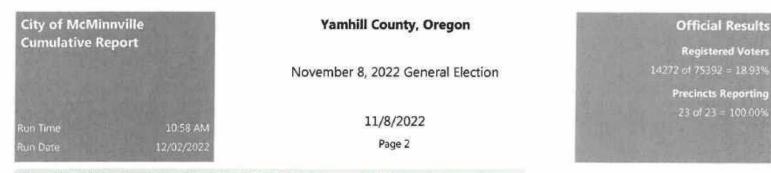
Amended on 12.14.2022

472 of 515

Registered Voters 14272 of 75392 = <u>18.93%</u>

> Precincts Reporting 23 of 23 = 100.00%

**Official Results** 



#### City of McMinnville, Councilor, Ward 3 - 4 Year Term - Vote for one

P	recinct	s		Voters	
Counted	Total	Percent !	Ballots	Registered	Percent
2	2	100.00%	4,308	7,489	57.52%

Choice	hoice Party Vote by Mail		by Mail	Tota	
Jessica Payne		2,414	100.00%	2,414	100.00%
	Cast Votes:	2,414	100.00%	2,414	100.00%
	Undervotes:	1,800		1,800	
	Overvotes:	0		0	
	Misc. Write-Ins:	94		94	

#### Measure 36-215 - Referred by City of McMinnville

P	recinct	5		Voters	
Counted	Total	Percent	Ballots	Registered	Percent
6	6	100.00%	14,272	23,066	61.87%

Choice	Party	Vote	by Mail		Total
Yes		7,573	56.45%	7,573	56.45%
No		5,843	43.55%	5,843	43.55%
	Cast Votes:	13,416	100.00%	13,416	100.00%
	Undervotes:	855		855	
	Overvotes:	1		1	
	Misc. Write-ins:	0		0	

\*\*\* End of report \*\*\*

City of McMinnville Canvass Report	Yamhill County, Oregon	Official Results
		Registered Voters 14272 of 75392 = 18.93%
	November 8, 2022 General Election	Precincts Reporting
Run Time 11:03 AM Run Date 12/02/2022	11/8/2022 Page 1	23 of 23 = 100.00%

#### City of McMinnville, Mayor - 2 Year Unexpired Term Vote for one

Precinct	Remy Drabkin	Cast Votes	Undervotes	Overvotes	Misc. Write-ins	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
014	1,235	1,235	728	0	89	2,052	2,052	3,373	60.84%
015	1,166	1,166	639	0	114	1,919	1,919	3,286	58.40%
016	1,074	1,074	588	0	102	1,764	1,764	3,011	58.59%
017	1,311	1,311	699	0	89	2,099	2,099	3,339	62.86%
018	2,548	2,548	1,172	0	174	3,894	3,894	5,579	69.80%
019	1,613	1,613	805	0	126	2,544	2,544	4,478	56.81%
Totals	8,947	8,947	4,631	0	694	14,272	14,272	23,066	61.87%



ABSTRACT CORRECTLY SUMMARIZE THE TALLY OF VOVES CAST AT THE ELECTION INDICATED. SHOWATSDE OF COUNTY CLEAR:

Amended on 12.14.2022 474 of 515

City of McMinnv Report	ille Canvass	Yamhill County, Oregon	Official Results Registered Voters
A LE CARE		November 8, 2022 General Election	14272 of 75392 = 18.93% Precincts Reporting
Run Time Run Date	11.03 AM 12/02/2022	11/8/2022 Page 2	23 of 23 = 100.00%

#### City of McMinnville, Councilor, Ward 1 - 4 Year Term - Vote for one

Precinct	Sal Peralta	Cast Votes	Undervotes	Overvotes	Misc. Write-ins	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
014	1,242	1,242	753	0	57	2,052	2,052	3,373	60.84%
015	1,156	1,156	705	0	58	1,919	1,919	3,286	58.40%
Totals	2,398	2,398	1,458	0	115	3,971	3,971	6,659	59.63%

City of McMinnville Canvass Report	Yamhill County, Oregon	Official Results Registered Voters
	November 8, 2022 General Election	14272 of 75392 = 18.93% Precincts Reporting
Run Time 11.03 AM Run Date 12/02/2022	11/8/2022 Page 3	23 of 23 = 100.00%

#### City of McMinnville, Councilor, Ward 2 - 4 Year Term - Vote for one

Precinct	Zack Geary	George Humlie	Cast Votes	Undervotes	Overvotes	Misc. Write-ins	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
017	905	904	1,809	290	0	0	2,099	2,099	3,339	62.86%
018	1,825	1,647	3,472	412	1	9	3,894	3,894	5,579	69.80%
Totals	2,730	2,551	5,281	702	1	9	5,993	5,993	8,918	67.20%

City of McMinnville Canvass Report	Yamhill County, Oregon	Official Results
		Registered Voters 14272 of 75392 = 18.93%
	November 8, 2022 General Election	Precincts Reporting
Run Time 11.03 AM Run Date 12/02/2022	11/8/2022 Page 4	23 of 23 = 100.00%

#### City of McMinnville, Councilor, Ward 3 - 4 Year Term - Vote for one

Precinct	Jessica Payne	Cast Votes	Undervotes	Overvotes	Misc. Write-ins	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
016	994	994	732	0	38	1,764	1,764	3,011	58.59%
019	1,420	1,420	1,068	0	56	2,544	2,544	4,478	56.81%
Totals	2,414	2,414	1,800	0	94	4,308	4,308	7,489	57.52%

City of McMinnville Canvass	Yamhill County, Oregon	Official Results
Report	Taninin County, Oregon	Registered Voters
TESCO SECONDER.	November 8, 2022 General Election	14272 of 75392 = 18.93% Precincts Reporting
Run Time 11.03 AM	11/8/2022	23 of 23 = 100.00%
Run Date 12/02/2022	Page 5	and the second sec

#### Measure 36-215 - Referred by City of McMinnville

Precinct	Yes	No	Cast Votes	Undervotes	Overvates	Misc Write-Ins	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
014	1,099	822	1,921	131	0	0	2,052	2,052	3,373	60.84%
015	966	828	1,794	124	1	0	1,919	1,919	3,286	58.40%
016	941	711	1,652	112	0	0	1,764	1,764	3,011	58.59%
017	1,144	829	1,973	126	0	0	2,099	2,099	3,339	62.86%
018	2,223	1,448	3,671	223	0	0	3,894	3,894	5,579	69.80%
019	1,200	1,205	2,405	139	0	0	2,544	2,544	4,478	56.81%
Totals	7,573	5,843	13,416	855	1	0	14,272	14,272	23,066	61.87%

City of McMinnville Canvass	Yamhill County, Oregon	Official Results
Report		Registered Voters 14272 of 75392 = 18 93%
	November 8, 2022 General Election	Precincts Reporting
Run Time 11:03 AN	11/8/2022	23 of 23 = 100.00%
Run Date 12/02/202	Page 6	

\*\*\* End of report \*\*\*

Exhibit B



This certifies that at the **November 8, 2022**, General Election held in the City of McMinnville, County of Yamhill, State of Oregon,

# **Remy Drabkin**

was elected to the Office of Mayor

for the unexpired term beginning December 2022 and ending December 31, 2024.

As directed by the City Charter, I have placed the seal of the City of McMinnville and signed this certificate, on **December 14**, **2022.** 



This certifies that at the **November 8, 2022,** General Election held in the City of McMinnville, County of Yamhill, State of Oregon,

## Sal Peralta

## was elected to the **Office of City Councilor Ward 1** for a term beginning **January 1, 2023** and ending **December 31, 2026**.

As directed by the City Charter, I have placed the seal of the City of McMinnville and signed this certificate, on **December 14**, **2022**.



This certifies that at the **November 8, 2022,** General Election held in the City of McMinnville, County of Yamhill, State of Oregon,

## Zack Geary

## was elected to the **Office of City Councilor Ward 2** for a term beginning **January 1, 2023** and ending **December 31, 2026**.

As directed by the City Charter, I have placed the seal of the City of McMinnville and signed this certificate, on **December 14**, **2022**.



This certifies that at the **November 8, 2022**, General Election held in the City of McMinnville, County of Yamhill, State of Oregon,

## Jessica Payne

## was elected to the **Office of City Councilor Ward 3** for a term beginning **January 1, 2023** and ending **December 31, 2026**.

As directed by the City Charter, I have placed the seal of the City of McMinnville and signed this certificate, on **December 14**, **2022.** 



### **STAFF REPORT**

DATE:December 13, 2022TO:Mayor and City CouncilorsFROM:Heather Richards, Community Development DirectorSUBJECT:Resolution No. 2022-73, Board, Committee and Commission Appointments

#### 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. 2022-73, appointing volunteers to City boards, committees, and commissions.

#### Background:

The City of McMinnville has many boards, committees and commissions that support the City's work on a volunteer basis. The City Council makes annual appointments to these boards, committees, and commissions at their meeting in December of each year to fill those positions that are being vacated by people whose terms have expired or have resigned from their position.

The City solicits applications by advertising the vacancies in October and November in the News Register, social media, and other communication opportunities. The applications are then reviewed, and interviews conducted by the Mayor, City Councilors and city staff. Each interview consists of two City Councilors and lead city staff for the board, committee or commission. All applicants are interviewed. Then the interview panel makes a recommendation to the City Council for appointments.

#### Discussion:

The following vacancies were advertised in the News Register on November 8, 11, 15 and 18, 2022.

<u>McMinnville Affordable Housing Committee – four (4) open positions</u>. The Affordable Housing Task Force is a nine-member City Council appointed body tasked with evaluating and implementing an Affordable Housing Action Plan meant to increase housing supply for low- and no-income families. Appointments are for 3 years.

Historic Landmarks Committee – one (1) open position (Must live within the Urban Growth Boundary). The Historic Landmarks Committee is a five-member City Council appointed body that: reviews building and demolition permit applications for a historic landmark, evaluates historic districts, buildings and sites; conducts surveys and inventories of potential historic resources; makes recommendations to the Planning Commission and City Council regarding historic preservation; and promotes historic preservation public awareness for the City of McMinnville. Appointments are for 4 years.

Landscape Review Committee – two (2) open positions (Must live within the Urban Growth Boundary). The Landscape Review Committee is a five-member City Council appointed body that reviews all required landscape plans for the City of McMinnville. Applicants should have a background in landscape design or architecture and/or horticulture. Appointments are for 3 years.

<u>Urban Renewal Advisory Committee – four (4) open positions (one Business and/or Property</u> <u>Owner within the Urban Renewal District and three Residents of the City of McMinnville</u>). The Urban Renewal Advisory committee is a nine-member Urban Renewal Board appointed committee that is responsible for reviewing, advising, and making recommendations to the McMinnville Urban Renewal Board on matters pertaining to the adopted "McMinnville Urban Renewal Plan." Also serving on this committee are three non-voting, ex-officio members representing the McMinnville Downtown Association, McMinnville Water and Light, and McMinnville City Council. Appointments are for 3 years.

#### McMinnville Planning Commission – Two (2) total positions per the description below:

• Ward 3 – two open positions (must reside in the area generally east of North Baker Street, and west of the South Yamhill River)

The Planning Commission is a nine-member City Council-appointed body, which takes action and makes recommendations to the City Council on a variety of current and long-range land use matters. Membership on the Commission requires that a person must be a resident of the City of McMinnville or within the Urban Growth Boundary and live in the ward they represent. Appointments are for 4 years.

This year there were 13 people that applied for the Affordable Housing Committee, 2 people for the Historic Landmarks Committee, 5 people for the Landscape Review Committee, 7 people for the McMinnville Urban Renewal Advisory Committee, and 6 people for the Planning Commission.

After interviews, the following are the recommendations of the interview panel to the City Council for the committee vacancies.

AFFORDABLE HOUSING COMMITTEE	
(3-year term)	
Rachel Flores	Expires December 31, 2025
Frank Foti	Expires December 31, 2025
Kenneth Cash Yount	Expires December 31, 2025
Vickie Ybarguen	Expires December 31, 2025
Howie Harkema (Encompass Yamhill Valley	Ex-Officio
Alexandra Hendgen (YCAP)	Ex-Officio
Miriam Vargas Corona (Unidos)	Ex-Officio
HISTORIC LANDMARKS COMMITTEE	
(4-year term)	
John Mead	Expires December 31, 2026
LANDSCAPE REVIEW COMMITTEE	
(3-year term)	
Jamie Fleckenstein	Expires December 31, 2025
John Hall	Expires December 31, 2025
McMinnville Urban Renewal Advisory Committee	
(3-year term)	
Walt Gowell (Resident)	Expires December 31, 2025
Kelly McDonald (Business Owner/Property Owner)	Expires December 31, 2025
Mike Morris (Resident)	Expires December 31, 2025
Abigail Neilan (Resident)	Expires December 31, 2025
PLANNING COMMISSION	
(4-year term)	
Gary Langenwalter, (Ward 3)	Expires December 31, 2026
Sylla McClellan, (Ward 3)	Expires December 31, 2026

#### Attachments:

Resolution No. 2022-73

#### Fiscal Impact:

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

**Recommendation/Suggested Motion:** 

"I MOVE TO APPROVE RESOLUTION NO. 2022 – 73 APPOINTING VOLUNTEERS TO THE AFFORDABLE HOUSING COMMITTEE, THE HISTORIC LANDMARKS COMMITTEE, THE LANDSCAPE REVIEW COMMITTEE, THE MCMINNVILLE URBAN RENEWAL ADVISORY COMMITTEE, AND THE MCMINNVILLE PLANNING COMMISSION."

#### **RESOLUTION NO. 2022 - 73**

A Resolution appointing and re-appointing members to the City's various Boards, Committees, and Commissions.

**RECITALS:** 

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

**Whereas**, the City Council is responsible for making appointments and reappointments.

#### 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 various Boards, Commissions, and Committees as detailed below.

Rachel Flores	Expires December 31, 202
Frank Foti	Expires December 31, 202
Kenneth Cash Yount	Expires December 31, 202
Vickie Ybarguen	Expires December 31, 2025
Howie Harkema (Encompass Yamhill Valley	Ex-Officio
Alexandra Hendgen (YCAP)	Ex-Officio
Miriam Vargas Corona (Unidos)	Ex-Officio
HISTORIC LANDMARKS COMMITTEE	
(4-year term)	
John Mead	Expires December 31, 2026
LANDSCAPE REVIEW COMMITTEE	
(3-year term)	
Jamie Fleckenstein	Expires December 31, 2025
John Hall	Expires December 31, 2025

McMinnville Urban Renewal Advisory Comm (3-year term)	ittee
Walt Gowell (Resident)	Expires December 31, 2025
Kelly McDonald (Business/Property Owner)	Expires December 31, 2025
Mike Morris (Resident)	Expires December 31, 2025
Abigail Neilan (Resident)	Expires December 31, 2025
PLANNING COMMISSION (4-year term)	
Gary Langenwalter, (Ward 3)	Expires December 31, 2026
Sylla McClellan, (Ward 3)	Expires December 31, 2026

2. This Resolution and these appointments will take effect January 1<sup>st</sup>, 2023.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 13<sup>th</sup> day of December 2022 by the following votes:

Ayes:\_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 13<sup>th</sup> day of December 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder



Water and Light Commission Appointment

On December 13, 2022, the City Council of the City of McMinnville unanimously approved my recommendation to reappoint Kathy Tate to the McMinnville Water and Light Commission.

I, Mayor Remy Drabkin, do hereby reappoint Kathy Tate. Ms. Tate's term will expire on December 31, 2026.

\_\_\_\_\_

Remy Drabkin, Mayor City of McMinnville Date

\_\_\_\_\_

#### STAFF MEMORANDUM

- To: McMinnville City Council
- From: Walt Gowell, Interim City Attorney
- Re: Oregon Transportation Infrastructure Bank (OTIB) Amendment #3
- Date: November 23, 2022

#### Background:

This agenda item concerns a proposed third Amendment to the current Loan No. OTIF-0048 between the City and OTIB relating to long-term financing of the local construction contribution to proposed Phases 2(B) & 3 of the Newberg-Dundee Bypass Project. The loan amendment has been revised at the request of the localities to include an allocation of and limitation on Phase 2(B) and Phase 3 expenditures.

- 1. The Loan Agreement will be amended to increase the current outstanding loan amount by the principal sum of \$3,622,000 to a modified loan amount of \$5,916,230.20.
- 2. The loan term and maturity date will be extended to a date not to exceed January 25, 2066.
- 3. The interest rate on the revised loan amount will be fixed at 2.88% for the full term of the loan.
- 4. Interest accrues only on the "outstanding balance" of the loan which is the amount of the loan actually disbursed to ODOT in conjunction with Phase 2(B) or Phase 3 construction, that has not yet been repaid to OTIB by the City.
- The Amendment allocates and limits use of proceeds of the loan amendment (in conjunction with the contributions by Yamhill County, Dundee and Newberg) with maximum local expenditures of 50.6% of the additional borrowed funds for Phase 2(B) and 49.4% to Phase 3.
- 6. Due to the timing and deferred nature of the construction activities, the fixed annual payment schedule may amortize the payment of the loan over a significantly shorter time than the maximum allowable term of the loan.

David Haugeberg, as Chair of the Yamhill County Parkway Committee, will be available to present additional information and respond to any questions regarding the proposed Third Amendment.

#### Staff Recommendation:

Staff recommends consideration and possible approval of the attached Resolution approving the OTIB Loan Amendment.

If approved, execution of Amendment #3 by the Mayor should be contingent upon approval of similar amendments by Yamhill County, Newberg and Dundee.

#### Attachments:

- Resolution 2022-70
  - Exhibit A: Amendment #3 to Loan Agreement

#### **RESOLUTION NO. 2022-70**

A RESOLUTION APPROVING AMENDMENT #3 TO LOAN AGREEMENT OTIF-0048.

#### **RECITALS:**

WHEREAS, as a part of financing for local contribution to the construction costs for Phases 2(B) & 3 of the Newberg-Dundee Bypass City and County representatives have negotiated with the Oregon Transpiration Infrastructure Bank ("OTIB") to amend and increase state financing to fund the locally financed portion of such Phases ; and

**WHEREAS,** The City and OTIB. desire to amend and extend their existing loan agreement to include such anticipated local-share funds; and

**WHEREAS,** OTIB Has agreed to extend favorable financing terms on an extended basis in a manner that would not increase current or future OIB loan cash flow demands upon the City over those currently in effect; and

**WHEREAS**, The City Council finds that construction of Phases 2(B) and 3 of the Newberg-Dundee Bypass will provide significant and enduring benefits to the citizens of McMinnville.

### IT IS THEREFORE RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCMINNVILLE AS FOLLOWS:

- 1. The form of Amendment #3 to existing Loan Agreement OTIB-48 between the City and the State of Oregon, acting by and through its Department of Transportation attached hereto as Exhibit A is hereby approved.
- 2. The City Manager is authorized to sign Amendment #3 on behalf of the City.
- 3. This Resolution will take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the  $13^{\text{th}}$  day of <u>December</u>, 2022 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this <u>13<sup>th</sup></u> day of <u>December</u> 2022.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBITS:

A. Amendment #3 to Loan Agreement

#### AMENDMENT #3 TO LOAN AGREEMENT

THIS THIRD AMENDMENT TO LOAN AGREEMENT ("Amendment") is made and entered into as of the \_\_\_\_\_ day of December 2022, by and between the State of Oregon, acting by and through its Department of Transportation ("ODOT" or the "State"), and City of McMinnville, Oregon (the "Borrower"). The reference number for this Loan Agreement is OTIF-0048. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement (as defined below).

#### WITNESSETH

WHEREAS, the State and the Borrower entered into Loan Agreement OTIF-0048 dated July 1, 2013 as amended from time to time, the ("Loan Agreement"), pursuant to which the State agreed to make a loan to Borrower in the principal amount of Three Million Two Hundred Nine Thousand Six Hundred and No/100 Dollars (\$3,209,600.00) (the "Loan") to finance Borrower's portion of the costs of construction of the Newberg-Dundee Bypass (the "Project");

WHEREAS, in connection with the Loan, the Borrower executed and delivered to the State a promissory note dated July 1, 2013 (as amended, extended, or renewed from time to time, the "Note"); and

WHEREAS, the State and the Borrower desire to modify certain terms and conditions of the Loan Agreement consistent with the changes to the Loan Amount, Project and Project schedule.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the State and the Borrower mutually agree as follows:

1. The definition of "Maturity Date," in Section 1.01 of the Loan Agreement is amended and restated to read as follows:

"Maturity Date" means the date on which the Loan is payable in full, which date shall be January 25, 2066.

2. The definition of "Project Completion Date," in Section 1.01 of the Loan Agreement is amended and restated to read as follows:

"Project Completion Date" means the earlier of

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

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

(iii) July 1, 2036.

3. The definition of "Project Completion Deadline," in Section 1.01 of the Loan Agreement is amended and restated to read as follows:

"Project Completion Deadline" means July 1, 2036.

4. Section 2.01 of the Loan Agreement is amended and restated to read as follows:

**Section 2.01.** Loan Amount. On December\_\_\_\_\_, 2022, the State hereby agrees to make to the Borrower, and the Borrower agrees to borrow and accept from the State, (i) a refinancing of the Loan in the amount of Two Million Two Hundred Ninety-four Thousand Two Hundred Thirty and 20/100 Dollars (\$2,294,230.20) and (ii) an increase in the Loan in the principal amount of Three Million Six Hundred Twenty-two Thousand and No/100 Dollars (\$3,622,000.00) for a maximum aggregate principal Loan amount of Five Million Nine Hundred Sixteen Thousand Two Hundred Thirty and 20/100 Dollars (\$5,916,230.20).

5. Section 2.03 of the Loan Agreement is amended and restated to read as follows:

**Section 2.03.** <u>Loan Term</u>. The term of the Loan is set forth in the Note. The term of the Loan commences on the date of the last disbursement of the Loan and ends on the Maturity Date, which is January 25, 2066.

6. Section 2.04 of the Loan Agreement is amended and restated to read as follows:

**Section 2.04.** Interest. The principal balances due under the Note shall bear interest at the rate of Two and 88/100 percent (2.88%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date hereof until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

7. New Section 3.11 is added to the Loan Agreement as follows:

**Section 3.11.** <u>Matching Funds</u>. Matching funds of the Borrower in the amount of Five Million Nine Hundred Sixteen Thousand Two Hundred Thirty and 20/100 Dollars (\$5,916,230.20) are available and committed to the Project.

8. Section 4.01 of the Loan Agreement is amended and restated to read as follows:

**Section 4.01.** <u>Conditions Precedent to Loan</u>. The State shall be under no obligation to make the loan pursuant to the terms hereof unless the Borrower delivers to the State, on or

prior to December 31, 2022, the following documents in form and substance satisfactory to the State and its Counsel:

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

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

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

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

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

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

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

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

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

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

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

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

9. Section 4.02(c) of the Loan Agreement is amended and restated to read as follows:

#### Section 4.02. Conditions to Disbursement.

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

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

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

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

(iv) The closing(s) for the loans to be made by the State to the Other Applicants for the Project, which together with the Loan to the Borrower, total the Local Government Share, have not occurred.

**10.** Section 5.06 of the Loan Agreement is amended and restated to read as follows:

**Section 5.06.** <u>Proportionality Formula for Payment Requisitions</u>. At the time of the first payment requisition from Borrower, ODOT shall state its estimate of the total Costs of the Project. The Borrower and the Other Applicants will be paying to ODOT a portion of the Costs of the Project for all three Project Phases in the maximum aggregate loan amount of \$33,773,470 (collectively, the "Local Government Share"), broken down as follows: (i) a maximum loan amount of \$16,000,000 for Phase 1, (ii) a maximum loan amount of \$9,000,000

for Phase 2(b) (as defined by ODOT) and (iii) no less than \$8,773,470 for Phase 3. Thus, the total maximum loan amount combined for Phases 2(b) and 3 equals \$17,773,470. The Local Government Share does not include the Loan Fees. As of June 24, 2020, OTIB has disbursed the entirety of the original loan proceeds in the amount of \$16,000,000. As between the Borrower and the Other Applicants for Phases 2 and 3 of the Project, an Applicant shall pay its portion of the aggregate payments made by all the Applicants for the Costs of Phases 2 and 3 of the Project in accordance with the applicable percentage set forth below:

Yamhill County	63.48%
City of McMinnville	20.17%
City of Newberg	14.57%
City of Dundee	1.78%

The Borrower Portion of the Costs of the Project and the portion of the Costs of the Project for each of the Other Applicants shall be determined by multiplying the applicable percentage set forth above for an Applicant by \$17,773,470 divided by the Costs of the Project estimated by ODOT at the time of the first payment requisition. These percentages for the Borrower and the Other Applicants, as well as ODOT's share of the Costs of the Project, shall remain constant during the Project with respect to all payment requisitions. For example:

If the Costs of the Project are estimated by ODOT at the time of the first payment requisition to be \$469,600,000, then the combined share of the Costs of the Project to be paid by the Borrower and the Other Applicants for the first and all subsequent requisitions will be 3.78481 percent of the Costs of the Project up to a maximum aggregate payment of \$17,773,470. If the first requisition is in the amount of \$10,000,000, then the portion of such requisition payable by Borrower and the Other Applicants shall be \$378,481.05 allocated to Borrower and the Other Applicants as follows:

Yamhill County	2.40248%	\$240,247.87
City of McMinnville	.76358%	\$76 <i>,</i> 358.18
City of Newberg	.55129%	\$55,128.83
City of Dundee	.06746%	\$6,746.17
Totals	3.78481%	\$378,481.05

10. Exhibit A to the Loan Agreement is amended and restated in the form of Revised Exhibit A attached hereto.

11. Exhibit B to the Loan Agreement is amended and restated in the form of Revised Exhibit B attached hereto.

12. Exhibit D to the Loan Agreement is amended and restated in the form of Revised Exhibit D attached hereto.

13. This Amendment may be signed in several counterparts. Each will be an original, but all of them together constitute the same instrument.

14. Except as specifically modified above, all other terms and conditions of the Loan Agreement and the Note remain unchanged and in full force and effect.

15. By its execution of this Amendment, the Borrower certifies to the State that the representations, warranties and certifications contained in the original Loan Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

IN WITNESS WHEREOF, the State and Borrower have caused this Third Amendment to Loan Agreement to be executed and delivered as of the date set forth in the first paragraph above.

<b>STATE OF OREGON</b> , acting by and through its Department of Transportation	<b>CITY OF MCMINNVILLE, OREGON</b> Borrower
By: Daniel Porter Budget, Economic and Debt Services	Ву:
Manager	Name:
Date:	······
	Title:
OREGON DEPARTMENT OF JUSTICE	
By: Sam Zeigler, Senior AAG	

Date: November 29, 2022 via email

#### **Revised Exhibit A to Loan Agreement**

#### **Project Description**

Borrower: City of McMinnville

ODOT will construct the Newberg-Dundee Bypass, consisting of three phases.

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

The Bypass includes the following proposed interchanges:

• Dayton Interchange – located at the junction of Oregon 99W and Oregon 18 and represents the western terminus of the Bypass; it replaces the existing Oregon 18/Oregon 99W intersection at McDougal Corner and the South Dundee Interchange.

• East Dundee Interchange – located between Dundee and Newberg; a new connector road will link the interchange at Oregon 99W to the Bypass.

• Oregon 219 Interchange – located in south Newberg along Oregon 219.

• East Newberg Interchange - located southwest of Rex Hill; this interchange will be the eastern terminus of the Bypass

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

Other Phase 1 improvements include:

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

**Phase 2 of the Bypass** includes the design and construction of a two-lane roadway section from the current connection at OR-18/OR 219 to OR-99W north of the City of Newberg. This work will include:

- OR-219 Interchange located in south Newberg along OR-219;
- Realigning Wynooski Road to meet the intersection of OR-219 and Wilsonville Road;
- Removing the old Wynooski Road alignment;
- Widening OR-219 for an additional travel lane, sidewalk, ADA ramps, and drainage.
- Sound walls to help reduce noise levels at locations identified in the environmental impact statement and confirmed during design;
- Pedestrian connections at the public golf course in coordination with Chehalem Park and Recreation District;
- Eight bridges to cross Fernwood Road, creeks, and local roads;
- Intersection improvements at the connection with OR-99W;
- Improvements to Veritas Lane and Corral Creek Road for safety and access to OR 99W.

**Phase 3 of the Bypass** includes a two-lane roadway section from current connections at OR-99W south of the City of Dundee to OR-18 north of the City of Dayton. This work will include:

- Sound walls to help reduce noise levels at locations identified in the environmental impact statement and confirmed during design;
- Adding Interchange near the City of Dundee;
- Adding interchange North of Dayton near the current location of the OR-18 and OR-99W intersection.

#### **Revised Exhibit B to Loan Agreement**

#### **Approved Project Budget**

#### Borrower: City of McMinnville

Borrower's Portion of the Costs of Project (in dollars): \$5,916,230.20

Sources	Original Loan	Phases 2 and 3
ARPA	N/A	\$32,000,000
Other State and Federal Sources	N/A	To be determined
ODOT STIP	\$223,750,968	\$419,826,530*
Confederated Tribes of Grand		To be determined
Ronde	4,000,000	
City of Dundee (OTIB Loan,	315,200 (original)	320,000
includes Loan Fee)	240,631.85 (refinanced)	
City of McMinnville (OTIB Loan,	3,209,600 (original)	3,622,000
includes Loan Fee)	2,294,230.20 (refinanced)	
City of Newberg (OTIB Loan,	2,211,200 (original)	2,615,000
includes Loan Fee )	1,574,746.73 (refinanced)	
Yamhill County (OTIB Loan,	10,366,640 (original)	11,396,000
includes Loan Fee)	7,871,681.18 (refinanced)	
Total	\$243,853,608	\$469,779,530
Uses		
Construction	\$132,754,730	\$348,900,000
Preliminary Engineering	42,273,396	54,000,000
Right of Way	60,828,533	54,700,000
Utility Relocation	5,400,000	12,000,000
Loan Fees	\$160,000	179,530
Other	\$2,436,950	
Total	\$243,853,609	\$469,779,530

\*This amount will be reduced by the amount of Other State and Federal Sources and Confederated Tribes of Grand Ronde, if any.

#### Revised Exhibit D to Loan Agreement

#### PROMISSORY NOTE

December\_\_\_\_, 2022 McMinnville, Oregon

For value received, the City of McMinnville (hereinafter "Borrower") unconditionally promises to pay to the State of Oregon, acting by and through its Department of Transportation (hereinafter "State"), or order, at 350 Capitol St. NE, Salem, OR 97301-3871 or such other place as the State may designate in writing, the principal sum of Five Million Nine Hundred Sixteen Thousand Two Hundred Thirty and 20/100 Dollars (\$5,916,230.20), or so much thereof as is disbursed and not repaid (the "outstanding principal balance"), plus interest from the date hereof on the outstanding principal balance until paid. Any capitalized terms not defined in this Note shall have the meanings assigned to such terms in that certain loan agreement of even date herewith between the State and Borrower (as amended from time to time the "Loan Agreement").

The interest rate shall be Two and 88/100 Percent (2.88%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months.

Principal and interest shall be payable at the times and in the amounts specified on the repayment schedule on Revised Exhibit A attached hereto and by this reference made a part hereof, and the outstanding principal balance of the Note, together with accrued unpaid interest, shall be due and payable on the Maturity Date. Each payment made by the Borrower hereunder shall be applied first to the State's expenses under the Loan Agreement, then to interest then due and payable on the Loan, then to the principal of the Loan unless the Loan Agreement provides otherwise.

This Note is not payable prior to its maturity except as provided for in Section 2.06 of the Loan Agreement.

This Note is given to avoid the execution by Borrower of an individual note for each advance by State to Borrower. In consideration thereof, Borrower agrees that State's record entries of transactions pursuant to this Note, shall be conclusive evidence of borrowings and payments made pursuant hereto, absent manifest error.

In the event that the Borrower receives written notification from the State that payments made pursuant to the Loan Agreement have been assigned, all payments hereunder shall be made directly to the assignee pursuant to such assignment.

If an Event of Default occurs, the outstanding balance hereunder, including principal, interest and other charges, if any, shall, at the option of the State, become immediately due

and payable. Presentment, demand, protest, and notice of dishonor, protest and nonpayment are waived by the Borrower.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Note shall be entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State its reasonable expenses incurred in the collection of Loan payments.

The terms, provisions and covenants contained in this Note shall apply to, inure to the benefit of, and bind the parties hereto and their respective successors and assigns.

This Note shall be governed by and construed in accordance with the laws of the State of Oregon (without giving effect to its conflicts of law principles).

This Note is subject to the terms and conditions of the Loan Agreement. The indebtedness evidenced by this Note is secured by the collateral described in the Loan Agreement.

City of McMinnville

Ву:\_\_\_\_\_

Name (print): \_\_\_\_\_

Mayor

NOTICE TO BORROWER

DO NOT SIGN THIS NOTE BEFORE YOU READ IT.

#### **Revised Exhibit A to Promissory Note**

#### **Repayment Schedule**

Borrower: City of McMinnville

Payment Due Date:	Amount Due:
January 25, 2023 and the first	Installment payment of
day of each July thereafter	principal and interest of
	\$201,248
Maturity Date (January 25, 2066)	The remaining principal and
	interest due on the Loan

#### **Revised Exhibit F to Loan Agreement**

#### **Payment Requisition**

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

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

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

[Insert Amount]

The foregoing disbursement is for Costs of the Project as such term is defined in, and which are permitted under, the Loan Agreement dated December\_\_\_\_\_, 2022, between the State of Oregon acting by and through its Department of Transportation and the City of McMinnville. I have attached all necessary documentation as required by Section 4.02(b)(vi) of the Loan Agreement. No Event of Default has occurred or is continuing under the Loan Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

CITY OF MCMINNVILLE

By:

Authorized Officer Name & Title (print): \_\_\_\_\_\_ Attachments



### STAFF REPORT

DATE:	December 13, 2022
TO:	Jeff Towery, City Manager
FROM:	Jennifer Cuellar, Finance Director
SUBJECT:	Cable Franchise Agreement Extension Ordinances

Strategic Priority and Goal:



#### **CITY GOVERNMENT CAPACITY**

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

#### **Report in Brief:**

The City of McMinnville has two cable franchise agreements with Comcast and Ziply Fiber. The Comcast agreement will expire on January 9, 2023, and the Ziply Fiber agreement expired on September 28, 2022.

Staff has engaged an attorney, Nancy Werner, as special legal counsel to the city to support us as we work through the negotiation process for new cable franchise agreements.

As a first step in the negotiation process, two contract extension ordinances are ready for review and action by the City Council.

#### **Contract Extensions:**

Ms. Werner has been in contact with both Comcast and Ziply Fiber and has secured both of their organizations' approval for the proposed extension agreements.

The Comcast agreement (Attachment 1) extends the franchise for 6 months, through July 9, 2023.

The Ziply Fiber agreement (Attachment 2) also extends the franchise through July 9, 2023.

No other provisions in the current agreements have been amended.

#### **Related activities:**

City staff has requested that Ms. Werner's law firm, Bradley Werner, LLC, secure proposals from audit firms with expertise in cable franchise accounting and franchise remittance calculations to review the city's actual franchisee payments. This audit will be carried out in the manner described in the terms of the current

agreements. Ms. Werner hopes to have identified the audit firm by January with the work getting underway shortly thereafter.

#### Fiscal Impact:

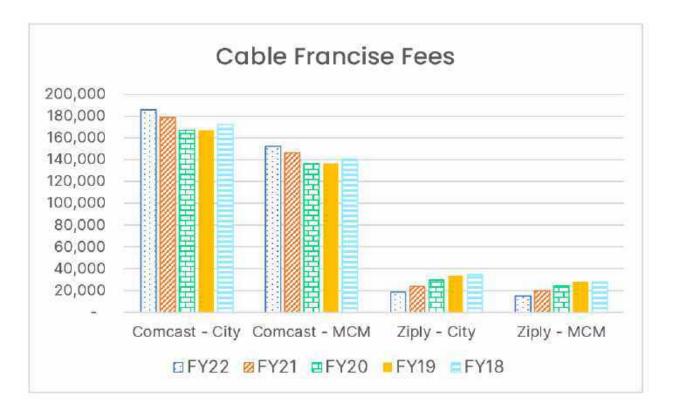
Cable franchise revenue is separated into two types – the franchise fee based on the cable company's use of the public right of way (it has a 5% legal maximum in federal statute) and support for Public Educational and Governmental (PEG) Access capital investments. The City of McMinnville splits the franchise fee revenue with the city's community access television station, McMinnville Community Access (MCM), with 55% staying with the city and the balance supporting the operations of MCM. PEG funds are passed through in their entirety to MCM to fund capital needs.

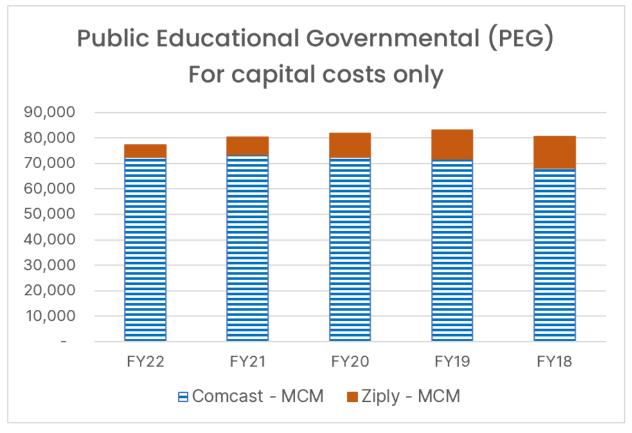
#### McMinnville Franchise Revenue information

	Total estimated subscribers:	6,430	6,698	6,826	6,933	6,71
	Total cable franchise related revenue	\$ 449,088	\$ 448,553	\$ 439,812	\$ 448,766	\$ 455,378
	Ziply Fiber	38,388	50,089	63,845	73,144	74,373
	Comcast	410,700	398,464	375,967	375,622	381,005
	Totals by Franchisee:					
	McMinnville Community Media	244,530	246,056	242,970	247,700	249,210
	Totals by Organizations funded: City of McMinnville	204,558	202,497	196,842	201,066	206,168
- and a fair	Total PEG	77,164	80,377	81,917	83,191	80,527
Ziply Fiber	McMinnville Community Media	4,564	6,829	9,523	11,382	12,31
Comcast	McMinnville Community Media	FY22 72,600	<u>FY21</u> 73,548	FY20 72,394	FY19 71,809	FY18 68,216
Cable Fra	nchise - Public Educational Govern	ince an and		2023-564		<i>1918</i> 23
	Total cable franchise fees	371,924	368,176	357,895	365,575	374,851
	Total	33,824	43,260	54,322	61,762	62,062
5% rate	McMinnville Community Media (45%)	15,221	19,467	24,445	27,793	27,928
Ziply Fiber	General Fund (55%)	18,603	23,793	29,877	33,969	34,134
	Total	338,100	324,916	303,573	303,813	312,789
5% rate	McMinnville Community Media (45%)	152,145	146,212	136,608	136,716	140,755
Comcast	General Fund (55%)	185,955	178,704	166,965	167,097	172,034
		FY22	FY21	FY20	FY19	FY18

#### Cable Franchise Fees (5% federal maximum level)

As the table above shows, the cable franchise agreements represent a substantial contribution to the City's operations. The funding mechanism is a pivotal source of support for our community public access station, MCM.





#### **Council Options for Action:**

Option 1: Extend the current cable franchise agreements until July 9, 2023 (approximately six months from now). During this time, staff will work with our special legal council to negotiate new agreements that will benefit the residents and businesses in town who utilize cable services and public access television in a way that allows the service providers to also be successful in our community.

Option 2: Do not extend the current cable franchise agreements, allowing both agreements to lapse. While it is likely that the cable providers will continue to operate in a way that is consistent with the previous agreement and continue to remit payments, the city's ability to assure compliance with agreement standards will be weakened.

#### **Staff Recommendation:**

Staff recommends that the Council adopt the two ordinances that extend the terms of the current agreements.

#### Attachments:

- 1. Ordinance **No. 5129**: Comcast Franchise Term Extension to July 9, 2023
- 2. Ordinance **No. 5130**: Ziply Fiber Franchise Term Extension to July 9, 2023

#### **ORDINANCE NO. 5129**

### AN ORDINANCE AMENDING THE COMCAST CABLE TELEVISION FRANCHISE AGREEMENT TO EXTEND THE TERM.

#### **RECITALS:**

**WHEREAS**, in December 2012, the City Council enacted Ordinance 4960, which granted a 10-year non-exclusive franchise allowing Comcast of Oregon II, Inc. ("Comcast"), to construct and operate a Cable System within the corporate limits of the City, subject to the terms and conditions set forth in the franchise ("Franchise"); and

**WHEREAS**, the Franchise took effect on January 10, 2013, and will expire on January 9, 2023; and

**WHEREAS**, on February 11, 2020, Comcast filed a request with the City to activate the process for renewing the Franchise pursuant to the provisions of the Cable Communications Policy Act of 1984 ("Cable Act"); and

**WHEREAS**, the parties are in negotiations concerning a renewal of the Franchise utilizing the informal procedures set forth in the Cable Act; and

**WHEREAS**, the parties desire to extend the current Franchise term in order to accommodate such negotiations.

### NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

- The provisions amending Ordinance 4960, set forth in the attached Exhibit 1 and incorporated by this reference, are hereby adopted, subject to the City's receipt of the Second Amendment to Franchise Agreement signed by an authorized representative of Comcast.
- 2. The City Manager is hereby authorized to sign the Second Amendment to Franchise Agreement.
- 3. This ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 13th day of December 2022, by the following votes:

Ayes:	 	 
Nays:	 	 

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

#### SECOND AMENDMENT TO FRANCHISE AGREEMENT

This Second Amendment to Franchise Agreement is made and entered as of January 9, 2023, by and between the City of McMinnville, Oregon ("Franchising Authority") and Comcast of Oregon II, Inc. ("Franchisee").

This Amendment shall modify the cable franchise agreement between the Franchising Authority and Franchisee dated December 11, 2012 ("Franchise"), as follows:

1. Section 2.4 of the Franchise is amended by adding the language shown in <u>underline</u>:

2.4 Term. The Franchise granted hereunder shall be for an initial term of ten (10) years, commencing on the effective date of the Franchise as set forth in Section 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise or extended by the mutual agreement of the parties.

2. Section 8.6 of the Franchise is amended by adding the language shown in <u>underline</u> and deleting the language shown in <del>strikethrough</del>:

8.6 Effective Date: The effective date of this Franchise is January 10, 2013 pursuant to the provisions of applicable law. The Franchise shall expire on January 9, 2023 July 9, 2023 unless extended by the mutual agreement of the parties, or rendered null and void pursuant to Section 8.7 hereof.

- 3. Except as amended by the First Amendment, dated September 9, 2018, and this Second Amendment, all other terms and conditions of the Franchise shall remain unchanged and in full force and effect.
- 4. By agreeing to this Second Amendment, it is understood that both the Franchising Authority and Franchisee are reserving all other rights that each may have according to law, including but not limited to franchise renewal rights set forth in Section 626 of the Communications Act of 1934, 47 U.S.C. § 546.

The Second Amendment shall be effective as of January 9, 2023.

City of McMinnville:	Comcast of Oregon II, Inc.
Ву:	Ву:
Title: City Manager	Title:
Date:	Date:

#### **ORDINANCE NO. 5130**

### AN ORDINANCE AMENDING THE ZIPLY CABLE TELEVISION FRANCHISE AGREEMENT TO EXTEND THE TERM.

#### **RECITALS:**

**WHEREAS**, effective September 28, 2007, the City Council granted a 15-year nonexclusive franchise allowing Verizon Northwest, Inc., to construct and operate a Cable System within the corporate limits of the City, subject to the terms and conditions set forth in the franchise ("Franchise"), which Franchise is now held by Ziply Fiber Northwest, LLC ("Ziply"); and

WHEREAS, the Franchise expired on September 28, 2022; and

**WHEREAS**, on September 30, 2019, Ziply's predecessor filed a request with the City to activate the process for renewing the Franchise pursuant to the provisions of the Cable Communications Policy Act of 1984 ("Cable Act"); and

**WHEREAS**, the parties are in negotiations concerning a renewal of the Franchise utilizing the informal procedures set forth in the Cable Act; and

**WHEREAS**, the parties desire to extend the current Franchise term in order to accommodate such negotiations.

#### NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

- 1. The provisions amending and extending the Franchise, set forth in the attached Exhibit 1 and incorporated by this reference, are hereby adopted, subject to the City's receipt of the Amendment to Franchise and Extension Agreement signed by an authorized representative of Ziply.
- 2. The City Manager is hereby authorized to sign the Amendment to Franchise and Extension Agreement.
- 3. This ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 13th day of December 2022, by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

#### AMENDMENT TO FRANCHISE AND EXTENSION AGREEMENT

This Amendment to Franchise and Extension Agreement is made and entered on \_\_\_\_\_, 2023, by and between the City of McMinnville, Oregon ("LFA") and Ziply Fiber Northwest, LLC ("Grantee").

1. This Amendment shall modify the cable franchise agreement effective September 28, 2007, between the LFA and Verizon Northwest, Inc., now held by Grantee ("Franchise"), as follows:

Section 2.3 of the Franchise is amended by adding the language shown in <u>underline</u>:

2.3 *Term.* The effective date of this Agreement shall be thirty (30) calendar days following its approval by LFA's governing authority authorized to grant franchises or the date of last signature, whichever is later ("Effective Date"). The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein or is extended by mutual agreement of the parties.

- 2. The LFA and Grantee mutually agree to extend the term of the Franchise to July 9, 2023.
- 3. Except as amended by this Amendment to Franchise and Extension Agreement, all other terms and conditions of the Franchise shall remain unchanged and in full force and effect.
- 4. By agreeing to this Amendment to Franchise and Extension Agreement, it is understood that both the LFA and Grantee are reserving all other rights that each may have according to law, including but not limited to franchise renewal rights set forth in Section 626 of the Communications Act of 1934, 47 U.S.C. § 546.

This Amendment to Franchise and Extension Agreement shall be effective as of September 28, 2022.

City of McMinnville:	Ziply Fiber Northwest, LLC	
Ву:	Ву:	
Title: City Manager	Title:	
Date:	Date:	