



**City Council Meeting Agenda**

**Tuesday, September 27, 2022**

**6:00 p.m. – Work Session Meeting - CANCELED**

**7:00 p.m. – City Council Regular Meeting**

**REVISED 09/22/2022**

*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, September 26th** to [claudia.cisneros@mcminnvilleoregon.gov](mailto:claudia.cisneros@mcminnvilleoregon.gov)*
- *If appearing via telephone only please sign up prior by **12 p.m. on Monday, September 26<sup>th</sup>** by emailing the City Recorder at [claudia.cisneros@mcminnvilleoregon.gov](mailto: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](http://www.mcm11.org/live)

**CITY COUNCIL REGULAR MEETING:**

*You may join online via Zoom Meeting:*

<https://mcminnvilleoregon.zoom.us/j/89781723782?pwd=VHcvZkZyS3V1VmpzVmRiMHFyUFBodz09>

*Zoom ID: 897 8172 3782*

*Zoom Password: 425772*

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

*ID: 897 8172 3782*

**6:00 PM – WORK SESSION MEETING - CANCELED**

**7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM AND SEATING AT CIVIC HALL**

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PROCLAMATIONS
  - a. Latinx Heritage Month Proclamation
  - b. McMinnville MADE Day in conjunction with The National Manufacturing Day Proclamation & Presentation
4. PRESENTATIONS
  - a. Oregon International Airshow Presentation
  - b. Budget Committee Recognition

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. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
- b. Department Head Reports

7. CONSENT AGENDA

- a. Consider **Resolution No. 2022-60**: A Resolution authorizing the City Manager to sign a Professional Services Agreement with Clair Company, Inc. to provide both building inspection and plan review services as needed.
- b. Consider **Resolution No. 2022-61**: A Resolution authorizing the Mayor to sign a Memorandum of Understanding with Yamhill Community Action Partnership and the City of Newberg recognizing the relationship between the three agencies relative to the operations of a navigation center both in Newberg and McMinnville, both of which will be entitled AnyDoor Place.
- c. Consider **Resolution No. 2022-62**: A Resolution authorizing the City Manager to sign an Amendment (Amendment #1) to the Navigation Center Construction and Operation Agreement approved by Resolution No. 2022-35.
- d. Consider request from Moffett Vineyards LLC dba: Moffett Vineyards for Winery 1<sup>st</sup> Location, OLCC Liquor License located at 1400 NE Alpha Drive. (Added on 09.22.2022)

8. RESOLUTION

- a. Consider **Resolution No. 2022-63**: A Resolution Authorizing Submission of and Supporting a Petition for Formation of a new Fire District Pursuant to ORS 198.800 to ORS 198. and a Ballot Measure for the Formation of McMinnville Fire District.

9. ORDINANCE

- a. Consider the first reading with a possible second reading of **Ordinance No. 5124**: An Ordinance Amending Section 3 Of Ordinance 5119 Declaring A Temporary Ban On Psilocybin Service Centers And The Manufacture Of Psilocybin Products, Referring Such Ordinance To The Voters And Declaring An Emergency.
- b. Consider the first reading with a possible second reading of **Ordinance No. 5125**: An Ordinance Granting A Non-Exclusive Telecommunications Franchise To Ziply Fiber Northwest, LLC (“Grantee” Or “Franchisee”).

10. ADJOURNMENT OF REGULAR MEETING



# PROCLAMATION

## Designation of September 15 – October 15 as Latinx Heritage Month

**WHEREAS**, National Latinx Heritage Month celebrates the Latinx community and highlights its countless achievements; and

**WHEREAS**, the observation began in 1968 as Hispanics Heritage Week under President Lyndon B. Johnson, and was enacted into federal law on August 17, 1988, calling upon the people of the United States to observe this time with ceremonies, activities, and programs; and

**WHEREAS**, many Latinx Americans trace their roots to the cultures of indigenous peoples of the Americas – including the Arawaks, the Aztecs, the Incas, the Maya, and the Tainos, and some trace their roots to ancestors from Spain, Mexico, the Caribbean, Central and South America, and Africa; and

**WHEREAS**, September 15 – October 15 is recognized as National Hispanic Heritage Month, a time to honor and celebrate the invaluable ways Latinxs contribute to McMinnville’s common goals, to celebrate a diverse Latinx culture, and to work toward a stronger and more inclusive society for all; and

**WHEREAS**, the 15<sup>th</sup> of September is significant as a starting date for Latinx Heritage Month because it is the anniversary of independence from Spain for Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Mexico and Chile celebrate their independence on September 16<sup>th</sup> and 18<sup>th</sup> respectively; and

**WHEREAS**, Latinxs are a significant part of McMinnville’s population and influence the fabric of our community with contributions to McMinnville’s arts, businesses, restaurants, civic leadership, education, and overall culture; and

**NOW, THEREFORE**, I, Remy Drabkin, Interim Mayor of McMinnville, do hereby proclaim the period between September 15 and October 15, 2022 as:

## Latinx Heritage Month

**IN WITNESS WHEREOF**, I have hereunto set my hand, this twenty-seventh day of September, in the year two thousand twenty-two.

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Remy Drabkin, Interim Mayor



# PROCLAMATION

**Whereas**, manufacturing and traded sector companies make a very significant contribution to the national, state and local economy; and

**Whereas**, our community is fortunate to be the home of nearly 100 world-class manufacturing and traded sector companies featuring a multitude of products made in the City of McMinnville; and

**Whereas**, these companies add to the vitality and prosperity of our community by employing over 2,000 people in McMinnville alone and nearly 6,000 employees throughout Yamhill County. Manufacturing has a revenue impact of \$320M in the City of McMinnville and nearly \$900M in revenue impact throughout Yamhill County.

**Now, therefore**, I, Remy Drabkin, by the virtue of the authority vested in me as the Interim Mayor of the City of McMinnville, do hereby proclaim October 7, 2022, as

## **McMinnville | MADE Day in conjunction with The National Manufacturing Day**

**In Witness Whereof**, I have hereunto set my hand and caused the Official Seal of the City of McMinnville to be affixed this 27th day of September 2022.

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Remy Drabkin, Interim Mayor



**City of McMinnville**  
**Community Development**  
231 NE Fifth Street  
McMinnville, OR 97128  
(503) 434-7311  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

# STAFF REPORT

**DATE:** September 27, 2022  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Community Development Director  
**SUBJECT:** Resolution No. 2021-60, Clair Company, Inc. Contract

## STRATEGIC PRIORITY & GOAL:



### COMMUNITY SAFETY & RESILIENCY

Proactively plan for & responsively maintain a safe & resilient community.

## OBJECTIVE/S:

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### Report in Brief:

This is the consideration of Resolution No. 2022-60 authorizing the City Manager to sign a contract with Clair Company, Inc. for an amount not to exceed \$50,000.

This is coming to the City Council as it represents an aggregate amount of \$149,500 of contracts with Clair Company, Inc. in the past four years.

### Background:

The City of McMinnville provides a full-service building program for developers and builders within the city limits except for electrical plan review and inspection services that are offered through Yamhill County; and

Due to staff capacity, there are times when the City of McMinnville needs to contract with a third-party vendor for building plan review and inspection services; and

Clair Company, Inc., is an approved vendor with the Oregon Building Codes Division; and

### Discussion:

Clair Company, Inc., has been providing those services for the City of McMinnville for the past three years and this contract will mean that their total aggregated contractual amount is \$149,500 necessitating City Council approval.

The City of McMinnville intends to initiate a new building inspection and plan review solicitation and procurement process in 2023

**Attachments:**

- Resolution No. 2022-60
- Professional Services Agreement with Clair Company, Inc.

**Fiscal Impact:**

The contract is for a not to exceed amount of \$50,000 through June 30, 2024, and is currently budgeted in the FY 22/23 Building Fund.

**Recommendation:**

Staff recommends adopting Resolution No. 2022-60 authorizing the City Manager to sign the contract with Clair Company, Inc.

**RESOLUTION NO. 2022-60**

A Resolution authorizing the City Manager to sign a Professional Services Agreement with Clair Company, Inc. to provide both building inspection and plan review services as needed.

**RECITALS:**

**Whereas**, the City of McMinnville provides a full-service building program for developers and builders within the city limits except for electrical plan review and inspection services that are offered through Yamhill County; and

**Whereas**, due to staff capacity, there are times when the City of McMinnville needs to contract with a third-party vendor for building plan review and inspection services; and

**Whereas**, Clair Company, Inc., is an approved vendor with the Oregon Building Codes Division; and

**Whereas**, Clair Company, Inc., has been providing those services for the City of McMinnville for the past three years and this contract will mean that their total aggregated contractual amount is \$149,500 necessitating City Council approval; and

**Whereas**, the City of McMinnville intends to initiate a new building inspection and plan review solicitation and procurement process in 2023

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

1. That the City Manager is authorized to sign the attached contract with Clair Company, Inc., in an amount not to exceed \$50,000; and
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 27th day of September 2022 by the following votes:

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

Nays: \_\_\_\_\_

Approved this 27th day of September 2022.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Recorder

EXHIBITS:

- A. Professional Services Agreement with Clair Company, Inc.



**CITY OF McMinnville, Oregon**

**PERSONAL SERVICES CONTRACT**

**With**

**CLAIR**

**For**

**BUILDING DIVISION SUPPORT SERVICES**

This Contract is between the CITY OF McMinnville, a municipal corporation of the State of Oregon (City) and CLAIR. (Contractor). The City's Project Manager for this Contract is Stuart Ramsing, Building Official for the City of McMinnville.

The parties mutually covenant and agree as follows:

- 1. Effective Date and Duration.** This contract is effective on the date at which every party has signed the contract and will expire, unless otherwise terminated or extended, on June 30, 2024.
- 2. Statement of Work.** The work to be performed under this contract consists of the services described in Exhibit A, attached hereto and by this reference incorporated herein. The statement of work, including the delivery schedule for the work, is contained in Exhibit A. The Statement of Work reflects both the work anticipated and the fees the Contractor will charge for each component of that work. The work provided will be guided by the Statement of the Work, but the Contractor will, with the approval and direction of the City, perform services in such a way as to ensure constant progress is being made to achieve the City's end goals in the most efficient manner possible.
- 3. Consideration.**
  - a. City agrees to pay Contractor for actual hours worked, and allowable expenses incurred for accomplishing the work required by this contract, with a total sum not to exceed \$50,000.
  - b. Contractor will furnish with each invoice for services an itemized statement showing both the work performed and the number of hours devoted to the project by the Contractor and its agents. City will pay the Contractor for services within 30 days of receiving an itemized bill that has been approved by the Project Manager.
  - c. City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this contract.
- 4. Additional Services.** Additional services, not covered in Exhibit A, will be provided if mutually agreed upon by the parties and authorized or confirmed in writing by the City, and will be paid for by the City as provided in this Contract in addition to the compensation authorized in subsection 3a. If authorized by the City, the additional services will be performed under a series of Task Orders defining the services to be performed, time of performance, and cost for each phase of services.

**[CONTINUED ON NEXT PAGE]**

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**CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE**

Name (please print): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security #: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

State Tax ID #: \_\_\_\_\_

Citizenship: Nonresident alien  Yes  No

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

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

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

Signed by Contractor:

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Date

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

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**CITY OF McMINNVILLE SIGNATURE**

Approved:

\_\_\_\_\_  
City Manager or Designee

\_\_\_\_\_  
Date

Reviewed:

\_\_\_\_\_  
City Attorney or Designee

\_\_\_\_\_  
Date

**CITY OF McMinnville**  
STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICES CONTRACTS

**1. Contractor is Independent Contractor.**

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

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

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

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

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

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

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

**5. Early Termination**

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

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

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

**6. Payment on Early Termination**

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

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

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

**7. Remedies**

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

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

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

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

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

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

**11. Indemnity and Hold Harmless**

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

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

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

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

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

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

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

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

**EXHIBIT A  
STATEMENT OF THE WORK**

***Inspections***

We propose to provide inspection services on a time and materials basis, portal to portal from our Corvallis office. There may be times when inspection staff can be dispatched from a location closer to McMinnville.

***Plan Review***

Plan review services can be provided under a variety of cost models. Following the cost model that works best for most of our jurisdictional clients, we propose to offer plan review services for 75% of the plan review fees collected by the City for scopes of work assigned to Clair. The City would retain the remaining 25% of the plan review fees, and 100% of the permit fees. Clair charges for time and materials associated with plan reviews beyond first back check, review of construction document revisions, deferred submittals, and partial reviews. Typically, these fees will be billed to the City as a pass through cost to the applicant to be paid at time of document pickup, and payable to the City for payment to Clair.

Services included in “in-scope plan review services” are as follows.

- Plan review services provided by certified plans examiners through first back check
- Administrative services for document control, etc. related to services listed above
- Accounting services including invoicing and cost tracking, and individual permit budget management
- Project management including overview of staff assignments, scheduling, and budget management
- Direct communication with project owner, permit applicant, design professional, contractor, other stakeholder agencies and City personnel
- Pickup and Delivery of plans back to the City is included in the rates billed by Clair

**Additional Scopes**

While we understand that the current need is for as needed inspection and/or plan review support services, Clair has the experience and ability to support the City with additional services if needed, and upon request.

- Commercial and residential plan review, all disciplines
- Specialized code analysis and review
- Project administration
- Building Official support services

<b>Classification</b>	<b>Base Rate</b>
Residential Plans Examiner / Technical Support	\$ 75.00 / hr.
Commercial Plans Examiner / Technical Support	\$ 85.00 / hr.
Licensed Engineer / Structural Plans Examiner	\$100.00 / hr.
Project Manager / Program Administrator Support	\$100.00 / hr.
Inspector (all residential, commercial building/mech)	\$ 77.00 / hr.
Commercial Inspector (Electrical/Plumbing)	\$ 90.00 / hr.
Project Administration / Document Control	\$ 50.00 / hr.
Overtime, if applicable	1.5 x Base Rate
Direct overhead for Supplies and Services	Cost
Mileage	\$0.68 / mile

**EXHIBIT B**  
**COMPLIANCE WITH APPLICABLE LAW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**EXHIBIT C  
INSURANCE**

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

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

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

Required by City                       I am exempt. Signed \_\_\_\_\_

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

Required by City     Not required by City    By: \_\_\_\_\_

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

Required by City     Not required by City    By: \_\_\_\_\_

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

Required by City     Not required by City    By: \_\_\_\_\_

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

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

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

**A. CONTRACTOR IS A CORPORATION**

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

Entity	Signature	Date

**B. CONTRACTOR IS INDEPENDENT.**

**Contractor certifies he/she meets the following standards:**

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

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

(Project Manager complete C below.)

**C. CITY APPROVAL**

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

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

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

---

Project Manager Signature

Date



**City of McMinnville**  
**Community Development**  
231 NE Fifth Street  
McMinnville, OR 97128  
(503) 434-7311  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

# STAFF REPORT

**DATE:** September 27, 2022  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Community Development Director  
**SUBJECT:** Resolution No. 2022 – 61, Memorandum of Understanding between YCAP, City of Newberg and City of McMinnville for Navigation Center Operations

## STRATEGIC PRIORITY & GOAL:



**HOUSING OPPORTUNITIES** (ACROSS THE INCOME SPECTRUM)  
Create diverse housing opportunities that support great neighborhoods.

**OBJECTIVE/S:** Collaborate to improve the financial feasibility of diverse housing development opportunities

---

## Report in Brief:

This is the consideration of Resolution No. 2022-61, authorizing the Mayor to sign a Memorandum of Understanding (MOU) between YCAP, the City of Newberg and the City of McMinnville relative to the operations of navigation centers both in the City of Newberg and the City of McMinnville.

## Background:

HB 5042 (Oregon 2021 Legislative Session) provided \$1,500,000 from the state general fund to the City of McMinnville for the development of a navigation center in McMinnville to serve persons who are houseless. A navigation center is defined by HB 2006 (Oregon 2021 Legislative Session) as a low-barrier emergency shelter that is open seven days per week and connects individuals and families with health services, permanent housing and public benefits.

On November 9, 2021, the McMinnville City Council adopted Resolution No. 2021-54 allocating \$500,000 to the future operations of the McMinnville Navigation Center.

On March 18, 2022, the City of Newberg signed a MOU with YCAP providing \$200,000 of their ARPA funds to help operate the McMinnville Navigation Center.

On May 24, 2022, the McMinnville City Council adopted Resolution No. 2022-35 authorizing the City Manager to sign an agreement with YCAP to build a navigation center (hereinafter referred to as AnyDoor Place) on their property at 327 and 329 SW Adams Street, and to operate it.

On May 24, 2022, the McMinnville City Council adopted Resolution No. 2022-36, authorizing the City Manager to sign a contract with FFA Architecture to design AnyDoor Place.

**Discussion:**

In March 2022, YCAP and the City of McMinnville learned of additional funds that may be available to Navigation Centers from Oregon Housing and Community Services (OHCS). The City partnered with YCAP and submitted an application for grant funds.

OHCS tentatively awarded the City of McMinnville and YCAP (\$1,689,000) for the McMinnville Navigation Center. However, one caveat of the funds was that the Navigation Center needed to be fully operational by June 30, 2023. And due to delays in securing architectural services, engineering subcontractors (as-builts, geo-tech and surveys), as well as staff transition both at YCAP and the City of McMinnville, the opening for the McMinnville navigation center is delayed past June 20, 2023.

The City of McMinnville staff and YCAP have been working with OHCS on a revised grant submittal. The City of Newberg is also in the process of developing a navigation center in their community that will be operated by YCAP. This facility will be open by June 30, 2023. Under the umbrella that houselessness is a county-wide need and response, YCAP proposed to OHCS that some of the grant funds be used for the City of Newberg navigation center to be operational by June 30, 2023, and that people suffering houselessness in need of shelter and services could be transported to the Newberg navigation center while the McMinnville facility is being built. In addition, YCAP will be working with First Baptist Church on providing interim on-site supportive services at their facility in McMinnville.

OHCS wanted a MOU formalizing that relationship. The bulk of the OHCS funds will be used for hiring and training staff that will work at both navigation centers, furnishings at the McMinnville navigation center and rehabilitation costs at the Newberg navigation center, resulting in thirty (30) beds and supportive services in Newberg and thirty (30) beds and supportive services in McMinnville.

The attached MOU defines all of those relationships and operational expectations of an AnyDoor Place in both the City of Newberg and the City of McMinnville and demonstrates the partnership of YCAP, Newberg and McMinnville to address and support people who are experiencing houselessness in Yamhill County.

**Attachments:**

- Resolution No. 2022-61
- MOU – YCAP, Newberg and McMinnville, AnyDoor Place

**Fiscal Impact:**

This MOU is needed to secure an additional \$1,689,000 of grant funds for navigation centers both in McMinnville and Newberg.

**Recommendation:**

Staff recommends adopting the Resolution authorizing the Mayor to sign the MOU.

## RESOLUTION NO. 2022-61

A Resolution authorizing the Mayor to sign a Memorandum of Understanding with Yamhill Community Action Partnership and the City of Newberg recognizing the relationship between the three agencies relative to the operations of a navigation center both in Newberg and McMinnville, both of which will be entitled AnyDoor Place.

### RECITALS:

**Whereas**, the Parties recognize a need for a holistic, compassionate, county-wide approach for individuals experiencing homelessness in Yamhill County; and

**Whereas**, Newberg has provided operational funding through an ARPA grant in the amount of \$200,000 to support the McMinnville Navigation Center, and McMinnville has provided operational funding through an ARPA grant in the amount of \$500,000 to support the McMinnville Navigation Center. Both cities understand the McMinnville Navigation Center will not be operational until mid-to-late 2023 due to delayed construction timelines as a result of the pandemic. As such, Newberg is supportive of individuals experiencing homelessness in McMinnville being helped at the soon-to-be-completed Newberg Navigation Center which will be fully operational by early 2023; and

**Whereas**, the Yamhill Community Action Partnership (YCAP) was founded in 1980 as part of a nationwide network of social service agencies designed to help improve the lives of low-income people and strengthen communities; and

**Whereas**, YCAP's mission is to serve and advocate for people in need by providing access to resources and tools to strengthen communities in Yamhill County. YCAP assists the residents of Yamhill County, diligently focusing on four primary service categories: Housing Stabilization, Energy Services, the regional Food Bank, and Youth Services; and

**Whereas**, as the Community Action Agency ("CAA") for Yamhill County, YCAP is the subrecipient and program administrator for various programs with Oregon Housing and Community Services ("OHCS"); and

**Whereas**, the Parties intend to work together to ensure behavioral health and culturally responsive and/or specific services are available to individuals seeking support at both the McMinnville Navigation Center and the Newberg Navigation Center regardless of such individual's initial location in Yamhill County. Both Navigation Centers will be open 7 days a week, provide overnight shelter, will have adequate transportation access to commercial and medical services, and will not pose any unreasonable risk to public health or safety. YCAP may provide discretion wrap-around support services through case managers and on-site partners, subject to available funding and staffing. Trainings will be conducted with staff from both facilities to ensure best practices and reasonable organizational policies are utilized; and

**Whereas**, the purpose of this non-binding MOU is to clearly specify the manner in which Newberg, McMinnville, and YCAP will work together until a more definitive agreement is reached, if necessary. The AnyDoor Place program will be the first major program that will share best practices, trainings, and a high level of collaboration across multiple service providers and municipalities to serve Yamhill County's houseless population.

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

1. That the Mayor is authorized to sign the attached Memorandum of Understanding on behalf of the City of McMinnville; and
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 27th day of September, 2022 by the following votes:

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

Nays: \_\_\_\_\_

Approved this 27th day of September 2022.

\_\_\_\_\_  
INTERIM MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
Interim City Attorney

\_\_\_\_\_  
City Recorder

EXHIBITS:

- A. Memorandum of Understanding, City of Newberg, City of McMinnville and Yamhill Community Action Partnership

## MEMORANDUM OF UNDERSTANDING

### City of Newberg, City of McMinnville, and Yamhill Community Action Partnership

This **MEMORANDUM OF UNDERSTANDING** (the “**MOU**”) is made and entered into this 28th day of September 2022 by **City of Newberg (“Newberg”)**, an Oregon municipality, **City of McMinnville (“McMinnville”)**, an Oregon municipality, and **Yamhill Community Action Partnership**, an Oregon non-profit corporation (“**YCAP**”) (collectively, the “**Parties**”).

#### Background

The Parties recognize a need for a holistic, compassionate, county-wide approach for individuals experiencing homelessness in Yamhill County.

Newberg has provided operational funding through an ARPA grant in the amount of \$200,000 to support the McMinnville Navigation Center, and McMinnville has provided operational funding through an ARPA grant in the amount of \$500,000 to support the McMinnville Navigation Center. Both cities understand the McMinnville Navigation Center will not be operational until mid-to-late 2023 due to delayed construction timelines as a result of the pandemic. As such, Newberg is supportive of individuals experiencing homelessness in McMinnville being helped at the soon-to-be-completed Newberg Navigation Center which will be fully operational by early 2023.

The Yamhill Community Action Partnership (YCAP) was founded in 1980 as part of a nationwide network of social service agencies designed to help improve the lives of low-income people and strengthen communities.

YCAP's mission is to serve and advocate for people in need by providing access to resources and tools to strengthen communities in Yamhill County. YCAP assists the residents of Yamhill County, diligently focusing on four primary service categories: Housing Stabilization, Energy Services, the regional Food Bank, and Youth Services.

As the Community Action Agency (“CAA”) for Yamhill County, YCAP is the subrecipient and program administrator for various programs with Oregon Housing and Community Services (“OHCS”).

The Parties intend to work together to ensure behavioral health and culturally responsive and/or specific services are available to individuals seeking support at both the McMinnville Navigation Center and the Newberg Navigation Center regardless of such individual’s initial location in Yamhill County. Both Navigation Centers will be open 7 days a week, provide overnight shelter, will have adequate transportation access to commercial and medical services, and will not pose any unreasonable risk to public health or safety. YCAP may provide discretion wrap-around support services through case managers and on-site partners, subject to available funding and staffing. Trainings will be conducted with staff from both facilities to ensure best practices and reasonable organizational policies are utilized.



The purpose of this non-binding MOU is to clearly specify the manner in which Newberg, McMinnville, and YCAP will work together until a more definitive agreement is reached, if necessary. The AnyDoor Place program will be the first major program that will share best practices, trainings, and a high level of collaboration across multiple service providers and municipalities to serve Yamhill County’s houseless population.

### **Agreement**

1. YCAP will provide housing services focused on identifying indicators of housing instability and providing information and referrals as needed with shelter partners.
  
2. Newberg is providing ARPA funding for the McMinnville Navigation Center operations and is supportive of utilizing the Newberg Navigation Center for any individuals experiencing homelessness in Yamhill County.
  
3. McMinnville is providing ARPA funding for the McMinnville Navigation Center operations and is supportive of utilizing the McMinnville Navigation Center for any individuals experiencing homelessness in Yamhill County.
  
4. The Parties understand and agree that this MOU is intended to recognize the relationship among the Parties and that the anticipated provision of ARPA or any other funding will be the subject of separate agreements among and between the Parties setting out additional rights and obligations.

### **Yamhill Community Action Partnership**

_____	_____
Signature	Date
Alexandra Hendgen	Executive Director
_____	_____
Name	Title

### **City of Newberg**

_____	_____
Signature	Date
Rick Rogers	Mayor – City of Newberg
_____	_____
Name	Title

**City of McMinnville**

_____ Signature	_____ Date
Remy Drabkin _____ Name	Mayor – City of McMinnville _____ Title



**City of McMinnville**  
**Community Development**  
231 NE Fifth Street  
McMinnville, OR 97128  
(503) 434-7311  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

# STAFF REPORT

**DATE:** September 27, 2022  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Community Development Director  
**SUBJECT:** Resolution No. 2022 – 62, Amendment #1 to Navigation Center Construction and Operation Agreement with YCAP

## STRATEGIC PRIORITY & GOAL:



**HOUSING OPPORTUNITIES** (ACROSS THE INCOME SPECTRUM)  
Create diverse housing opportunities that support great neighborhoods.

**OBJECTIVE/S:** Collaborate to improve the financial feasibility of diverse housing development opportunities

---

## Report in Brief:

This is the consideration of Resolution No. 2022-62, authorizing the City Manager to sign Amendment #1 to the Navigation Center Construction and Operation Agreement with YCAP.

## Background:

HB 5042 (Oregon 2021 Legislative Session) provided \$1,500,000 from the state general fund to the City of McMinnville for the development of a navigation center in McMinnville to serve persons who are houseless. A navigation center is defined by HB 2006 (Oregon 2021 Legislative Session) as a low-barrier emergency shelter that is open seven days per week and connects individuals and families with health services, permanent housing and public benefits.

On May 24, 2022, the McMinnville City Council adopted Resolution No. 2022-35 authorizing the City Manager to sign an agreement with YCAP to build a navigation center (hereinafter referred to as AnyDoor Place) on their property at 327 and 329 SW Adams Street, and to operate it.

On May 24, 2022, the McMinnville City Council adopted Resolution No. 2022-36, authorizing the City Manager to sign a contract with FFA Architecture to design AnyDoor Place.

## Discussion:

In March 2022, YCAP and the City of McMinnville learned of additional funds that may be available to Navigation Centers from Oregon Housing and Community Services (OHCS). The City partnered with YCAP and submitted an application for grant funds.

OHCS tentatively awarded the City of McMinnville and YCAP (\$1,689,000) for the McMinnville Navigation Center. However, one caveat of the funds was that the Navigation Center needed to be fully operational by June 30, 2023. And due to delays in securing architectural services, engineering subcontractors (as-builts, geo-tech and surveys), as well as staff transition both at YCAP and the City of McMinnville, the opening for the McMinnville navigation center is delayed past June 20, 2023.

The City of McMinnville staff and YCAP have been working with OHCS on a revised grant submittal. The City of Newberg is also in the process of developing a navigation center in their community that will be operated by YCAP. This facility will be open by June 30, 2023. Under the umbrella that houselessness is a county-wide need and response, YCAP proposed to OHCS that some of the grant funds be used for the City of Newberg navigation center to be operational by June 30, 2023, and that people suffering houselessness in need of shelter and services could be transported to the Newberg navigation center while the McMinnville facility is being built. In addition, YCAP will be working with First Baptist Church on providing interim on-site supportive services at their facility in McMinnville.

To provide interim navigation center services at the First Baptist Church site, 125 NE Cowl's Street, YCAP and the First Baptist Church would need to secure a conditional use permit for a social relief facility. However, per HB 4051 (2022 Oregon Legislature), navigation centers are exempt from local land-use regulations if they secure an agreement prior to June 30, 2023. All other local, state, and federal regulations apply, including compliance with the Oregon State Building Codes.

Amendment #1 to the Navigation Center Construction and Operation Agreement provides that land-use exemption.

**Attachments:**

- Resolution No. 2022-62
- Amendment #1 – Navigation Center Construction and Operation Agreement

**Fiscal Impact:**

This amendment to the agreement is needed to secure an additional \$1,689,000 of grant funds for navigation centers both in McMinnville and Newberg.

**Recommendation:**

Staff recommends adopting the Resolution authorizing the City Manager to sign the amendment to the Navigation Center Construction and Operation Agreement.

## **RESOLUTION NO. 2022-62**

A Resolution authorizing the City Manager to sign an Amendment (Amendment #1) to the Navigation Center Construction and Operation Agreement approved by Resolution No. 2022-35.

### **RECITALS:**

**WHEREAS**, the City of McMinnville has hundreds of residents who are currently experiencing homelessness without emergency shelter opportunities available to them; and

**WHEREAS**, the 2021 Oregon Legislature passed HB 2006, a bill describing the need for emergency shelter in Oregon for individuals without shelter and determining the need to build these emergency shelters as soon as possible; and

**WHEREAS**, HB 2006 defined a "Navigation Center" as an emergency homeless shelter; and

**WHEREAS**, the City of McMinnville was awarded \$1,500,000 for a Navigation Center in HB 5024 in the 2021 Oregon Legislature; and

**WHEREAS**, the City of McMinnville adopted Resolution No. 2022-35, approving an agreement with YCAP to construct the Navigation Center on YCAP property and to hand over the final built improvement upon achieving successful occupancy permits for YCAP to own and operate; and

**Whereas**, the City of McMinnville recently learned of the opportunity to secure another \$1,689,000 in funds for the McMinnville Navigation Center from Oregon Housing and Community Services, if navigation center services could be offered temporarily in McMinnville at another site until such time that the new navigation center is constructed; and

**Whereas**, YCAP is partnering with the First Baptist Church in McMinnville to provide interim navigation center services on site at 125 SE Cows Street as well as in Newberg at the Newberg Navigation Center; and

**Whereas**, YCAP and the First Baptist Church have requested permission to offer the interim Navigation Center services at 125 SE Cows Street per HB 4051 (2022 Oregon Legislature), that exempts navigation centers from local land-use regulations.

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

1. That the City Manager is authorized to sign the attached Amendment #1 to the Navigation Center Construction and Operation Agreement with YCAP; and
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 27th day of September, 2022 by the following votes:

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

Nays: \_\_\_\_\_

Approved this 27th day of September 2022.

\_\_\_\_\_  
INTERIM MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
Interim City Attorney

\_\_\_\_\_  
City Recorder

EXHIBITS:

- A. Amendment #1 to Navigation Center Construction and Operation Agreement

# NAVIGATION CENTER CONSTRUCTION AND OPERATION AGREEMENT

## AMENDMENT #1

This is an amendment to the Navigation Center Construction and Operation Agreement (“Amendment”) dated \_\_\_\_\_, 2022, between the **City of McMinnville**, a municipal corporation of the State of Oregon (“City”) and **Yamhill Community Action Partnership**, an Oregon non-profit corporation (“YCAP”).

This Amendment will become effective on the date that the two parties sign the Amendment.

### AGREEMENT AMENDMENT

Amend Section 18 to add:

**155.1 Interim Navigation Center Services:** Until such time that the Navigation Center is open at 327 and 329 Adams Street, YCAP is authorized to provide Navigation Center services at 125 SE Cows Street in the interim.

**165.1 Land-Use Exemption:** Per HB 4051 (2022 Oregon Legislature), Section 3, Navigation Center services provided by YCAP at 125 SE Cows Street are exempt from land-use regulations, and this Agreement shall serve as the City’s approval of YCAP’s application to develop an emergency shelter as defined in HB 2006 (2021 Oregon Legislature) if this agreement is signed prior to June 30, 2023. The temporary Navigation Center will still need to comply with all other applicable local, state and federal regulations, including the Oregon State Building Codes.

The provisions of this Amendment amend, supplement and modify the corresponding terms of the Navigation Center Construction and Operation Agreement, dated May 25, 2022. In all other respects, the Navigation Center Construction and Operation Agreement remains in full force and effect as currently written. All capitalized terms not defined herein will have the meaning given them in the Navigation Center Construction and Operation Agreement.

This Amendment shall be governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction). In the event of any inconsistency or conflict between the provisions of this Amendment and the Navigation Center Construction and Operation Agreement, the provisions of this Amendment shall control. This Amendment contains the entire understanding between the parties with respect to the matters being amended as contained herein. Except as specifically amended by this Amendment, the Navigation Center Construction and Operation Agreement has not been amended in any respect. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together shall be one and the same instrument.

[Signature Page Follows]

**YAMHILL COMMUNITY  
ACTION PARTNERSHIP**

**CITY OF MCMINNVILLE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
City of McMinnville, Oregon



## Liquor License Recommendation

---

BUSINESS NAME / INDIVIDUAL: Moffett Vineyards LLC dba: Moffett Vineyards  
BUSINESS LOCATION ADDRESS: 1400 NE Alpha Drive  
LIQUOR LICENSE TYPE: Winery 1<sup>st</sup> location

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

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

Hours of operation: Sunday – Saturday 8 am to 5 pm  
Entertainment: N/A  
Hours of Music: N/A  
Seating Count: N/A

EXEMPTIONS:  
(list any exemptions)

---

Tritech Records Management System Check: Yes  No

Criminal Records Check: Yes  No

Recommended Action: Approve  Disapprove

  
\_\_\_\_\_  
Chief of Police / Designee

\_\_\_\_\_  
City Manager / Designee



# LIQUOR LICENSE APPLICATION

**PRINT FORM**

**RESET FORM**

1. Application. **Do not include** any OLCC fees with your application packet (the license fee will be collected at a later time). Application is being made for:

License Applied For:	CITY AND COUNTY USE ONLY
<input type="checkbox"/> Brewery 1 <sup>st</sup> Location	Date application received and/or date stamp: <u>9/21/2022</u>
Brewery Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	
<input type="checkbox"/> Brewery-Public House (BPH) 1 <sup>st</sup> location	Name of City or County:
BPH Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	
<input type="checkbox"/> Distillery	Recommends this license be: <input type="checkbox"/> Granted <input type="checkbox"/> Denied
<input type="checkbox"/> Full On Premises, Commercial	
<input type="checkbox"/> Full On-Premises, Caterer	By: _____
<input type="checkbox"/> Full On-Premises, Passenger Carrier	Date: _____
<input type="checkbox"/> Full On-Premises, Other Public Location	OLCC USE ONLY
<input type="checkbox"/> Full On-Premises, For Profit Private Club	
<input type="checkbox"/> Full On-Premises, Nonprofit Private Club	Date application received: <u>07/07/2022</u>
<input type="checkbox"/> Grower Sales Privilege (GSP) 1 <sup>st</sup> location	Date application accepted: <u>07/07/2022</u>
GSP Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	License Action(s): C/O C/TN
<input type="checkbox"/> Limited On-Premises	
<input type="checkbox"/> Off Premises	
<input type="checkbox"/> Warehouse	
<input type="checkbox"/> Wholesale Malt Beverage & Wine	
<input checked="" type="checkbox"/> Winery 1 <sup>st</sup> Location	
Winery Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/> (4 <sup>th</sup> ) <input type="checkbox"/> (5 <sup>th</sup> ) <input type="checkbox"/>	

2. Identify the applicant(s) applying for the license(s). **ENTITY (example: corporation or LLC) or INDIVIDUAL(S)**<sup>1</sup> applying for the license(s):

MOFFETT VINEYARDS, LLC

App #1: NAME OF ENTITY OR INDIVIDUAL APPLICANT

App #2: NAME OF ENTITY OR INDIVIDUAL APPLICANT

App #3: NAME OF ENTITY OR INDIVIDUAL APPLICANT

App #4: NAME OF ENTITY OR INDIVIDUAL APPLICANT

3. Trade Name of the Business (Name Customers Will See)

MOFFETT VINEYARDS

4. Business Address (Number and Street Address of the Location that will have the liquor license)

1400 NE ALPHA DRIVE

City	County	Zip Code
MCMINNVILLE	YAMHILL	97128

<sup>1</sup> Read the instructions on page 1 carefully. If an entity is applying for the license, list the name of the entity as an applicant. If an individual is applying as a sole proprietor (no entity), list the individual as an applicant.



## STAFF REPORT

**DATE:** September 15, 2022  
**TO:** Mayor and City Councilors  
**FROM:** Rich Leipfert, Fire Chief  
**SUBJECT:** Fire Department Consolidation Resolution # 2022-63:



**COMMUNITY SAFETY & RESILIENCY**

Proactively plan for & responsively maintain a safe & resilient community.

**OBJECTIVE/S:** Provide exceptional police, municipal court, fire, emergency medical services EMS, utility services and public works

### **Report in Brief:**

On August 17<sup>th</sup> 2022 the City Council had a work session on the Consolidation process and gave guidance to staff on several issues to move the project forward. At the time of that work session, we were operating under the assumption that a citizen petition process would be required. Since that time, the County Commissioners have agreed to support the city request to petition the Commission directly for an order that would allow the County Commissioners to initiate their process for adding a ballot measure for the May election. This will provide more time for educating the citizens rather than using the lengthy citizens petition process.

### **Background:**

This process will include the City passing the resolution referring to the prospective petition to the County Commission for the County Order to place the ballot measure in the May election. The resolution, perspective petition, and feasibility statement meet the requirements for the formal request to the County Commissioners. During the Commissioners meeting there was an additional

request to have an IGA with the City for reimbursement to the County for the costs of the election. That draft IGA is exhibit 2 in your packet.

**Discussion:**

During the Council work session there was discussion around the disposition of the current fire station. The recommended language around that disposition included in the current resolution came from the City Attorney.

There was a question around the projected costs of the maintenance on the Facility. The 2019 facilities condition assessment indicated that there would be anticipated cost forecast of \$2,012,120 required in the first 10 years of the study. The City has addressed the mold issues at a cost of \$100,000 and replaced 1 of the 3 HVAC systems for \$19,000. The remaining estimated needs are still there. In addition, the forecast for years 10-20 was an additional \$1.12 million dollars

**Attachments:**

- Exhibit #1: Resolution #2022-63
- Exhibit #2: IGA with Yamhill County
- Exhibit #3: Legal Boundary Description of Proposed Fire District
- Exhibit #4 Prospective Petition
- Exhibit #5 Economic Feasibility Statement

**Recommendation:**

Staff recommends approval of Resolution #2022-63

**CITY OF MCMINNVILLE RESOLUTION #2022-\_\_\_\_\_**

**A Resolution Authorizing Submission of and Supporting A Petition for Formation of a new Fire District Pursuant to ORS 198.800 to ORS 198. and a Ballot Measure for the Formation of McMinnville Fire District**

WHEREAS, the City of McMinnville Fire Department provides fire and ambulance services to the City of McMinnville, Oregon, a municipal corporation of the State of Oregon; and

WHEREAS, the McMinnville Fire Department and, the McMinnville Rural Fire Protection District (the “Existing District”); have a singular and coordinated operations system to provide efficient and effective fire protection and emergency medical services within their respective municipal and rural fire district; and

WHEREAS, the City of McMinnville and the McMinnville Rural Fire Protection District (the “Existing Areas”) desire to consolidate their operations and governing structures by the dissolution of the Existing District and the formation of a new protection fire district to be known as the McMinnville Fire District; and

WHEREAS, the Board of Directors of the McMinnville Rural Fire Protection District intends to initiate a measure for voter approval of dissolution of the Existing District conditioned on simultaneous voter approval of the formation of the McMinnville Fire District; and

WHEREAS, the Board of the McMinnville Rural Fire Protection District has communicated to the City that it intends to propose a Plan of Dissolution and Liquidation which would convey all, assets, and liabilities of the Existing District to the McMinnville Fire District ensuring the reserve funds are dedicated to substation construction that improves rural area fire and emergency services; and

WHEREAS, The City of McMinnville intends, upon formation of the McMinnville Fire District, to convey all McMinnville Fire Department personal property, vehicles, equipment, supplies, fire department liabilities, ambulance billing revenue and Volunteer LOSAP plan funds to the McMinnville Fire District; and

WHEREAS, The City of McMinnville intends, upon formation of the McMinnville Fire District, to lease the existing fire district main station to the McMinnville Fire District for \$1.00 per year for a minimum of ten (10) years, whereupon at that time the McMinnville Fire District will determine if the entire fire station is still needed by the Fire District for emergency services. If the District determines that it still requires the station for emergency services, the Fire District will have the option to extend the Lease for additional increments of ten (10) years each, not to exceed a total lease term of one hundred (100) years. The City of McMinnville additionally intends to lease the existing McMinnville Fire Department Training area to the McMinnville Fire District for \$1.00 per year for one hundred (100) years; and

Resolution No. \_\_\_\_\_

WHEREAS, Subject to the provisions of ORS 236.605 to 236.640, the employees of the City of McMinnville Fire Department shall be transferred to the McMinnville Fire District; and

WHEREAS, the Yamhill County Board of Commissioners has the authority pursuant to ORS 198.795 to 198.820 to approve an Order for Formation of the McMinnville Fire District providing for an election of the electors of the proposed McMinnville Fire District on the question of formation of the proposed district and the adoption of a permanent rate limit for operating taxes for the proposed McMinnville Fire District and;

WHEREAS, the Oregon Constitution limits the general government tax rate on real property to \$10 per \$1,000 of assessed value and the general governmental tax rate in the City of McMinnville for fiscal year 2021-2022 is \$7.7596 per \$1,000 of assessed value; and

WHEREAS, the attached Petition proposes a permanent tax rate for the proposed McMinnville Fire District of \$2.00 per \$1,000 of assessed value; and if the formation of the McMinnville Fire District had been undertaken prior to the current tax year the general government tax rate for McMinnville would be \$9.7596 per \$1,000 of assessed value and would not have caused compression of the general government tax rates for properties located within the City of McMinnville; and

WHEREAS, the Yamhill County Commissioners have the statutory authority to approve an Order for Formation of the McMinnville Fire District and submit to the electors a Ballot Measure on the question of formation of the McMinnville Fire District and;

WHEREAS, the boundary of the proposed McMinnville Fire District is described on the Petition attached hereto as Exhibit 1.

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

1. The City of McMinnville, Oregon hereby approves and authorizes submission of the attached Petition for Formation of the McMinnville Fire District to the Yamhill County Board of Commissioners requesting Board action to initiate statutory proceedings for the formation of the McMinnville Fire District.
2. The Mayor of the City of McMinnville is hereby authorized to sign the attached Petition on behalf of the City of McMinnville attached hereto as Exhibit 1.
3. The City of McMinnville, Oregon hereby approves and authorizes execution of the Intergovernmental Agreement for cost reimbursement to Yamhill County, attached hereto as

Resolution No. \_\_\_\_\_

Exhibit 2, and the Mayor of the City of McMinnville is hereby authorized to said attached Intergovernmental Agreement.

4. The City Recorder of the City of McMinnville, Oregon shall provide a certified copy of this Resolution and original Petition to the Yamhill County Board of Commissioners forthwith.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the \_\_\_th day of \_\_\_\_\_, 2022 by the following votes:

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

Nays: \_\_\_\_\_

Approved this \_\_\_th day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Remy Drabkin, MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
Interim City Attorney

\_\_\_\_\_  
Claudia Cisneros, City Recorder

Resolution No. \_\_\_\_\_

# PROSPECTIVE PETITION

## Petition to the Yamhill County Board of Commissioners for the Formation of a Rural Fire Protection District

The City of McMinnville, by resolution of the City Council, hereby petitions the Yamhill County Board of Commissioners, pursuant to ORS 198.835, to initiate the formation of a rural fire protection district organized under ORS Chapter 478.

1. This Petition is filed pursuant to ORS 198.705 to 198.955 and ORS Chapter 478.
2. The name and principal act of all affected districts and counties are:
  - Yamhill County — ORS Chapter 201 through ORS Chapter 215
  - Chemeketa Community College -- ORS Chapter 341
  - Chemeketa Regional Library — ORS 357.417
  - Willamette ESD -- ORS Chapter 334
  - Yamhill County Soil & Water Conservation District — ORS Chapter 568
  - Ash Creek Water Control District — ORS Chapter 553
  - McMinnville School District -- ORS Chapter 332
  - Yamhill Carlton School District -- ORS Chapter 332
  - Amity School District -- ORS Chapter 332
  - Yamhill County Transit District – ORS Chapter 451
  - Yamhill County Extension Services ORS Chapter 451
3. This is a proposal for the formation of a rural fire protection district, the principal act of which is Chapter 478 of the Oregon Revised Statutes.
4. The Board of Directors of the proposed District will be elected and will consist of five (5) members elected at large.
5. The legal description of the proposed District is shown on Exhibit "A", attached to this Petition, and is depicted on the included map.
6. The territory of the proposed District is inhabited.
7. The name of the proposed District is the **McMinnville Fire District**.
8. The proposed permanent tax rate for operating taxes sufficient to support the services and functions described in the Economic Feasibility Statement for the proposed District is \$2.00 per one thousand dollars (\$1,000) of assessed valuation.
9. The proposed formation is subject to the following proposed terms and conditions:
  - Formation of the Fire District is subject to the public hearing process with the County Board specified in ORS 198.800, et seq.



## PROSPECTIVE PETITION

- Formation of the Fire District is subject to the voter approval, with the questions presented at the May 16, 2023, election.
  - Formation of the Fire District is subject to the concurrent voter approval of the dissolution of the existing McMinnville Rural Fire District.
  - Effective Date: The order forming Fire District will take effect on June 30, 2023, at 11:30 p.m. PST. .
  - Employees: Subject to the provisions of ORS 236.605 to 236.640, the employees of the City of McMinnville Fire Department shall be transferred to Fire District.
  - Asset Transfer: All real and personal property and other assets of the McMinnville Rural Fire District and those assets of the City of McMinnville necessary for provision of fire and EMS services shall be transferred to and become the property of Fire District.
  - Debt Distribution: The Fire District will assume all fire protection related debt obligations of the City of McMinnville Fire Department and McMinnville Rural Fire Protection District. The City of McMinnville has an outstanding municipal loan for \$588,000 for fire apparatus. No other long term debt obligations will be assumed by the new district.
10. The Economic Feasibility Statement required by ORS 198.749 is attached hereto as Exhibit "B".
11. A portion of the proposed District is within the boundaries of a forest protection district established pursuant to ORS Chapter 477. Pursuant to ORS 478.150, the petitioners have conferred with the Oregon State Forestry Department in determining the boundaries and lands to be included within the proposed District. Petitioners will work with the Oregon State Forestry Department to obtain final approval of the boundaries and lands to be included within the proposed District.
12. The boundary of the proposed District includes the City of McMinnville. As required by ORS 198.720, the Resolution of the City of McMinnville approving the formation of the proposed District is made in conjunction with this petition. The City of McMinnville is the only incorporated city within the boundary of the proposed District. City consideration and approval by resolution of the final Order of the County Board will occur contemporaneously with the County process, and must be attached to the County's Order.

## PROSPECTIVE PETITION

13. The petitioners request that proceedings for the formation of the Fire District proceed.

DATED this. \_\_\_\_\_ day of September 2022.

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Remy Drabkin, Mayor

Legal Description For:  
McMinnville Fire District  
Resultant Boundary as Modified  
By ORDER NO. 76-174

Beginning at the Southeast corner of the Carlton Rural Fire District in the Northeast one-quarter of Section 1, Township 4 South, Range 4 West of the Willamette Meridian, Oregon; and running thence:

West with South line of said Carlton District to and along County road 70.0 chains to angle in road; thence Northwesterly along County road and over bridge 15.0 chains to angle in road; thence Westerly and Southwesterly along road 85.0 chains to the center of State Highway No. 47; thence Northwesterly following center of State Road No. 47, 72.0 chains to the North line of the J. W. Carse property, said point being 128.0 chains South of Main Street in the City of Carlton, Oregon; thence West 85.0 chains to the center of the North Yamhill river; thence Northerly following center of North Yamhill river to where said river intersects the East line of the J. W. Shelton D.L.C.; thence North 15.0 chains; thence West 35.0 chains to a County road; thence North 3.0 chains to angle in County Road; thence West along County road 40.0 chains to intersection of roads; thence South 16.0 chains to angle in road; thence West along County road 100.0 chains more or less to the Southeast corner of the August Romike property; thence North 12.0 chains to angle in Romike property; thence West 6.00 chains to angle in Romike property; thence North 28.0 chains to the Northeast corner of Romike property and the South line of the W. L. Adams D.L.C.; thence South 82° 00' West along South line of the Adams D.L.C., 40.0 chains to angle in South boundary of said Claim; thence North 77° 00' West along South boundary of Adams Claim, 25.0 chains to the line between Sections 25 and 26 in Township 3 South, Range 5 West; thence South along Section line, 81.0 chains to the 1/4 post between Sections 35 and 36; thence West 80.0 chains to the 1/4 post between Sections 34 and 35; thence South 20.0 chains to the Northeast corner of the Howard Bixler land; thence West 80.0 chains to the Section line between Sections 33 and 34; thence South 50.0 chains along Section line to where the Section line between Sections 3 and 4 crosses the County road; thence Southeasterly following County road approximately 40.0 chains to where county road crosses section line between Sections 3 and 10, in Township 4 South, Range 5 West, and being an angle corner of the Forrest Fire Patrol District; thence West 60.0 chains to the 1/4 post between Sections 4 and 9; thence South 40.0 chains to the center of Section 9; thence West 40.0 chains to the 1/4 post between Sections 8 and 9; thence South 40.0 chains to the southeast corner of Section 8;

thence West 40.00 chains to the 1/4 post between Sections 8 and 17;  
 thence South 40.0 chains to the center of Section 17;  
 thence West 40.0 chains to the 1/4 post between Sections 17 and 18;  
 thence South 60.0 chains;  
 thence East 40.0 chains to an angle in county road 20 chains South of the 1/4 post on the North line of  
 Section 20 in Township 4 South, Range 5 West;  
 thence following county road Easterly and Southerly approximately 1-3/4 miles to the line between  
 Sections 21 and 22;  
 thence South 90.0 chains to the southeast corner of Section 28;  
 thence West 100.0 chains to where Section line intersects the North line of the R. C. Combs D.L.C.;  
 thence North 60° 45' West along North line of the Combs Claim, 13.0 chains to the northwest corner of  
 said Combs Claim;  
 thence South 21° 30' West with West line of said Combs claim, 81.0 chains to the S. W. corner of said  
 Combs claim;  
 thence South 60° 45' East along South line of Combs claim and extending to County road, approximately  
 82.0 chains and being the Northeast corner of the Sheridan Rural Fire Patrol District;  
 thence Southerly along county road and the East line of the Sheridan District, 90.0 chains to the  
 Southerly line of the James Coleman D.L.C.;  
 thence South 54° 00' East along said Claim line 15.0 chains to the Southerly corner of said Coleman  
 claim;  
 thence South 38.0 chains to the southwest corner of Lot #7 of Section 9 in Township 5 South, Range 5  
 West, and the S. W. corner of Dave Waddell property;  
 thence East 40.0 chains to the southeast corner of the Waddell property;  
 thence North 40.0 chains to the East and West center line of Section 9;  
 thence East 28.0 chains to the 1/4 post between Sections 9 and 10;  
 thence North 20.0 chains;  
 thence East 20.0 chains;  
 thence South 84.0 chains to the North line of the Andrew Baker claim;  
 thence East 12.0 chains to the northeast corner of the Andrew Baker D.L.C;  
 thence South 48.0 chains to the S. E. corner of the Andrew Baker D.L.C.;  
 thence Easterly along the county road approximately 70.0 chains to the intersection of county roads;  
 thence East along the north line of the Robert Henderson D.L.C. 49.56 chains more or less to the  
 northeast corner of said claim;  
 thence South along the East line of the Henderson Claim to the section line between Sections 23 and 14  
 in Township 5 South, Range 5 West;  
 thence East along said section line between Sections 23 and 14, and Sections 13 and 24, Township 5  
 South, Range 5 West to a point in the center of the South Yamhill River;  
 thence Northerly following the center of the South Yamhill River to the west line of the A. E. Garrison  
 D.L.C. at a point which bears North 23° West 23 chains from the southwest corner of said claim;  
 thence North 23° West along the west line of said Garrison D.L.C., to the Northwest Corner of said  
 Garrison claim;  
 thence North 62° East along the North line of said Garrison claim to the west line of the John Monroe  
 D.L.C.;  
 thence North along the west line of said Monroe claim to the south line of Lot 6 of County Survey No.  
 2476;  
 thence East along the south line of Lot 6, 837.41 feet to the Southeast Corner of Lot 6, also being the  
 Southwest corner of Lot 5 of said County Survey No. 2476;

thence North 1456.82 feet to the Northwest corner of said Lot 5, said point also being the northwest corner of that tract conveyed to Yamhill County as recorded in Film Volume 83, Page 8788, Deed and Mortgage Records, said point also being on the North Line of said Monroe Claim;

thence East along the North line of said Monroe claim to a point in the center of the South Yamhill River;

thence Easterly along the center of the South Yamhill River to the Northeast corner of said Yamhill County tract, said point being on the west line of the John William Crawford and Viola M. Crawford property as recorded in Film Volume 47, Page 1347, Deed and Mortgage Records;

thence North along said west line to the Northwest corner of said Crawford property, said point being on the North line of said Monroe claim;

thence South 88°41'48" East 115.69 feet along said north line;

thence North 49°28' East 23.55 chains to the most Northerly northeast corner of the Elmer E. and Hazell Shaver Property;

thence East along the north line of said Shaver property and along the section line between Section 6 and Section 7, Township 5 South, Range 4 West, being the north line of the McPhillips Farm, Inc. Property, 59.00 chains to the west line of U.S. Lot 3 of Section 6, Township 5 South, Range 4 West;

thence North along the West line of said Lot 3 to the Northwest corner thereof;

thence East along the North line of said Lot 3 to the Northeast corner thereof;

thence South along the East line of said Lot 3 and the West line of the William Garrison D.L.C to the intersection with the center of Salt Creek;

thence in a Southeasterly direction down the meanderings of the center of Salt Creek to the West line of the Maude Kneedler Robbins Tract as recorded in Volume 170, Page 670, Deed and Mortgage Records in and for Yamhill County;

thence North 8° East along the West line of the said Robbins Tract to the intersection with the West line of the Southern Pacific Railroad;

thence Southeasterly along the West line of said Railroad to the Westerly extension of the North line of the Lois M. and Huron W. Clough Tract, also being the South Line of Yamhill Street of Whites Addition to Whiteson;

thence South 89° 22' East along the South line of said Yamhill Street and North line of said Clough Property to the Northeast corner of said Clough Property, said point also being at the center of County Road 450;

thence Northwesterly along the center of said County Road 450 to the intersection with the center of Market Road No. 34;

thence Easterly along the center of said Market Road No. 34 to the northeast corner of the John Stephens D.L.C.;

thence South 75°34' East 5.72 chains along said center of Market Road No. 34 to the East line of a tract conveyed to George Joseph Goss and Rosalin Goss and Veral Goss and Lena Goss recorded in Volume 154, Page 756, Deed and Mortgage Records;

thence North along the East line of said Goss tract 14.15 chains to the northeast corner thereof;

thence South 57° 45' West 5.72 chains along the north line of said Goss tract to a point 10.275 chains North of the Northeast corner of said Stephens Claim;

thence North to the corner of Sections of 3, 4, 9, and 10 in Township 5 South, Range 4 West;

thence North 17° East 18.25 chains;

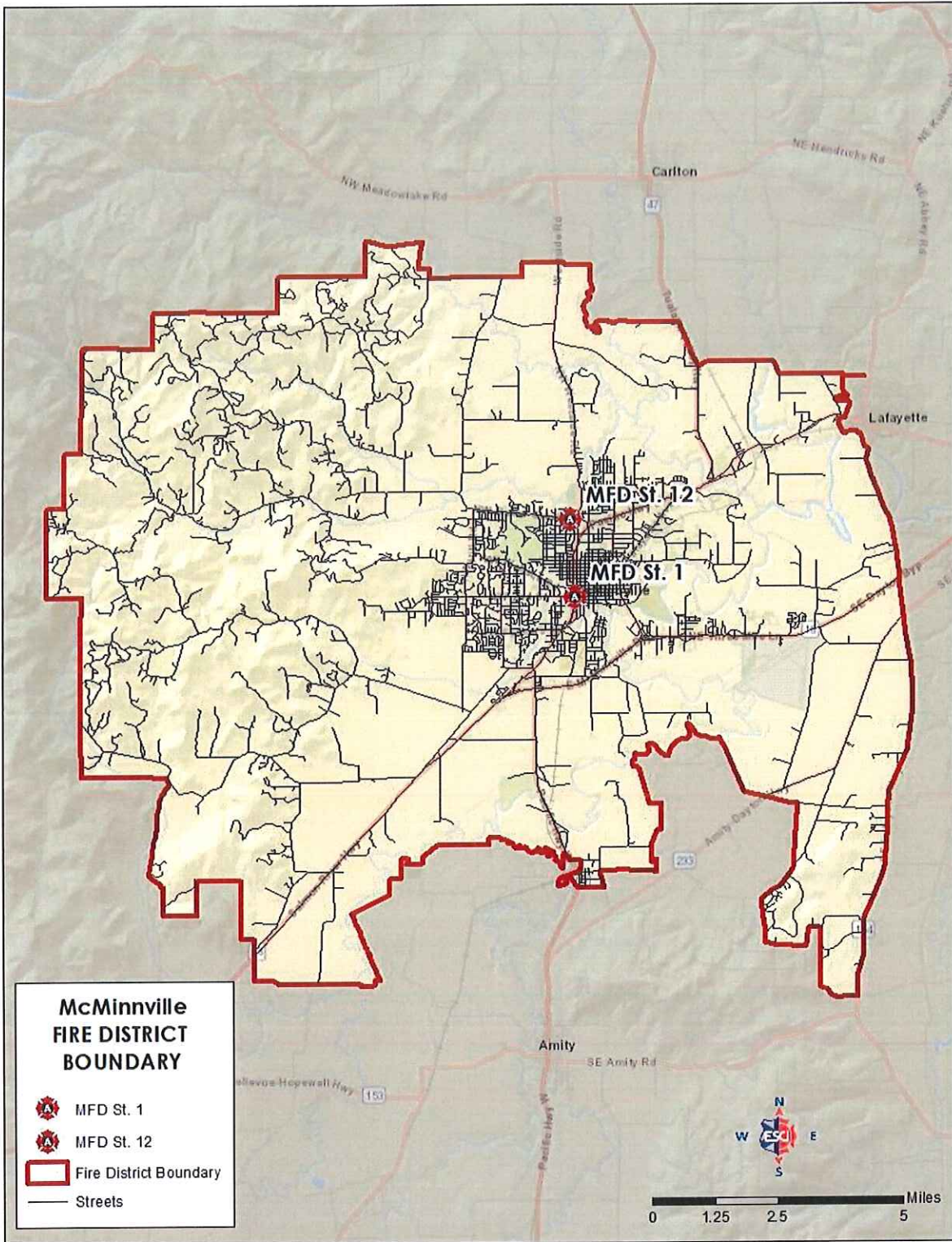
thence East 4.94 chains;

thence North 31.64 chains;

thence South 85° West 13.37 chains to a point on the East line of the Henry Hyde D.L.C that is North 16° West 8.00 chains from quarter section corner on the section line between Section 3 and Section 4, Township 5 South, Range 4 West of the Willamette Meridian;

thence North 18° 30' West along the East line of said Henry Hyde Claim to the Northeast corner thereof;

thence North 87°30' West 325.79 Feet along the North line of said Henry Hyde Claim to the southwest corner of U.S. Lot 8 in Section 33, Township 4 South, Range 4 West;  
 thence North 7 Chains along the line between U.S. Lots 2, 7, and 8 in said Section 33 to the Northeast corner of said U.S. Lot 2, said point being on the South line of the Ephriam Ford D.L.C.;  
 thence East along the along the South line of said Ephriam Ford claim 23.70 chains to the Southeast corner thereof;  
 thence North 12° West 18 chains more or less along the East line of said Ephriam Ford Claim to the center of the South Yamhill River;  
 thence Easterly with the meanders of said South Yamhill River downstream to a point which bears North 17°30' East from the Northwest Corner of the Cyrus B. Hawley D.L.C. No. 67, being also an angle corner in the Richard Boothe D.L.C.;  
 thence South 17°30' West to the aforementioned northwest corner of the Cyrus B. Hawley D.L.C.;  
 thence South 23° 30' East along the West line of said Hawley Claim to an angle corner of said Hawley Claim, being also an angle corner in the County Road 463;  
 thence Easterly along the center of said County Road 463 to the West line of the William Graham D.L.C. No. 55;  
 thence South 4° 30' West along the West line of said Graham Claim to the center line of Star Quarry Road, County Road No.421;  
 thence Southwesterly along the center of said County Road 421 to the West line of the Plat of Woodland Heights Subdivision;  
 thence South 5°50'58" East along the west line of said Woodland Heights Subdivision to the Southwest corner thereof, said point being on the South line of the James McDonald D.L.C.;  
 thence South 85°30' East along said South line of McDonald Claim 48.54 chains to the S. E. corner of said claim;  
 thence North 4°00' East along the East line of said McDonald Claim 20.0 chains to the N. W. corner of Lot #1 of Walnut Hill Plat;  
 thence East 15.0 chains to the N. E. corner of Lot #15 Walnut Hill Plat;  
 thence South along East line of Walnut Hill Plat 65.0 chains to center line of county road;  
 thence Easterly along center of county road 40.0 chains to the intersection of County road and Secondary State Highway;  
 thence Northerly and following center of Secondary State Highway No. 154 and county road approximately 8 miles to center of South Yamhill River;  
 thence Westerly up center of Yamhill river to a point in line with the Westerly boundary of the City of Lafayette produced Southerly;  
 thence Northerly to and with the Westerly boundary of the City of Lafayette to the Northwest corner of City of Lafayette;  
 thence Easterly along the Northerly boundary of the City of Lafayette to center of Market road from Lafayette to Chehalem Valley;  
 thence Northerly along center of Market road 30.0 chains more or less to point due East of beginning;  
 thence West 10.0 chains more or less to the point of beginning.



Economic Feasibility Statement  
for the Formation of  
McMinnville Fire District



## Fire District Economic Feasibility Statement

### FEASIBILITY OF CREATING A NEW FIRE DISTRICT

The McMinnville Municipal Fire Department currently provides fire protection, emergency medical, and fire prevention services within the McMinnville City limits and the McMinnville Rural Fire Protection District boundaries.

#### Fire Services Evaluation and Recommendations:

The City of McMinnville Fire Department was founded prior to 1900. The Department is overseen by an appointed Fire Chief who answers to the McMinnville City Manager and elected seven-member City Council. Since 1945, City of McMinnville Fire Department entered into an Intergovernmental Agreement (IGA), with McMinnville Rural Fire Protection District for fire protection and fire prevention services. Additionally in 2018, the fire department was asked to evaluate the feasibility to consolidate or merge the municipal department and the rural fire protection district. Emergency Service Consulting, Inc. (ESCI), completed a "Consolidation Feasibility Study" in December 2020, which can be found on both the City's and the District's websites. The feasibility study included an analysis of the delivery of fire, emergency medical, and prevention services throughout many Yamhill and Polk County fire agencies, including McMinnville Fire Department and McMinnville Rural Fire Protection District response areas.

Emergency Services Consulting International and fire district formation consultants identified several deficiencies in the existing fire districts and identified several critical issues which should be addressed by the local communities.

## Fire District Economic Feasibility Statement

The following summarizes some of the findings:

### Management and Governance:

The City of McMinnville Fire Department and McMinnville Rural Fire Protection District have outdated strategic plans or coordinated response plans that provide guidance for the future.

The separation of governing bodies creates management and budget inefficiencies and obstacles to implementing long-term improvements to facilities, fire apparatus, and equipment.

The City of McMinnville Fire Department and McMinnville Rural Fire Protection District funds are provided by a combination of City general fund dollars, ambulance fees, and miscellaneous revenues. The two fire agencies have been inadequately funded for many years resulting in a backlog of vehicle and equipment replacement, facility improvements and expansions (substations) and response personnel needs.

### Fire District Safety and Operational Deficiencies:

The City of McMinnville Fire Department provides all operational and prevention services to both agencies. They have been experiencing a decline in volunteer fire and emergency medical responders. As these numbers continue to decline, service demands have increased resulting in a decrease service level. Although the City of McMinnville Fire Department has had some increase in career staff, the financial constraints of the current funding model leave it very understaffed for number of calls for service.

Regulatory agencies and courts hold small rural fire districts to the same training standards and operational requirements as all other districts, large or small, providing the same level of service.

The City of McMinnville Fire Department and McMinnville Rural Fire Protection District do not meet national standards for service due to call volume, concurrent calls and staffing levels.

Pre-incident plans have not been developed for all target hazards.

### Fire District Facilities and Equipment:

The City of McMinnville Fire Department and McMinnville Rural Fire Protection District have one fire station and one substation. The main station is not reinforced for a seismic event and is subject to collapse during a major earthquake. The substation is a converted private residence and houses only an ambulance with a two-person crew.

The fire station has undersized or inadequate vehicle bays, equipment storage, training facilities, office, and meeting areas.

## Fire District Economic Feasibility Statement

The City of McMinnville Fire Department has several fire response apparatuses that are at the end of life and need replacement.

### Volunteer and Career Firefighters:

Volunteer response is inconsistent and slow.

The City of McMinnville Fire Department and McMinnville Rural Fire Protection District frequently rely on other neighboring fire districts to have enough responders to manage an emergency incident or fire adequately and safely.

McMinnville has followed the national and local trend with a decline in volunteer responders. This trend initiated in the 1980's and continues today.

Additional staff and volunteers are needed to have sufficient personnel for a moderate to high-risk incidents.

Recruiting and retaining individuals willing to volunteer as firefighters has become more difficult for many reasons but is partially due to the time commitments for training and response just to meet statutory requirements.

Most career firefighters live outside these jurisdictions and are not available for emergency callback.

The City of McMinnville Fire Department has one main station and one substation staffed with 24-hour career personnel coverage. The main station has a 24-hour fire engine that often is staffed with two firefighters which falls below national safety standards. It houses three ambulances with two personnel that are all crossed trained medics/firefighters each and the substation houses an ambulance with two personnel. McMinnville Rural Fire Protection District has no stations, vehicles, or staff (volunteer or career).

### Recommendations:

Consolidation of the Fire Department and Fire District will enhance operations, improve efficiencies and enable the new district to focus on providing excellent fire protection, emergency medical services, and fire prevention.

A new fire district, with a single governing body, is proposed as the most efficient and cost-effective way to organize fire, rescue, and emergency services for the new fire district area.

A new permanent tax rate will stabilize funding and is viewed as the fairest way to distribute costs among all property owners.

## Fire District Economic Feasibility Statement

### Proposed Fire District:

In May 2022, the City of McMinnville Fire Department and McMinnville Rural Fire Protection District agreed to pursue the creation of a new fire district to serve the citizens within the existing fire protection and emergency medical service areas of the City of McMinnville Fire Department and McMinnville Rural Fire Protection District.

The strategic planning group established the following goals to be accomplish under the district formation proposal:

1. Simplify governance of the district.
2. Create an effective organizational structure.
3. Establish a stable revenue base sufficient to pay for:
  - operations
  - training
  - maintenance of facilities and equipment
  - asset replacement
  - capital purchases
  - ensure adequate staffing.
4. Provide the highest level of service to the community in a cost-effective manner.

The districts evaluated several options to achieve these goals. The final recommendation was to dissolve the existing City municipal fire department and the rural fire protection district and form a new fire district. The proposal for the new fire district assumes the following:

The new “Fire District” will provide fire protection, emergency medical services, and fire prevention within the boundaries of a new fire district. It will also provide emergency medical services to Ambulance Service Area (ASA) #2.

The City of McMinnville Fire Department will cease to provide fire protection services on June 30, 2023.

The McMinnville Rural Fire Protection District will be dissolved and cease to exist on June 30, 2023, and will eliminate its permanent tax rate of \$0.9735 per thousand.

The new district would assume responsibility for the debt owed by the City of McMinnville Fire Department for apparatus and equipment already purchased.

All capital assets, excluding real property, in the existing City of McMinnville Fire Department will be transferred to the new district.

The City of McMinnville intends to convey all vehicles, equipment, supplies, fire department liabilities, ambulance billing revenue and Volunteer LOSAP Plan funds to the McMinnville Fire District. The City of McMinnville intends, upon the formation of the McMinnville Fire District, to lease the existing fire department

## Fire District Economic Feasibility Statement

main station to the McMinnville Fire District for \$1.00 per year for a minimum of ten (10) years, whereupon at that time the McMinnville Fire District will determine if the entire fire station is still needed by the Fire District for emergency services. If the District determines that it still requires the station for emergency services, the Fire District will have the option to extend the lease for additional increments of ten (10) years each, not to exceed a total lease term of one hundred (100) years.

The City of McMinnville will lease the asset (Fire Department Training area) to the McMinnville Fire District for \$1.00 per year for 100 years.

The McMinnville Rural Fire Protection Fire District intends to propose a Plan of Dissolution and Liquidation which would convey all assets and liabilities of the existing District to the McMinnville Fire District, ensuring the reserve funds are dedicated to substation construction that improves rural area service. The reserve accounts will be allocated according to their dissolution plan.

A new tax rate of \$2.00 per \$1,000 will apply to all property within the newly created district. With an estimated 2023-2024 taxable assessed value of \$4,036,526,867. The new district will generate 8,073,054 in property tax revenues during its first year of operation. Beginning balance, user fees, miscellaneous, contracted services and grants will provide an additional \$5,084,704 in revenue.

The advantages of creating a new fire district are:

One district operates the fire protection, fire prevention and emergency medical service. A new five-member board of directors will be elected in May 2023. The board will take office in July 2023.

Fire protection services will be provided by one agency to all properties within the new fire district boundaries.

Ambulance services will be provided by the new district to Yamhill and Polk Counties through Ambulance Service Area agreements.

Tax rates will be equalized for all properties within the district.

The revenues are sufficient to establish an equipment replacement program and capital reserve for the purchase of new fire stations, apparatus, and new safety equipment.

The revenues will pay for increasing response personnel, as well as administrative support staff including human resources, financial director, and information technology.

### BALLOT MEASURES FOR THE MAY 2023 ELECTION

The City Council from the City of McMinnville Fire Department and the Board of Directors of the McMinnville Rural Fire Protection District moved to proceed with a proposal to create the McMinnville Fire District and calling for an election in May 2023.

## Fire District Economic Feasibility Statement

The McMinnville Fire District will be formed if voters approve all the following ballot measures at the May 2023 election:

Shall McMinnville Fire District be formed, have a tax rate of \$2.00 per \$1,000 assessed value beginning fiscal year 2023-24, and assume responsibility for the McMinnville Fire Department debt of \$588,000.

Shall the McMinnville Rural Fire Protection District be dissolved? (Within the Rural Fire Protection District boundaries)

If either of the proposed ballot measures are not approved, then the new fire district is not formed.

### DESCRIPTION OF PROPOSED SERVICES AND FUNCTIONS TO BE PROVIDED BY THE PROPOSED DISTRICT (ORS 198.749(1))

The new district shall have all authority of a fire district pursuant to ORS Chapter 478.005 to ORS 478.965. Specifically, it is proposed that the district will perform both fire protection and emergency medical services. The new fire district will take over fire protection and emergency medical services for the entire district on July 1, 2023.

#### McMinnville Fire District Service Area

The district shall provide fire protection and emergency medical services for all inhabitants within the 95+/- square mile area of the new fire district. The permanent population for the district is approximately 39,896.

The district will provide fire protection, fire suppression, rescue, emergency medical, fire prevention, and public education services to approximately 6,000+/- commercial buildings. Fire and emergency medical services will be provided on Oregon State Highways including 12-miles Hwy. 18, 10-miles of Hwy. 99W, 3-miles of Hwy. 47, and 6-miles of Hwy. 233.

#### Fire Stations and Fire Apparatus

District offices will be in the existing City of McMinnville main fire station. The new district will have a total of two stations, with two of those stations having career personnel 24-hours per day. Plans include additional substations to improve response times throughout the new district.

#### Career Personnel and Volunteers

The new fire district will continue to heavily rely on its volunteers. All career and volunteer firefighters will meet State of Oregon and national standards in such areas as hazardous materials, rescue, emergency driving, safety equipment, first aid, building construction, incident command, and structural and wildland firefighting. The new district

## Fire District Economic Feasibility Statement

will add career staff to have a fully staffed 3-person engine and staffed 3-person truck company.

### Calls for Service:

The City of McMinnville Fire Department and McMinnville Rural Fire Protection District respond to over 9,000 fire and medical response calls per year. A large percentage of all calls are responses are for emergency medical incidents, traffic accidents, and fire related emergencies. McMinnville Fire District career and volunteer staff have firefighters who have received training in specialized areas, such as vehicle extrication, rope rescue, wildland firefighting, and all hazards.

The new district will continue to rely on volunteers to supplement the efforts of career staff. Many of the volunteer firefighters support the creation of a new district.

### RELATIONSHIP TO OTHER GOVERNMENTAL SERVICES (ORS 198.749(2))

McMinnville Fire District will continue to have on-going working relationships with a variety of local governments and surrounding fire districts within Yamhill and Polk Counties, Grand Ronde, the State of Oregon, and many other local agencies.

McMinnville Fire District will also maintain our working relationship with the Oregon Department of Forestry and Bureau of Land Management for all forest lands and wildfire protection areas within the boundaries of the new fire district.

The petitioners believe the new fire district is a viable solution to ensure that adequate facilities, equipment, and staffing for fire protection and emergency medical services are available on a continued basis to all inhabitants within the fire district boundaries. The petitioners further believe the dissolution of the existing fire department and district and the formation of a new fire district will simplify government by eliminating unnecessary duplication of services. The creation of a new, larger fire district, offers an opportunity for greater control over the growth and direction of fire and emergency medical services to the inhabitants of the district. The elected board of directors will make all decisions for the new district. Providing fire protection, prevention, and emergency medical services will be the board's only concern.

### BUDGET (ORS 198.749(3))

During its first year of operation, the annual operating budget for the district will be approximately \$13,473,935. The primary sources of revenue in the first year will be from property taxes and ambulance fees. Other general fund revenues will come from fire call response fees, interest earnings, donations, and miscellaneous revenues. A loan from the City of McMinnville will be used to cover the gap until property tax payments in December 2023.

The district proposes to use property taxes as a stable, long-term funding source to pay for the majority of its personnel, materials and services, and capital expenses. The district

## Fire District Economic Feasibility Statement

proposes to establish a permanent tax rate of \$2.00 per \$1,000 of assessed valuation. Collection of property taxes will begin in fiscal year 2023-2024. The assessed values (Measure 50 taxable value) of all property within the district are estimated to be \$4,036,526,867, in FY 2023-24. Based upon this value, the district will levy \$8,073,054 in property taxes. Other general fund revenues in the amount of \$5,084,704 will make up the difference between the operating budget and property tax receipts. See Appendix 1 & Appendix 2 for detailed first-year and third-year proposed budget.

### Personnel Services:

The proposed budget anticipates the new district will continue with the current administrative staff consisting of a Fire Chief, Operations Chief, Fire Marshal, and Training Chief for the first three years as the fire district continues its path toward solidifying the organizational chart of the new fire district. The two agencies currently have joint policies, administration, operations, training, and logistics. The two agencies utilize the same volunteer association and will to continue to operate status quo.

In its first fiscal year, the new district will be composed of the following personnel:

#### **Career Staff**

- 1 - Fire Chief
- 1 - Assistant Chief of Operations
- 1 - Assistant Chief of Administration/Fire Marshal
- 1 - Assistant Chief of Training
- 1 - Office Manager
- 1 - Operations Support Specialist
- 1 - Deputy Fire Marshal
- 1 - Support Services Tech
- 3 - Battalion Chiefs
- 3 - Captains
- 3 - Apparatus Operators/Engineers
- 31 - Career Firefighter EMT/Paramedics
- 2 - Paramedic only

#### **Volunteers**

32-Volunteers

Personnel costs for the new district will be approximately \$8,658,208 in 2023-2024. This cost includes the additional funding for three support staff for the first year of operation. The work of these positions may be covered with professional services contracts until positions are filled.

### Materials and Service:

Materials and service expenses will average \$2,132,339 per year. They include general office supplies, equipment supplies for the fire trucks and rescue vehicles, replacement



## **Fire District Economic Feasibility Statement**

equipment for firefighters, maintenance of vehicles, safety equipment, training, and general administrative expenses for insurance and audit. Legal and other professional services.

### Capital Reserves and Debt Service:

The proposed budget is created with capital reserve funds to address future facility, apparatus, and major equipment improvements for the new district. The ESCI report identified significant deficiencies in fire apparatus, structural deficiencies, location, or capacity problems in all McMinnville fire stations.

The capital reserve fund will be established in FY 2023-2024 to finance fire apparatus, vehicles and major pieces of equipment. Annually there will be a \$250,000 transfer from the general fund into the capital reserve fund. The transferred funds will be placed in the capital reserve fund to purchase future apparatus, fire equipment, and substation development. The proposed district budget anticipates the district will purchase apparatus per its apparatus replacement plan. Please see Appendix 3.

### Existing Debt:

The new district is required to assume all fire protection related debt obligations of the City of McMinnville Fire Department and McMinnville Rural Fire Protection District. The City of McMinnville has an outstanding municipal loan for \$588,000 for fire apparatus. No other long term debt obligations will be assumed by the new district.

### Contingencies:

The budget includes a general fund operating contingency to cover unanticipated operating expenses. An amount between 4% to 5% of the estimated annual personnel and materials and services costs is recommended. The new district will be placing \$250,000 per year into to an account until an adequate fund is established. User fee revenues help offset the estimated operating contingency need. Any unspent contingency and capital reserve funds will be retained for use in future years to support vehicle replacement, fire station improvements, and improved fire protection and emergency medical services.

### Budget Summary:

In summary, the proposed budget demonstrates the economic feasibility of the proposed district because it establishes a stable annual revenue base for the district by establishing a permanent tax rate of \$2.00, which will be used exclusively for fire protection and emergency medical services within the community.

The proposed budget will:

- set aside capital reserves to replace for fire apparatus and meet future facility needs.
- allow the district to hire additional staff

## Fire District Economic Feasibility Statement

- provide sufficient annual revenues to pay for operating and maintenance expenses of the existing fire protection and emergency medical services currently provided by McMinnville Fire Department and McMinnville Rural Fire Protection District.
- provide sufficient annual revenues to retire existing debt of McMinnville Fire Department.

# Appendix 1

Name	License	Year	Make	Model	Replacement	
					Year	Cost
Remount Ford E450	E279643	2019	FORD	E450 VAN	2029	\$220,000.00
E450 Medic (pdx)	E235626	2005	FORD	E350 VAN	2022	\$250,000.00
Chev Medic	E266011	2015	CHEVROLET	EXPRESS 4500	2025	\$210,000.00
E450 Medic (pdx)	E235628	2005	FORD	E350 VAN	2024	\$250,000.00
Chev Medic	E254685	2012	CHEVROLET	EXPRESS 4500	2022	\$190,000.00
Ford E450	E269253	2016	FORD	E450 VAN	2026	\$210,000.00
Ford E450	E279613	2018	FORD	E450 VAN	2028	\$210,000.00
E1	E266040	2015	PIERCE	SABER-PUC	2040	\$525,000.00
E14	E224914	2003	H&W	Spartan 2000-2 EE2502	2033	\$515,000.00
E15	E194462	1994	H&W	Spartan 1000-EE2-006	2024	\$500,000.00
E16	E276252	1996	BME	BME 2160548	2030	\$450,000.00
BR1	E279643	2019	FORD	F550 PICKUP 4wd	2049	\$189,000.00
BR11	E249084	2010	FORD	F550 PICKUP 4wd	2040	\$185,000.00
SQ 1	E212130	2000	H&W	SPARTAN 100-EE2-823	2045	\$225,000.00
TR1	E266013	2015	PIERCE	ARROW XT	2045	\$950,000.00
WT1	E266039	2005	Freighliner	Converted into Tanker	2045	\$200,000.00
WT10	E168598	1985	International	F2275	2023	\$175,000.00
Car 12/C1	E258914	2013	CHEVROLET	TAHOE 4wd	2033	\$48,000.00
Car 13/DC12	E227119	2003	CHEVROLET	TAHOE 4wd	2022	\$45,000.00
Car 17	E227118	2003	CHEVROLET	TAHOE 4wd	2024	\$40,000.00
Car 1/DC1	E261887	2015	CHEVROLET	TAHOE 4wd	2028	\$48,000.00
Car 18 / FM1	E279605	2019	CHEVROLET	SILVERADO	2039	\$50,000.00
Car 14/FM-12	E235800	2006	FORD	F150 PICKUP 4wd	2030	\$42,000.00
UT1	E196145	1995	DODGE	RAM 3500 PICKUP 4wd		
C-12		2020	FORD	EXPLORER AWD	2040	\$450,000.00
Trailer	E237767	2006		MCI		
Trailer	FIT			FIT		
Trailer	Flatbed	1987		FlatBed		
Trailer	Smoke House			Smoke House		
Trailer	Conflag	2019		Conflag Trailer		
Trailer	Car Hauler	1993		Popcorn Wagon		

**YAMHILL COUNTY, OREGON /  
CITY OF MCMINNVILLE, OREGON  
INTERGOVERNMENTAL AGREEMENT**

This agreement ("Agreement") is between YAMHILL COUNTY ("County"), a political subdivision of the State of Oregon and the CITY OF MCMINNVILLE ("City"), a municipal corporation of the State of Oregon.

The parties mutually covenant and agree as follows:

**1. Effective Date and Duration.**

This Agreement is undertaken pursuant to ORS Chapter 190.010 and shall be effective on the date it is fully executed. It will terminate on December 31, 2023, unless modified by mutual agreement of the parties or earlier terminated pursuant to Section 10 of this Agreement.

**2. Statement of Purpose.**

Based upon the Petition of City, County has taken action to initiate formation proceedings for creation of a new fire district serving the area of the existing McMinnville Rural Fire District and the City of McMinnville. Formation proceedings will be undertaken in accordance with ORS 198.795 to 198.820. The purpose of this Agreement is to assure that the all out of pocket costs incurred by County in connection with such district formation proceedings and election shall be fully and promptly reimbursed in full by City to County.

**3. Reimbursement of District Formation Costs.**

By executing this Agreement City agrees to promptly reimburse County for all out of pocket expenses incurred by County in connection with McMinnville Fire District formation proceedings.

**4. Indemnity and Hold Harmless.**

Consistent with this agreement and subject to the limitations imposed by the Constitution of the State of Oregon and the Oregon Tort Claims act, City and County shall each defend, save, hold harmless, and indemnify the other party from all claims, suits, injuries, actions of whatsoever nature resulting from or arising out of such party's actions relating to the McMinnville Fire District formation proceedings.

**5. No Third-Party Beneficiaries.**

County and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are

individually identified in this Agreement and expressly described as intended beneficiaries of the terms of this Agreement.

**6. Successors in Interest.**

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

**7. Termination.**

- a. County and City, by mutual written agreement, may terminate this Agreement at any time.
  
- b. Either City or County may terminate this Agreement in the event of a material breach by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

**8. Governing Law**

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

**9. Severability**

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

**10. Merger Clause**

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

IN WITNESS WHEREOF, the parties have executed, or caused to be executed on the date indicated by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

**YAMHILL COUNTY**

**CITY OF MCMINNVILLE**

Approved:

Approved:

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Mayor, City of MCMINNVILLE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Interim City Attorney

Attest: \_\_\_\_\_  
City Recorder

Staff Memorandum

To: McMinnville City Council  
From: Walt Gowell, Interim City Attorney  
Re: Technical Correction to Ordinance 5119  
Date: September 14, 2022

Council:

In connection with the filing of the Ballot Title for Measure 36-215 with the County Clerk it was determined that the Ballot Title Caption included three too many words to comply with State Election Law requirements. I am requesting that the Council give favorable consideration to approval of a technical correction Ordinance amending Ordinance 5119 relating to Measure 36-215 that will appear on the Ballot on November 8, 2022.

The Ballot title caption set out in Ordinance 5119 contains three too many words to comply with the requirements of state law limiting ballot captions to ten words. I am recommending that you amend Ordinance 5119 by deleting the words “the city of” from the caption thereby bringing the Ordinance’s caption into strict compliance with election law requirements.

The change in language to “*within McMinnville*” instead of “*within the city of McMinnville*” in my opinion is merely grammatical, and does not change the meaning or intent of the caption.

**ORDINANCE NO. 5124**

**AN ORDINANCE AMENDING SECTION 3 OF ORDINANCE 5119 DECLARING A TEMPORARY BAN ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURE OF PSILOCYBIN PRODUCTS, REFERRING SUCH ORDINANCE TO THE VOTERS AND DECLARING AN EMERGENCY.**

**RECITALS:**

**WHEREAS**, on August 2, 2022, the City Council approved Ordinance No. 5119 **DECLARING A TEMPORARY BAN ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURE OF PSILOCYBIN PRODUCTS, REFERRING SUCH ORDINANCE TO THE VOTERS AND DECLARING AN EMERGENCY**; and

WHEREAS, Section 3 of Ordinance No. 5119 contains a technical error in the caption of the Ballot Title by exceeding the ten-word limit thereof by three words; and

WHEREAS, the City Council desires to amend Ordinance 5119’s Ballot Title caption to delete the words “the city of” in order to correct such technical error.

**NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF CARLTON ORDAINS AS FOLLOWS:**

**Section 1.** The Ballot Title caption set forth in Section 3 of Ordinance No. 5119 is hereby amended to read as follows:

“Prohibits psilocybin-related businesses within McMinnville. Prohibition sunsets after two years.”

**Section 2. Emergency Declaration.** This ordinance being necessary for the peace, health and safety of the City, an emergency is hereby declared, and this ordinance shall effective immediately upon its passage and adoption by the City Council.

Passed by the McMinnville City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022\_\_\_ by the following votes:

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

Nayes: \_\_\_\_\_

Abstained: \_\_\_\_\_

DATED and signed by the Mayor this \_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Recorder





**City of McMinnville  
Administration**  
230 NE Second Street  
McMinnville, OR 97128  
(503) 435-5702  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** September 21, 2022  
**TO:** Jeff Towery, City Manager  
**FROM:** Walter Gowell, Interim City Attorney  
**SUBJECT:** Ziplly Telecommunications Franchise

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### **Report in Brief:**

This is the consideration of Ordinance 5125. **AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO ZIPLY FIBER NORTHWEST, LLC (“GRANTEE” OR “FRANCHISEE”).**

### **Background:**

During January of 2022, Ziplly Fiber applied to the City for approval of an additional non-exclusive telecommunications franchise allowing Ziplly Fiber to provide telecommunications services (not cable tv services) to McMinnville residents and businesses as an alternative service option.

### **Discussion:**

This is a separate franchise from the former Verizon/Frontier not Ziplly Cable TV franchise currently in place.

The City Council has previously approved telecommunications franchises for Astound Broadband and CoastCom Inc. using substantially similar franchise agreements in a format previously approved by City Staff and the City Council.

The City’s existing format for a Telecommunications Franchise Ordinance has been utilized. Some provisions have been updated to comply and be consistent with superseding Oregon Public Utility Commission requirements and regulations for telecommunication franchises generally; including: approval of franchise transferers by the PUC; removal or transfer of ownership of facilities upon termination of the franchise operations; non-discrimination in the extension of additional service facilities, and provision for application of the franchise fee to internet services if and when such is allowed by applicable federal and state law.

**Attachments:**

1. Draft Ordinance 5125.

**Fiscal Impact:**

The fiscal impact will consist of additional franchise fee revenue to the General Fund. The amount of such impact is unknown at this time.

**Recommendation:**

Staff recommends that the City Council consider the draft ordinance and a possible first reading of the ordinance as presented.

**ORDINANCE NO. 5125**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO ZIPLY FIBER NORTHWEST, LLC (“GRANTEE” OR “FRANCHISEE”).**

RECITALS:

1. Whereas, pursuant to Federal law, State statutes, and City Charter and local ordinances, the City is authorized to grant non-exclusive franchises to occupy “public rights-of-way” as defined by McMinnville Municipal Code (“MMC”) 3.18 (sometimes referred to as “Public Ways” in this Franchise), in order to construct, operate, and maintain a telecommunications system within the municipal boundaries of the City of McMinnville (“Franchise Area” or “Service Area”).

2. Whereas, the City has found that the Franchisee meets all lawful requirements to obtain a franchise, and therefore approves the application;

3. Whereas, both the City and the Franchisee expressly reserve all rights they may have under law to the maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this agreement.

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

**Section 1. Definitions**

For the purpose of this Franchise Agreement, terms, phrases, words, and abbreviations shall have the meanings ascribed to them in Chapter 3.18.010 of the McMinnville Municipal Code (“MMC”) except as otherwise defined herein.

**Section 2. Grant of Authority**

2.1. Grant. The City of McMinnville (“Franchising Authority” or “City”) hereby grants to the Grantee a nonexclusive right to conduct a general telecommunications business within the City and nonexclusive right to place, erect, lay, maintain and operate in, upon, under and over public rights of way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors (collectively, facilities) for the transmission of light, electricity, or other impulses for telecommunications purposes, including the provision of telecommunications, private line, and Internet access services (collectively, telecommunications services), subject to the terms and conditions stated herein. Such facilities may be strung upon poles and other fixtures above ground or may be laid underground in pipes and conduits or otherwise protected. This ordinance does not grant Grantee authority to use its facilities to provide any non-telecommunications services. The facilities installed pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.

2.2. Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance. In the event of a conflict between Chapter 3.18 of the MMC in effect as of the date of this Franchise and this Franchise, Chapter 3.18 of the MMC shall control, and the Grantee is subject to the lawful exercise of the police power of the Franchising Authority, including all provisions of MMC Chapter 3.18. In the event of a conflict between this Franchise and any amendment to MMC Chapter 3.18 effective after the date of this Franchise, this Franchise shall control. The City will administer this Franchise in a uniform, non-discriminatory manner with respect to other telecommunications franchises.

2.3. Non-Exclusive. The Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful organizations to provide telecommunications or telecommunications services within the Franchise Area.

2.4. Term. The Franchise granted hereunder shall be for a term of ten (10) years commencing on the effective date of the acceptance of this ordinance by Grantee, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5. Franchise Review. Upon the commencement of sale of telecommunications services within the city, and within sixty (60) days of the third anniversary or any of the subsequent anniversaries of the commencement of the sale of telecommunications services within the city, the Franchising Authority may, but is not required to, conduct a limited review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment that the Grantee continues to effectively serve the public in light of new developments in telecommunications technology together with related developments in telecommunications law and regulations, and community needs and interests. Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review. If after, completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the Franchise, the Franchising Authority, with the express written agreement of the Grantee, shall modify the obligations and extend the term of the Franchise accordingly.

### **Section 3. Standards of Service**

#### **3.1. Conditions of Occupancy.**

3.1.1. The telecommunications system installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways. Prior to the commencement of any construction, extension, or relocation of Grantee's telecommunications services in the Public Ways, Grantee agrees to obtain the necessary and required approvals from the Franchising Authority, including a right-of-way permit and payment of applicable fees.

3.1.2. Grantee's services shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, or any other property of the City, or with any

other pipes, wires, conduits, cables or other facilities that may be in the Public Way by or under the City's authority. Grantee and City shall work together during any design process affecting the Public Way to establish suitable locations for Grantee's facilities, provided however, that all new installations serving new development shall access new lots and parcels through utility easements delineated on the approved partition or subdivision plat for such development.

3.2. Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the telecommunications services there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. In the event Grantee fails to restore the Public Way to a condition reasonably comparable to the condition existing immediately prior to such disturbance, the Franchising Authority may restore or cause to restore such Public Way at the expense of Grantee; provided, that the Franchising Authority provides Grantee with reasonable notice to restore and grantee fails to restore such Public Way within the time period given by the franchising authority.

3.3. Relocation at request of the Franchising Authority. Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services, provided that:

3.3.1. The City Engineer or designee first makes a reasonable determination that such relocation, removal, disconnection, protection or support is convenient or necessary for a public purpose or a City improvement project;

3.3.2. The City provides Grantee with at least forty-five (45) days prior written notice describing the schedule for such relocation, removal, disconnection, protection or support; provided, however, that in the event of an Emergency, the City shall only be obligated to give Grantee written notice as soon as practicable under the circumstances; and

3.3.3. The City provides Grantee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Grantee's Facilities so that Grantee may relocate its Facilities in other City Rights-of-Way or other location in order to accommodate such improvement, provided however, that nothing in this section shall require City to obtain or guarantee the availability of an alternative location or compensate Grantee therefor.

3.4. Failure to Timely Relocate. The City and Grantee recognize that time is of the essence of this Franchise Agreement and that the City will suffer financial loss and public

detriment if Grantee fails to relocate its property when requested by the City pursuant to the schedule provided by the City, 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 projects are not completed on time due to Grantee's delay. Accordingly, instead of requiring any such proof, the City and Grantee agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount of one hundred dollars (\$100) per day for each and every day that expires after the relocation schedule provided by the City. 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.

3.5. Trimming of Trees and Shrubbery. Subject to acquiring prior written permission of the Franchising Authority or the McMinnville Water and Light Commission, as applicable, including any required permit, the Grantee shall have the authority, but not the obligation, to trim trees that overhang a Public Right of Way of the Grantor so as to prevent the branches of such trees from coming in contact with its facilities, in accordance with applicable codes and regulations.

3.6. Safety Requirements. Construction, operation, and maintenance of the telecommunications services shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations, in compliance with all adopted building, construction safety and fire codes and standards and the National Electric Safety Code. The telecommunications services shall not endanger or unreasonably interfere with the safety of Persons or property.

3.7. Underground Construction. In those areas where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its telecommunications services underground. The Franchising Authority shall not incur any construction or expense in the event Grantee is lawfully required by the Franchising Authority to place its distribution facilities underground as provided in this Section 3.8.

3.8. Placement of Facilities Underground; Access to Open Trenches. Should it become a matter of public interest and convenience that a certain portion of the Grantee's aerial facilities and aerial facilities of other uses of the Public Ways be placed underground, the Franchising Authority shall conduct a hearing to determine whether the underground placement of such facilities will serve said public interest and convenience. The Franchising Authority shall provide written notice of this hearing to Grantee, who shall be afforded a meaningful opportunity to comment at the hearing.

## **Section 4. Regulation by the Franchising Authority**

### **4.1. Franchise Fee; Regulation of Rates**

4.1.1. The Grantee shall pay to the Franchising Authority a franchise fee equal to seven percent (7%) of annual gross revenue, as that term is defined in ORS 221.515, and as may be amended, provided however, that in the event internet services are provided by Franchisee to its customers, and in the further event that City shall be authorized by applicable state or federal law, or by final binding judicial order or decree to charge a franchise fee on such services, "Gross Revenues" shall include revenue derived from the sale of internet services delivered through the Telecommunications Network, such revenue shall, for the purposes of this ordinance and franchise be considered received from exchange access service and shall be included in Franchisee's Gross Revenues

4.1.2. The franchise fee payment shall be due quarterly and payable within forty-five days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. The percentage amount of the franchise fee may change, at the discretion of the Franchising Authority, if provided for by new federal law and upon ninety days' notice to Grantee by Franchising Authority.

### **4.2. Review of Franchise Fee Payments.**

4.2.1. Franchising Authority or its designee may conduct a financial review or other inquiry in relation to payments made by Grantee no more than once every two years during the Term. As a part of the review process, Franchising Authority or Franchising Authority's designee may inspect Grantee's books of accounts relative to Franchising Authority at any time during regular business hours and after thirty (30) calendar days' prior written notice.

4.2.2. All records deemed by Franchising Authority for Franchising Authority's designee to be reasonably necessary for such review shall be made available by Grantee in a mutually agreeable format. Grantee agrees to give its full cooperation in any review and shall provide responses to inquiries within thirty (30) calendar days of written request. Grantee may provide such responses within a reasonable time that is mutually agreeable, after the expiration of the response period above, so long as Grantee has made a good faith effort to procure any such tardy response.

4.2.3. If the results of any review undertaken which included gross revenue from the sales of telecommunications services within the city, indicate that Grantee (1) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, then the Franchising Authority shall pay the costs of the review. If the results of the review indicate Grantee underpaid the franchise fee by more than five percent (5%), then Grantee shall pay the reasonable, documented, independent third-party costs of the review, which costs shall be limited to seven thousand five hundred dollars (\$7,500) if any review discloses an underpayment of the franchise fee in any amount, Grantee shall pay Franchising Authority the amount of the underpayment, together with interest computed from the applicable due date, at a rate per annum equal to the highest Bank Prime Rate during the period of delinquency plus one percent (1%). The Bank Prime Rate shall mean the prime lending rate as it appears in the Wall Street Journal during the period of delinquency.

4.2.4. Franchising Authority may regulate rates for the provision of telecommunications services and equipment as expressly permitted by federal or state law.

4.3. Inspections for Compliance. The Franchising Authority may inspect the telecommunications services, during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of Grantee, in order to determine compliance with standards imposed by applicable federal or state law. Except in emergency circumstances, such inspections may be undertaken only after giving no less than five (5) days advance notice thereof and after giving Grantee an opportunity to be present during such inspections. In the event such inspection determines that Grantee's telecommunications services has substantially failed to comply with the applicable standards, the cost of the inspection shall be borne by the Grantee. Except in emergency circumstances, the Franchising Authority agrees that such inspection shall be undertaken no more than annually, and that the results thereof shall be provided to Grantee.

4.4. Renewal of Franchise.

4.4.1. The Franchising Authority and the grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal for the grantee's Franchise shall be governed by and comply with MCC Sections 3.18.445 through MMC Sections 3.18.455.

4.4.2. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.



4.5. Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority pursuant to MCC 3.18.460. Notwithstanding the foregoing, Grantee may, without the City's consent, pledge the Franchise to its lenders solely for the purpose of securing indebtedness, except that the City's consent shall be required before the lender assumes the Franchise. Any transfer of Franchisee's assets to another carrier which is approved by the Oregon Public Utilities Commission will receive automatic approval by the City.

## **Section 5. Books, Records and Maps**

5.1. Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location or to provide the Franchising Authority to view certain books and records in electronic format. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential under applicable federal and state law, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

5.2. Maps. Grantee shall maintain "as built" drawings for the facilities at Grantee's business office, and make them available to the Franchising Authority for inspection during normal business hours upon written request. "As built" drawings shall be updated as changes occur in the facilities. Upon written request of the Franchising Authority, Grantee shall provide the Franchising Authority copies of strand and trench maps showing the location of Grantee's lines within the Public Ways within sixty (60) days of request for the same. The Franchising Authority recognizes that the information contained in such maps is confidential and proprietary, and remains the property of the Grantee. To the extent provided under the Oregon Public Records Law, the Franchising Authority shall safeguard such information from public law.

## **Section 6. Insurance and Indemnification**

6.1. Insurance Requirements. The Grantee shall maintain in full force and effect at its own cost, and expense, during the term of the Franchise, insurance as required by MCC 3.18.540.

6.2. Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend, the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury

(including accidental death), which arise out of Grantee's construction, operation, or maintenance of its facilities.

6.3. Bonds and Other Surety. Except as may be required for construction purposes by MMC Chapter 3.18, no bond or other surety shall be required of the Grantee at the inception of the Franchise. In the event Grantee is required by the Franchising Authority to obtain a bond or other surety in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days in advance written notice thereof stating the specific reasons for such requirement.

## **Section 7. Enforcement and Termination of Franchise**

7.1. Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2. The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3. Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(c) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing, which specifies the time, place and purpose of such hearing, and provide Grantee the opportunity to be heard.

7.4. Enforcement. Subject to applicable federal and state law and pursuant to MMC 3.18.480, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

7.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

7.4.2. Commence an action at law of monetary damages or seek other equitable relief; or

7.4.3. In the cases of a substantial default of material provision of the Franchise, seek to revoke the franchise in accordance with Section 7.5.

7.5. Revocation. Should the Franchising Authority seek to revoke the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

7.5.1. At the designated hearing, Grantee shall be provided a fair opportunity for full participation including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to call the relevant officials, agents, employees or consultants of the Franchising Authority as permitted by law, to compel the testimony of other persons as permitted by law. A complete record consisting of all written exhibits, minutes and an audio tape shall be made of the hearing by the Franchising Authority.

7.5.2. Following the hearing, the Franchising Authority shall determine whether the franchise shall be revoked. If the Franchising Authority determines that the franchise shall be revoked, Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

7.5.3. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's facilities is attached, as well as unavailability to materials and/or qualified labor to perform the work necessary.

7.6.1. Furthermore, the parties hereby agree that it is not the Franchise Authority's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance

would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the Franchise Authority and/or Subscribers.

- 7.7. Whenever Franchisee intends to permanently discontinue use of part or all its Telecommunications System, Franchisee shall submit a completed application to the City Engineer for approval, describing the Facility or Facilities involved and the date on which the Franchisee intends to discontinue its use. Franchisee shall, unless proscribed therefrom by current statute, rule or regulation of the Oregon Public Utilities Commission, remove the Facility or request that the City permit the Facility to remain in place, which permission shall be in the sole discretion of the City. If Franchisee is permitted to abandon its Facilities in place as evidenced by written consent from the City, Franchisee shall, at the request of City, submit to the City a deed or other form of documentation acceptable to the City Attorney transferring ownership of such Facilities in the Rights-of-Way to the City, effective upon acceptance thereof by the City.
- 7.8. After the transfer of ownership is complete, the Franchisee shall have no further obligation over the Facilities. Notwithstanding Franchisee's request that any such Facility remain in place, the City Engineer may require the Franchisee to remove the Facility from the Rights-of-Way, or modify the Facility, or a combination of both, in order to protect the public health and safety, or otherwise serve the public interest. Franchisee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until the City consents to Franchisee's abandonment, or Franchisee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another person or entity having authority to construct and maintain such Facilities, Franchisee shall be responsible for all necessary repairs and relocations of the Facilities, as well as restoration of the public Rights-Of-Way, in the same manner and degree as if the Facilities were in active use. Franchisee shall also retain all liability for such Facilities.

## **Section 8. Miscellaneous Provisions**

8.1. Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2. Entire Agreement. When accepted in accordance with Section 8.6, this Franchise, as supplemented by the requirements of MMC Chapter 3.18 constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be valid if mutually agreed to in writing by the parties.

8.3. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority of the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed

in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Manager  
City of McMinnville  
230 NE Second Street  
McMinnville, OR 97128

Notices or responses to the Grantee shall be addressed as follows:

Ziplay Fiber Northwest, LLC  
Attn: Jessica Epley, VP-Regulatory and External Affairs  
135 Lake Street S, Ste 1000  
Kirkland, WA 98033  
Legal@ziplay.com

8.4. Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph term or provision hereof, all of which will remain in full force and effect for the term of the franchise.

8.6. Acceptance of Franchise. This ordinance does not grant a franchise unless and until it is accepted in writing by Franchisee within sixty (60) days after its enactment.

Passed by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by the following votes:

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

Nays: \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
CITY RECORDER

\_\_\_\_\_  
CITY ATTORNEY



**ACCEPTANCE OF FRANCHISE ORDINANCE**

**TO THE CITY COUNCIL OF THE CITY OF McMinnville, Oregon:**

ZiPLY Fiber Northwest, LLC, hereby unconditionally accepts the right, privilege and franchise granted unto it, its successors and assigns, by that certain franchise passed by the City Council of the City of McMinnville, Oregon, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, designated as Ordinance No. \_\_\_\_\_ and entitled:

“AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO ZIPLY FIBER NORTHWEST, LLC (“GRANTEE” OR “FRANCHISEE”).”

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**ZIPLY FIBER NORTHWEST, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Receipt of within and foregoing acceptance by ZiPLY Fiber Northwest, LLC is hereby acknowledged on this \_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF McMinnville, Oregon**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attested: \_\_\_\_\_  
City Recorder