

City Council Meeting Agenda**Tuesday, February 14, 2023****5:30 p.m. – Executive Session (CLOSED TO THE PUBLIC)****7:00 p.m. – City Council Regular Meeting****SECOND EXECUTIVE SESSION – to immediately follow the URA Meeting (CLOSED TO THE PUBLIC)**

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, February 13th** to claudia.cisneros@mcminnvilleoregon.gov*
- *If appearing via telephone only please sign up prior by **12 p.m. on Monday, February 13th** by emailing the City Recorder at claudia.cisneros@mcminnvilleoregon.gov as the chat function is not available when calling in*
- *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:*

mcm11.org/live

CITY COUNCIL REGULAR MEETING:

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/87304769147?pwd=Z25icDJRTy8zaXljWGVDaU1oT2JQZz09>

Zoom ID: 873 0476 9147

Zoom Password: 263778

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

ID: 873 0476 9147

5:30 PM – EXECUTIVE SESSION – (NOT OPEN TO THE PUBLIC)

1. CALL TO ORDER
2. **EXECUTIVE SESSION pursuant to ORS 192.660 (2)(a):** To consider the employment of a public officer, employee, staff member or individual agent.
3. ADJOURNMENT

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

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. LIFESAVING AWARD
4. HEART HANDS PRESENTATION

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. 2023-07**: A Resolution authorizing the approval of an intergovernmental agreement between the city of McMinnville and the city of Lincoln City Oregon regarding Municipal Judge appointments.
- b. Consider the request from Moonlite Candles & Gifts LLC dba NW Cru for Commercial License, OLCC Liquor License located at 325 NE Evans Street.

8. RESOLUTION

- a. Consider **Resolution No. 2023-08**: A Resolution Authorizing the City Manager to sign a contract with McMinnville Economic Development Partnership in the amount of \$245,000 for Coordination of Sustainable, Localized Workforce Programs in association with McMinnville’s Business Recovery and Resiliency Grant.
- b. Consider **Resolution No. 2023-09**: A Resolution authorizing the City Manager to sign an Annexation Agreement with Anders Johansen, property owner, for the future annexation of Tax Lots R4421 00900 and 01200.
- c. Consider **Resolution No. 2023-10**: A Resolution adopting a supplemental budget for fiscal year 2022-2023 and making supplemental appropriations for the General Fund, Wastewater Services Fund and Information Services Fund for approved American Rescue Plan Act (ARPA) projects and Repealing Resolution No. 2023-05.

9. ADJOURNMENT OF REGULAR MEETING

SECOND EXECUTIVE SESSION- IMMEDIATELY FOLLOWING THE MCMINNVILLE URBAN RENEWAL AGENCY MEETING - (NOT OPEN TO THE PUBLIC)

1. CALL TO ORDER

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

3. ADJOURNMENT OF EXECUTIVE SESSION



STAFF REPORT

DATE: February 14, 2023
TO: City Council
CC: Arnold Poole, Municipal Court Judge and Jason Carbajal, Municipal Court Supervisor
FROM: Jennifer Cuellar, Finance Director
SUBJECT: Municipal Judge IGA with Lincoln City

Strategic Priority and Goal



CITY GOVERNMENT CAPACITY

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

Report in brief

The McMinnville Municipal Judge works part time for the City of McMinnville and also serves other cities as their municipal court judge.

The purpose of this Intergovernmental Agreement (IGA) is for each city to acknowledge awareness that Judge Poole is serving more than one jurisdiction and to protect the Judge from allegations of "dual office holding" under the Constitution.

Discussion

In the Circuit Court for Columbia County, a sitting municipal court judge has been challenged as being in violation of the dual office holding prohibition in the Oregon Constitution. An Intergovernmental Agreement pursuant to ORS 221.335 will protect the Judge from similar allegations.

The IGA with the City of Lincoln City establishes that court staff will work together to address any scheduling concerns that may arise from Judge Poole working for more than one court. As a practical matter, the standing dates for court sessions in McMinnville and Lincoln City are different so we are not anticipating difficulties in maintaining McMinnville's court calendar or the need for much coordination in this area.

The City of McMinnville employment contract with the Judge is for part time services and does not prohibit him from working as a judge in other jurisdictions.

Options for Council Action

Approve the IGA – this will protect the Judge from the issue of dual office holding as well as the City of McMinnville to the extent that the organization would be exposed to liability in this area. (staff recommendation)

Decline to enter into the IGA – this will increase risk to the Judge, and potentially the city as well.

Attachments

1. Resolution No. 2023-07
2. IGA between the Cities of McMinnville and Lincoln City

RESOLUTION NO. 2023 - 07

A Resolution authorizing the approval of an intergovernmental agreement between the city of McMinnville and the city of Lincoln City Oregon regarding Municipal Judge appointments.

RECITALS:

The City of McMinnville employs a municipal judge part-time by contract.

The City of Lincoln City desires to employ the same person to be its part-time municipal judge.

The schedules of the two courts allow that the activities of each will not generally come into conflict with each other. In the event that scheduling issues arise, the municipal court supervisors will resolve them to the mutual satisfaction of both courts.

An intergovernmental agreement pursuant to ORS 221.335 will protect the judge and jurisdictions from being in violation of the dual office holding prohibition in the Oregon Constitution.

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

1. That entry into an agreement with the City of Lincoln City acknowledging that both jurisdictions employ the same person to act as Municipal Court Judge in both jurisdictions is approved.
2. The Mayor is hereby authorized and directed to sign the agreement between the City of Lincoln City and the City of McMinnville.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a meeting held the 14th day of February 2023 by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February 2023.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

**INTERGOVERNMENTAL AGREEMENT
FOR MUNICIPAL COURT JUDGE
The City of Lincoln City, Oregon and the City of McMinnville, Oregon**

This Agreement is entered into this _____ day of February, 2023 by and between **THE CITY OF LINCOLN CITY**, Oregon, and **THE CITY OF MCMINNVILLE**, Oregon.

RECITALS

- A. ORS 190.010 permits units of local government to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has authority to perform; and
- B. ORS 221.355 expressly provides that one City may enter into an intergovernmental agreement with another City for the provision of judicial services; and
- C. ORS 221.355 further provides that such exercise of jurisdiction under an intergovernmental agreement shall not constitute the holding of more than one office in violation of Article II, Section 10 of the Oregon Constitution; and
- D. The City of McMinnville employs Judge Arnold W. Poole (“the Judge”) as its Municipal Court Judge; and
- E. The City of Lincoln City is recruiting for a new Municipal Court Judge and is interested in hiring Judge Poole; and
- F. In the Circuit Court for Columbia County, Oregon, a sitting municipal court judge has been challenged as being in violation of the dual-office holding prohibition in the Oregon Constitution. CIS is defending; and
- G. An Intergovernmental Agreement pursuant to ORS 221.335 will protect the Judge from allegations of “dual office holding” under the Constitution.

NOW, THEREFORE, in consideration for the mutual covenants contained herein the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The recitals set forth above are true and correct and are incorporated herein by this reference.
2. **DURATION.** [ORS 190.020(1)(e)]. This Agreement shall be effective upon approval and execution by both City of Lincoln City and the City of McMinnville. The term of this Agreement shall commence January 24, 2023 and shall terminate on December 31, 2027, unless administratively extended in writing as provided for herein. The Lincoln City Manager may extend this Agreement by twelve (12) months by indicating in writing to the City of

McMinnville that an extension of the Agreement is sought under the same terms and conditions of this Agreement. The extension shall be effective upon receipt of a document from an authorized representative of the City of McMinnville that the City of McMinnville agrees to the extension under the same terms and conditions.

3. **FUNCTIONS OR ACTIVITIES.** [ORS 190.020(1)]. The City of McMinnville shall make available to the City of Lincoln City, its employee, Arnold W. Poole (the Judge) to act as Municipal Court Judge for the City of Lincoln City on those dates and at those times as are agreed upon between the Judge and the City of Lincoln City, provided such dates and times do not conflict with the City of McMinnville Municipal Court proceedings. The Judge's calendar shall be accordingly coordinated through the respective Municipal Court Clerks. Generally, in McMinnville, Municipal Court is conducted every Wednesday. Generally, Lincoln City will hold Court on two Tuesdays during the month (about 16 hours per month).

The McMinnville Municipal Court Judge providing services to Lincoln City pursuant to this Agreement shall have all judicial jurisdiction, authority, powers, functions, and duties of the Municipal Court of the City of Lincoln City under the Charter and laws of Lincoln City with respect to any and all violations of the Charter, Oregon Statutes, or City ordinances.

4. **PAYMENT.** [ORS 190.020(1)(a)]. The City of Lincoln City will pay the Judge directly as a contract employee, at an agreed upon salary for a minimum sixteen (16) hours per month with an agreed upon hourly rate for additional work. In addition, Lincoln City will report hours worked for Lincoln City to PERS and make any required PERS payment, if any, based on the Judge's eligibility based on the aggregate number of hours worked in different jurisdictions. Lincoln City shall not be responsible to pay PERS benefits for hours worked in other jurisdictions. Notwithstanding the above, it is the Judge's responsibility to ensure that all employers are reporting / paying PERS should his aggregate hours of service qualify. No payment shall be required to the City of McMinnville from the City of Lincoln City, nor to the City of Lincoln City from the City of McMinnville. The City of McMinnville and the City of Lincoln City reserve the right to negotiate and amend their respective and separate employment contracts and /or terms with the Judge without the consent of the other City.

5. **REVENUE.** [ORS 190.020(1)(b)]. All fines, costs, assessments, receipts, and forfeited security deposits collected shall be paid to the respective prosecuting city, as shall be disbursed as required by statute. No revenues are contemplated to be shared. There are no revenues expected to be derived pursuant to this Agreement which need to be apportioned between the parties.

6. **PERSONNEL.** [ORS 190.020(1)(c)]. No employees will be transferred pursuant to this Agreement but the Parties consent and agree to the Judge performing judicial services under this Agreement for both jurisdictions. The parties will separately contract / employ the Judge under terms and conditions to be agreed upon by the respective parties. With the exception of hours of PERS eligible work, the parties are not required to share information.

The City of McMinnville and the City of Lincoln City remain subject employers under ORS Chapter 656, and shall procure and maintain current valid workers compensation insurance coverage for all subject workers throughout the period of this Agreement. This Agreement does not change the status of any employee, contractor or officer of the respective Cities.

7. **REAL OR PERSONAL PROPERTY.** [ORS 190.020(1)(d)]. There shall be no transfer of title or possession to any real or personal property pursuant to this Agreement.

8. **TERMINATION.** [190.020(1)(f)]. This Agreement may be terminated by mutual consent by both parties; or unilaterally by either party at any time, upon ninety (90) days notice in writing, and delivered by certified mail or personal service. Such termination shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination.

9. **INDEMNITY / HOLD HARMLESS.**

9.1 Subject to the limitations of the Oregon Constitution, and the Oregon Tort Claims Act, the City of Lincoln City shall hold harmless, defend and indemnify the City of McMinnville from any and all claims, demands, damages or injuries that anyone may have or assert by reason of any error, act or omission of Party for claims arising out of or in any way associated with the Judge in the performance of the Judge's duties as Municipal Court Judge for the City of Lincoln City. Subject to the limitations of the Oregon Constitution, and the Oregon Tort Claims Act the City of McMinnville shall hold harmless, defend and indemnify the City of Lincoln City from all claims, demands, damages or injuries that anyone may have or assert by reason of any error, act or omission of Party for claims arising out of or in any way associated with the Judge in the performance of the Judge's duties as Municipal Court Judge for the City of McMinnville. The Parties shall not be held responsible for any claims, actions, costs, judgments or other damages, directly and proximately caused by the criminal or wanton acts of the other Party's employees or the negligence of such employees. Such indemnification shall also cover claims brought against any Party under state or federal employees' compensation laws. It is the intention of the parties, to be solely responsible for the actions of the Judge acting with full judicial power of the respective Cities within or for their local jurisdiction pursuant to this Agreement. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

9.2 A Party nor any attorney engaged by a party may not defend a claim in the name of another party, nor purport to act as legal representative of the other Party without

consent of the other Party's attorney. Parties may not settle any claim on behalf of another Party without the approval of the other Party.

9.3 The Parties agree that they are not agents of each other and are not entitled to statutory indemnification and defense under ORS 30.285 and ORS 30.287

10. **METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS.** All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

City of Lincoln City
Attn: Daphnee Legarza, City Manager
P.O. Box 50
Lincoln City, Oregon 97367
Phone: 541-996-1200
Fax: 541-994-7232
dlegarza@lincolncity.org

City of McMinnville
Attn: Jeff Towery, City Manager
230 NE 2nd Street
McMinnville, Oregon 97128
Phone: 503-434-7302
Jeff.Towery@mcminnvilleoregon.gov

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made to the names and addresses of the person to whom notices, bills, and payments are to be given by providing notice pursuant to this paragraph.

11. **MERGER.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in two (2) duplicate originals, either as individuals, or by their officers, thereunto duly authorized.

Dated this _____ day of February 2023.

City of Lincoln City, Oregon

City of McMinnville, Oregon

By: _____
Daphnee Legarza, City Manager
[per LCMC 4.04.010.B.]

By: _____
Remy Drabkin, Mayor

Approved as to Form:

Approved as to Form:

City Attorney

City Attorney

Liquor License Recommendation

BUSINESS NAME / INDIVIDUAL: Moonlite Candles & Gifts LLC dba: NW Cru
BUSINESS LOCATION ADDRESS: 325 NE Evans Street
LIQUOR LICENSE TYPE: Commercial

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: N/A
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

Page 1 of 4

Check the appropriate license request option:

New Outlet | Change of Ownership | Greater Privilege | Lesser Privilege | Additional Privilege

Select the license type you are applying for.

More information about all license types is available [online](#).

Full On-Premises

- Commercial
- Caterer
- Public Passenger Carrier
- Other Public Location
- For Profit Private Club
- Nonprofit Private Club

Winery

- Primary location
- Additional locations: 2nd 3rd 4th 5th

Brewery

- Primary location
- Additional locations: 2nd 3rd

Brewery-Public House

- Primary location
- Additional locations: 2nd 3rd

Grower Sales Privilege

- Primary location
- Additional locations: 2nd 3rd

Distillery

- Primary location
- Additional tasting locations: 2nd 3rd 4th 5th 6th

Limited On-Premises

Off Premises

Warehouse

Wholesale Malt Beverage and Wine

INTERNAL USE ONLY

Local Governing Body: After providing your recommendation, return this application to the applicant.

LOCAL GOVERNING BODY USE ONLY

City/County name:

Date application received: *2/2/2023*

Optional: Date Stamp

- Recommend this license be granted
- Recommend this license be denied

Printed Name

Date



STAFF REPORT

DATE: February 14, 2023
TO: Mayor and City Councilors
FROM: Jody Christensen, Special Projects Manager
SUBJECT: Resolution No. 2023-08: Professional Services Agreement Contract Award – McMinnville Business Recovery and Resiliency Plan Goal #2 Coordination of Sustainable, Localized Workforce Programs

STRATEGIC PRIORITY & GOAL:



ECONOMIC PROSPERITY

Provide economic opportunity for all residents through sustainable growth across a balanced array of traditional and innovative industry sectors.

OBJECTIVE/S: Improve systems for economic mobility and inclusion

Report in Brief:

This action is the consideration of Resolution No. 2023-08 to award a professional services agreement contract in the amount of \$245,000 to the McMinnville Economic Development Partnership (“MEDP”) for the 8212 State American Rescue Plan Act (“ARPA”) funded McMinnville Business Recovery and Resiliency Goal #2 Coordination of Sustainable, Localized Workforce Programs.

Background:

During the 2021 Oregon Legislative session, Representative Ron Noble (HD-24) worked with the McMinnville Economic Development Partnership (“MEDP”) and the City of McMinnville to secure \$750,000 in HB 5006 for the McMinnville Business Recovery and Resiliency Plan (“Plan”).

The Plan invests in priority projects identified to help McMinnville businesses recover from the ongoing effects of the COVID-19 pandemic and become more resilient in the future. The Plan addresses the following issues: 1) Recruiting and Retaining Workforce; 2) Trained Workforce; and 3) Business Resiliency. The Plan has four goals: Goal 1 - Develop Business Assistance Grants for Workforce Recruitment and Retention; Goal 2 - Coordination of Sustainable, Localized Workforce Programs; Goal 3 - Develop a Loan Forgiveness Program with Micro Enterprise Services of Oregon (“MESO”); and Goal 4 - Develop Bilingual Business Training/Mentorship Program.

Discussion:

The Coordination of Sustainable, Localized Workforce Programs Informal Request for Proposals (“RFP”) was released on Wednesday, November 9, 2022.

On Tuesday, December 13, 2022, one proposal was received for the Coordination of Sustainable, Localized Workforce Programs. The proposer is as follows:

- The McMinnville Economic Development Partnership (MEDP)

The proposer completed and met the City’s requirements. A detailed breakdown of the received proposal is on file in the Planning Department. A review panel with representatives from the McMinnville Economic Vitality Leadership Council (1), Business Oregon (1), and city staff (2) independently reviewed and scored the proposals.

				TOTAL	AVERAGE
73	71	80	80	304	76

The panel recommended that MEDP should provide clarifications on the proposed scope of work regarding the tasks and outcomes. On February 2, 2023, city staff received an updated document that meet the intent of the RFP and the review committee’s request for clarifications on the scope of work. These documents have been added to the original proposal and are on file in the Planning Department.

The project is expected to start approximately March 1, 2023, and be meaningfully underway by June 30, 2024. The project should be completed by December 31, 2026.

Attachments:

1. Resolution 2023-08
2. Professional Services Contract

Fiscal Impact:

The contract will be funded by the State ARPA \$750,000 Business Recovery and Resiliency grant received by the City in 2022.

Recommendation:

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to enter into a professional services agreement contract with the McMinnville Economic Development Partnership for 8212 State ARPA McMinnville Business Recovery and Resiliency Plan Goal #2 Coordination of Sustainable, Localized Workforce Programs.

RESOLUTION NO. 2023-08

A Resolution Authorizing the City Manager to sign a contract with McMinnville Economic Development Partnership in the amount of \$245,000 for Coordination of Sustainable, Localized Workforce Programs in association with McMinnville’s Business Recovery and Resiliency Grant.

RECITALS:

Whereas, the Coordination of Sustainable, Localized Workforce Programs, addresses the ongoing local workforce impacts of COVID-19; and

Whereas, at 2:00 pm on December 13, 2022, one proposal was received for the Coordination of Sustainable, Localized Workforce Programs; and

Whereas, the proposal from McMinnville Economic Development Partnership, met all of the proposal requirements and should be considered the responsible and responsive proposal; and

Whereas, Funding for this project is the State American Rescue Plan Act Fund grant.

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

1. That the City of McMinnville will enter into a contract with the McMinnville Economic Development Partnership for the coordination of sustainable, localized, workforce programs in an amount not to exceed \$245,000 as part of a state grant that the City of McMinnville received for Business Recovery and Resiliency programs after the impact of COVID..
2. The City Manager is hereby authorized and directed to sign the contract per Exhibit A.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of February, 2023, by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February 2023.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

CITY OF McMinnville
MCMINNVILLE BUSINESS RECOVERY AND RESILIENCY PLAN
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) for McMinnville Business Recovery and Resiliency Plan Goal 2 – Coordination of Sustainable, Localized Workforce Programs (“Plan Goal 2 Project”) is made and entered into on this ____ day of _____ 2023 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and the McMinnville Economic Development Partnership (MEDP) an Oregon [state] 501 (c) 6[corporation/limited liability company, etc.] (hereinafter referred to as “Consultant”).

RECITALS

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

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

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

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

AGREEMENT

Section 1. Scope of Work

Consultant shall diligently perform the services according to the requirements and deliverable dates identified in the Scope of Work for the Project, attached hereto as **Exhibit 1** and incorporated by reference herein (the “Services”).

Section 2. Term

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than _____, 20____, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

The agreement shall as of June 30, 2024, be fully contracted and meaningfully underway with all project work completed by the date of December 31, 2026.

The following terms have the meanings assigned below.

Amount: \$245,000.00.

Obligation Deadline: June 30, 2024.

Final Reporting Deadline: December 31, 2026

Section 3. Consultant's Services

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

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing; however, no additional compensation will be provided due to a Force Majeure event. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

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

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

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed two hundred and forty-five thousand dollars (\$245,000), for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

Disbursement. Upon execution of this Contract and satisfaction of all conditions precedent, the City shall disburse the funds to Consultant in reimbursement (i.e., reimbursement) payments from the date of a signed agreement.

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

4.3. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe

benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 5. City’s Rights and Responsibilities

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

Section 6. City’s Project Manager

The City’s Project Manager is Jody Christensen. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 7. Consultant’s Project Manager

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

Section 8. Project Information

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

Section 9. Reporting Requirements

The required Project reporting will be executed as outlined in **Exhibit 3**. If the scope of work is deemed complete by the City, the last annual report received will be used for future City ARPA required reporting.

The City of McMinnville’s logo and the following statement in English and Spanish will be included in all written and presentation materials:

“The McMinnville Business Recovery and Resiliency Plan (“Plan”) is a State American Rescue Plan Act (“ARPA”) funded project secured by Rep. Ron Noble (HD-24) in the 2021 Oregon Legislative Session. The Plan addresses the ongoing

issues related to the impacts of the COVID-19 pandemic. In addition, the Plan supports the community's MacTown 2032 strategic plan goal of Economic Prosperity. This Plan is intended to have enduring value.”

GENERAL CONDITIONS

A. Contractual Relationship

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing a contractual relationship of any sort between the parties. Consultant shall at all times be responsible its improvements, obligations to contractors and subcontractors, employees, and to comply with all requirements.

B. Hold Harmless

Consultant shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of Consultant's performance or nonperformance of the services or subject matter called for in this Agreement.

C. Insurance & Bonding

Consultant shall carry sufficient general liability, auto liability, professional errors and emissions and workers' compensation insurance coverage until the completion of the project to protect the City and City contract assets from loss due to negligence, theft, fraud and/or undue physical damage, and shall provide to City an acceptable Certificate of Insurance coverage in force. City shall be named as an additional insured party on such liability insurance policies, and consultant shall provide an insurance endorsement so providing.

D. Grantor Recognition

Consultant shall insure recognition of the role of the City in providing services through this contract. All activities, facilities and items utilized pursuant to this contract shall be prominently labeled as to funding source.

E. Amendments

The City and Consultant may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Consultant from its obligations under this Agreement.

This Agreement shall be subject to all federal, state or local governmental statutes,

guidelines, and policies, including amendments made after execution of this Agreement which are binding upon the City. If any change in such code or regulation results in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, the parties shall agree to such modification or the Agreement shall be terminated.

F. Suspension or Termination by City

The City may suspend or terminate the Agreement, in whole or in part, if Consultant materially fails to comply with any term of the Agreement, or with any of the rules, regulations or provisions referred to herein. In addition, the City may declare Consultant ineligible for any further participation in City contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe Consultant is in noncompliance

If this Agreement is terminated, Consultant shall immediately pay back the City the total disbursements received to date under this contract. If not paid within 24 hours of termination, all amounts due shall bear interest at 9% per annum. In any proceeding to recover funds owing under this section, or for any other breach of this agreement by the Consultant, the City of McMinnville shall be entitled to recover from the Consultant its costs and attorney fees incurred.

G. Successors and Assigns

This agreement shall be binding on the parties' successors and assigns.

H. Consultant Termination

Consultant may terminate this Agreement effective upon delivery of written notice to the City under any of the following conditions:

- a. City fails to make payments due under this Agreement, or
- b. City fails to perform the provisions of this Agreement, and within ten (10) days or such longer period as Consultant may authorize, after receipt of written notice from Consultant, fails to correct such failure.

I. Rights After Termination

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

J. No Other Parties

City and Consultant are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.

K. Severability

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

L. Governing Laws

The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Yamhill City. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. Notwithstanding the above, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon.

M. Counterparts

This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

N. Entire Agreement

This Agreement, Project application and documents provided by Consultant to City prior to the execution of the Agreement, and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that Part of that or any other provision.

O. Waiver of Certain Damages

Except as provided elsewhere herein, neither party will be liable for incidental, consequential or other direct damages arising out of or related to this Agreement,

regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither party will be liable for any damages or any sort arising solely from the termination of this Agreement in accordance with its terms.

P. Limitation on Assignment

Consultant may not assign or transfer its interest in this Agreement without the prior written consent of City and any attempt by Consultant to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. City's consent to Consultant's assignment or transfer of its interest in this Agreement will not relieve Consultant of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

Q. Financial Records

Consultant shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Consultant must maintain any other records, whether in paper or other form, pertinent to this Agreement in such a manner as to clearly document Consultant's performance. All financial records and other records, whether in paper, electronic or other forms, that are pertinent to this Agreement, are collectively referred to as "Records." Consultant acknowledges and agrees City and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Consultant must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

R. Time of the Essence

Time is of the essence in Consultant's performance of the Project activities under this Agreement.

S. Indemnification

If Consultant does not complete the Project in accordance with this Agreement, the Consultant shall pay back all of the Funds to City. Any Funds disbursed to Consultant but not used for the approved Project must be returned to City. In the case of a violation of Section 603(c) of ARPA regarding the use of Funds, previous payments shall be subject to recoupment by City, or the US Treasury ("Treasury") as provided in Section 603(e) of ARPA.

T. Required ARPA Grant Contract Provisions

All federally or State of Oregon required terms and provision relating to the MCMINNVILLE BUSINESS RECOVERY AND RESILIENCY PLAN GRANT

FUNDS are hereby incorporated into this Agreement by this reference, and shall govern over any other term or provision in the Agreement which is not consistent therewith.

The Contract is subject to the terms and conditions contained in the American Rescue Plan Act (ARPA) funding provisions attached hereto as “City of McMinnville-American Rescue Plan (ARPA) Contract Addendum” which terms and conditions shall govern over and supersede any inconsistent term or provision contained in the Contract. The addendum is Exhibit 4.

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

CONSULTANT:

CITY:

CITY OF McMINNVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

City Attorney
City of McMinnville, Oregon

- Exhibit 1: Scope of Work
- Exhibit 2: Budget
- Exhibit 3: Reporting Requirements
- Exhibit 4: City of McMinnville – American Rescue Plan Act (APRA) Contract Addendum

Exhibit 1: MEDP's Scope of Work

Except from the MEDP Proposal dated December 13, 2022

MEDP has a unique understanding of the need for coordination of sustainable, localized workforce programs to address the ongoing impacts of the COVID-19 pandemic on businesses in McMinnville. During the immediate response to the pandemic, the Stable Table (MEDP, City of McMinnville, Chamber of Commerce and Downtown Association) worked together to communicate federal, state, and local requirement for Personal Protective Equipment (PPE) while also providing resources and connection to programs like the Paycheck Protection Program (PPP) (See Attached - **Navigating Covid Business Relief Program List**). MEDP also held outreach engagements and surveys to collect data regarding the impact of Covid on our Business Community. (See Attached – **MEDP Business Retention Covid 19 Impact Survey Report**) .

While Stable Table partners maintained organizational specific business contact lists, the lack of a comprehensive McMinnville business registry limited the reach of communication. The result was a labor-intensive process of phone calls, social media, and e-newsletter platforms to communicate critical connections to **resources**. The pandemic emphasized a fundamental gap: a comprehensive and equitable system to reach the business community.

In response to the ongoing pandemic impacts, Representative Ron Noble (HD-24) secured \$750,000 in HB 5006 for the McMinnville Business Recovery and Resiliency Plan("Plan") during the 2021 Oregon Legislative session. The Plan funded investments in priority projects identified to support recovery for McMinnville businesses from the ongoing effects of the COVID-19 pandemic and develop resiliency to future economic impacts.

The Plan focuses on:

1. Recruiting and Retaining Workforce
2. Trained Workforce
3. Business Resiliency

This proposal addresses coordination of sustainable, localized workforce programs for McMinnville's business sector, including tourism-oriented businesses, retail, and advanced manufacturing. Implementation of this proposal will formalize a methodical, accessible database of businesses, workforce resources, and training programming to help business and industry address the lack of skilled workforce due to the impacts of the pandemic. MEDP will provide the city and its partners an intentional workforce development system that provides sustainable data-informed workforce solutions for McMinnville's business community.

Outcomes (City/DAS) COMPLIANCE: Addresses negative economic impacts	Approach	Action Plan (How – High Level)	Anticipated Implementation Partners
Implementation of a data-informed and equitable action plan.	Assess Build	<ul style="list-style-type: none"> Hire Workforce Development Coordinator (FTE) to develop and implement the workforce action plan. Develop a comprehensive business database to identify workforce needs/trends and inform the action plan and support data collection. Analyze data, identify gaps in service, and track workforce outcomes. 	City of McMinnville MWP – Equity Chamber, MDA, Visit Mac, MEDP Unidos Community Justice
Development of programs that increase access to a trained workforce.	Build Integrate	<ul style="list-style-type: none"> Develop a directory of current workforce programming. Implement a data-informed action plan to assess current workforce programming to increase access to a trained workforce and connects underserved populations with workforce opportunities. Analyze and develop programs (if needed) for reemployment, training, and support services to populations most in need. GOOW** by connecting businesses with an emerging, underemployed, underrepresented, disengaged workforce. 	Unidos MEDP Chemeketa WWP MSD – Rural SD Linfield MWP
Marketed programs to employers and the community at large.	Engage Inform	<ul style="list-style-type: none"> Create bilingual and culturally appropriate marketing materials to communicate with our business community. Engage partners in an approach to equitable involvement in developing the workforce database. 	City of McMinnville MWP Unidos Grand Ronde Tribe Chamber, MDA, Visit Mac, MEDP
Development of an apprenticeship program with the proposed partner, Chemeketa Community College.	Build	<ul style="list-style-type: none"> Utilize data to inform the development of apprenticeship programs to meet business needs and data trends. Build industry-recognized certification programs if data indicates the need. 	Chemeketa MSD – Rural SD MEDP, Businesses
Documented outreach to (the city provided) 1800+ McMinnville businesses and the community, including underserved and underrepresented businesses and residents most impacted by the COVID-19 pandemic.	Integrate Inform	<ul style="list-style-type: none"> Report progress based on the grant reporting schedule to the city. Communicate reporting results and outcomes to partners/stakeholders. Document communication and outreach to demonstrate access to workforce programming, participation rates, and community engagement. 	City Program Manager City Council MEVLC Chamber, MDA, Visit Mac, MEDP
Ensure project sustainability	All Stages	<ul style="list-style-type: none"> Analyze workforce data to ensure diversity, equity, and inclusion of businesses and workforce. (Assess) Utilize data to enhance existing programs and create innovative workforce programming for data-identified gaps (Build). Use the proposed methodology (Project Approach) to monitor engagement and communication and develop continuity of service processes and systems (Integrate). Evaluate current and proposed workforce programming and processes (Inform) 	City of McMinnville MWP & sub-groups Chemeketa Chamber, MDA, Visit Mac, MEDP Unidos Community Justice

**Grow Our Own Workforce

Exhibit 2: Budget

Grant Name	City of McMinnville Business Recovery and Resiliency Coordination of Sustainable, Localized Workforce Program	
Organization	McMinnville Economic Development Partnership	
Budget Category	Amount	
Personnel: Workforce Coordinator (FTE, 24-month contract)	\$150,000.00	
Operations, Supplies & Materials	\$5,500.00	
Workforce Database Platform (Customer Relationship Management - Salesforce)	\$25,000.00	
Inclusive and Equitable Outreach and Marketing	\$40,000.00	
Total Project Costs	\$220,500.00	
Administrative Costs	\$24,500.00	
	10%	
TOTAL BUDGET	\$245,000.00	

Exhibit 3: Reporting Requirements

The Consultant will submit quarterly, annual, and final reports. These reports will be used to document progress and results of the McMinnville Business Recovery and Resiliency Plan. The City will use the reported information to submit data to the Oregon Department of Administrative Services to meet the requirements of the State American Rescue Plan Act (ARPA) program, which is the funding source for the McMinnville Business Recovery and Resiliency Plan.

Quarterly Reporting Requirements

The Consultant will provide **written electronic quarterly reports** submitted to the City's Project Manager.

Report Format: No more than one-page

Reports Due: Starting from the point of the contract on or before:

- March 31, 2023
- June 30, 2023
- September 30, 2023
- December 31, 2023
- March 31, 2024
- June 30, 2024

These reports will include:

- 1) Expenditure Report
 - a. Quarterly Obligation Amount
 - b. Quarterly Expenditure Amount
 - c. Projects
 - d. Primary Location of Project Performance
 - e. Detailed Expenditures
- 2) Project Status Update
 - a. Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.
 - b. Progress since last report including project outputs and achieved outcomes.
 - c. Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risk to the overall project goals.
 - d. Document community outreach/engagement and/or other positive local news stories.

Annual Reporting Requirements

The Consultant will provide **annual written electronic project update reports** submitted to the City's Project Manager.

Report Format: No more than three (3) pages

Reports Due: Starting from the point of the contract on or before:

- June 30, 2023 (could be combined with Quarterly Report)
- June 30, 2024 (could be combined with Quarterly Report)
- December 31, 2025

This report will include:

- a. Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.
- b. Progress since last report including project outputs and achieved outcomes.
- c. Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risk to the overall project goals.
- d. Document how the project is promoting equitable outcomes.
- e. Document how the project is engaging with the community.
- f. Document community outreach/engagement and/or other positive local news stories.

Final Reporting Requirement

The Consultant will provide the **final written electronic report** submitted to the City's Project Manager. This report should include final statements on the work completed.

Format: No more than three (3) pages

Due: On or before December 31, 2026.

This report will include:

- a. Status of project: completed.
- b. Final project outputs and achieved outcomes.
- c. Document how the project is promoting equitable outcomes.
- d. Document how project is engaging with the community.
- e. Document community outreach/engagement and/or other positive local news stories.

Exhibit 4: City of McMinnville – American Rescue Plan Act (ARPA) Contract Addendum

Notice: The contract or purchase order to which this addendum is attached is made using federal assistance provided to the City of McMinnville by the US Department of Treasury under the American Rescue Plan Act (“ARPA”), Sections 602(b) and 603(b) of the Social Security Act, Pub. L. No. 117-2 (March 11, 2021).

The following terms and conditions apply to you, the contractor or vendor, as a contractor of the City of McMinnville, according to the City’s Award Terms and Conditions signed on May 11, 2021; by ARPA and its implementing regulations; and as established by the Treasury Department.

1. Equal Opportunity. Contractor shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Contractor hereby agrees to comply with the following, when applicable. Accordingly, the Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

(2) Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(3) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(4) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation,

proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(5) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(7) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(8) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Suspension and Debarment. (applies to all purchases.) (A) This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor hereby verifies that none of Contractor's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

2. The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by the City of McMinnville. If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government

may pursue available remedies, including but not limited to suspension and/or debarment.

4. The Contractor agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended. (Applies to all purchases.) Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

I. *Purchases over \$100,000 - Contractors must sign the certification on the last page of this addendum*

4. Access to Records. (A) The Contractor agrees to provide the City of McMinnville, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means or to copy excerpts and transcriptions as reasonably needed, and agrees to cooperate with all such requests.

2. The Contractor agrees to provide the Treasury Department or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

3. No language in this contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.

5. Rights to Inventions Made Under a Contract or Agreement. Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable implementing regulations.

6. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333) Where applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704 of the Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 3702 of the Act, each contractor shall be required to:

(1) Overtime requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she

is employed on such work to work in excess of forty hours in such a workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such a workweek.

(2) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. McMinnville shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

7. **Clean Air Act & Federal Water Pollution Control Act** (applies to purchases of more than **\$150,000.**)

(A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(B) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(C) The Contractor agrees to report each violation of the Clean Air Act and the Water Pollution Control Act to the City of McMinnville and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(D) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in w8. Federal Water Pollution Control Act

(E) (1) The contractor agrees to comply with all applicable standards, orders, or regulations

issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
(F) (2) The contractor agrees to report each violation to the (NAME OF CITY) and understands and agrees that the (NAME OF CITY) will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office.

(G) (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funds.

(H) Federal Water Pollution Control Act

(I) (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(J) (2) The contractor agrees to report each violation to the (NAME OF CITY) and understands and agrees that the (NAME OF CITY) will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency regional office.

8. Prohibition on certain telecommunications and video surveillance services or equipment (Huawei and ZTE)

Contractor is prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by **Huawei Technologies Company or ZTE Corporation** (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

9. Buy USA - Domestic Preference for certain procurements using federal funds.

Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards

including all contracts and purchase orders for work or products under this award. For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

10. Procurement of Recovered Materials: (applies only if the work involves the use of materials)

(A) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(B) Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(C) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury.”

12. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles.

13. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

14. Termination

(a) Termination by the City For Convenience. The City for its convenience, in its sole and absolute discretion, may terminate this Contract:

- (i) if the Contractor has breached any provision of this Contract (including without limitation reporting requirements in Schedule A hereto) or has failed to comply with any applicable state or federal law or regulation applicable to any Project and/or any Grant; or
- (ii) if any representation or warranty made by the Contractor in any Application, this Contract, or any certification or other supporting documentation thereunder or hereunder shall prove to have been incorrect in any material respect at the time made.

(b) Notice of Termination For Cause. The City shall provide the Contractor with written notice of termination of this Contract, setting forth the reason(s) for termination. The termination of this Contract or any one or more Grants shall be effective as of the date such notice of termination is sent by the City.

(c) Effect of Termination. Upon termination of this Contract, the Contractor shall reimburse the City for all non-accrued and unearned costs and disbursements of the Contract terminated on a schedule to be negotiated in good faith between the City and the Contractor, but in no event more than 60 days from the date of such termination.

STAFF REPORT

DATE: February 14, 2023
TO: Mayor and City Councilors
FROM: Heather Richards, Community Development Director
SUBJECT: Resolution No. 2023-09: For an Annexation Agreement with Anders Johansen to annex Tax Lots R4421 00900 and 01200 into the city limits.

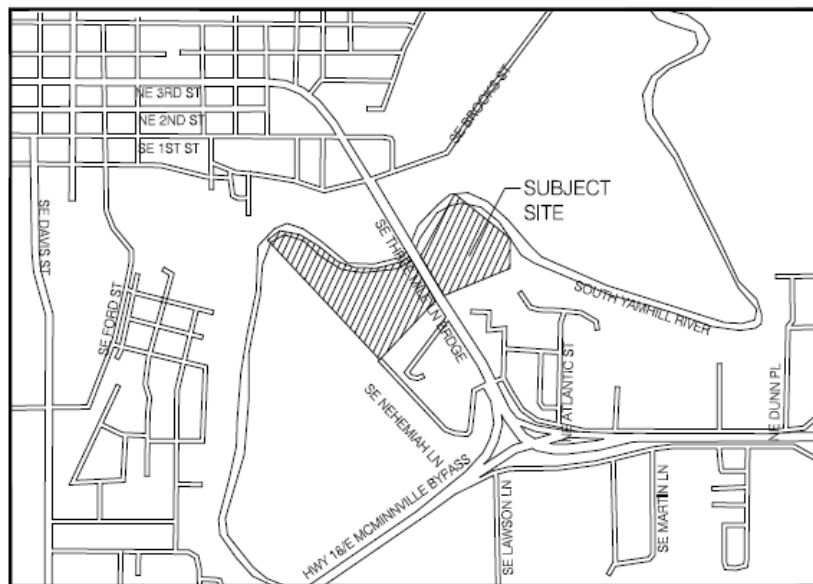
STRATEGIC PRIORITY & GOAL:

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

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

Report in Brief:

This is the consideration of Resolution No. 2023-09, authorizing the City Manager to sign an Annexation Agreement with Anders Johansen for the consideration of annexing his property, Tax Lots R4421 00900 and 01200 into the McMinnville city limits.



VICINITY MAP

Attachments:
 Resolution No. 2023-09



Background:

Annexation is the process by which a municipality, upon meeting certain requirements, expands its corporate limits.

Oregon statewide planning goals require that each city be surrounded by a boundary which is called an urban growth boundary (UGB). The UGB defines the area that the city has identified as being eligible to be included within the city limits during a 20-year planning period to accommodate growth. Annexation is the process for lands within the UGB to become part of the city limits, and thus developed to an urban intensity in compliance with the city’s comprehensive plan. Lands within the UGB may be considered for annexation into the city limits consistent with ORS 222 and local ordinances. Annexations are governed by state laws (Oregon Revised Statute, Title 21, Chapter 222), City Charters, and local ordinances.

A proposal for annexation of territory to a city may be Initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed. The boundaries of a city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water, if the proposal for annexation is approved in the manner provided by the city charter or by ORS 222.111.

Attachments:
Resolution No. 2023-09

When the city approved Ordinance No. 5098 adopting the McMinnville Growth Management and Urbanization Plan, on December 8, 2020, the City adopted a new program for annexations in McMinnville dependent upon annexation agreements as a precursor to annexation.

That new program was codified on October 26, 2021, with the adoption of Ordinance No. 5106, establishing Chapters 16.10.00, 16.20.00, 16.30.00, and 16.40.00 of the McMinnville Municipal Code, outlining the requirements of an annexation application and the process for annexation.

The Annexation Agreement is an annexation contract between the landowner(s) and the City Council determining what is expected from both parties for the annexation to be successful.

The Annexation Agreement is the opportunity for the City to require elements of the property that the City deems is necessary for the public good associated with the annexation. This typically includes the dedication and development of necessary public Infrastructure Improvements, as well as the dedication and development of public parks and trails, and in some cities, the development of necessary affordable housing to meet the city's future housing need. The Annexation Agreement is approved by Resolution of the City Council. This action is not a land-use action. However, the Annexation Agreement does identify the land-use process that the applicant needs to follow to demonstrate compliance with the McMinnville Comprehensive Plan as well as a timeframe in which to achieve the appropriate land-use approvals, in order to annex their property into the city. This land-use process needs to be concluded prior to the annexation becoming effective.

In this case, the property owner will need to successfully navigate the land-use process for a city zoning map amendment and provide all of the required consents identified in the MMC 16.20.020

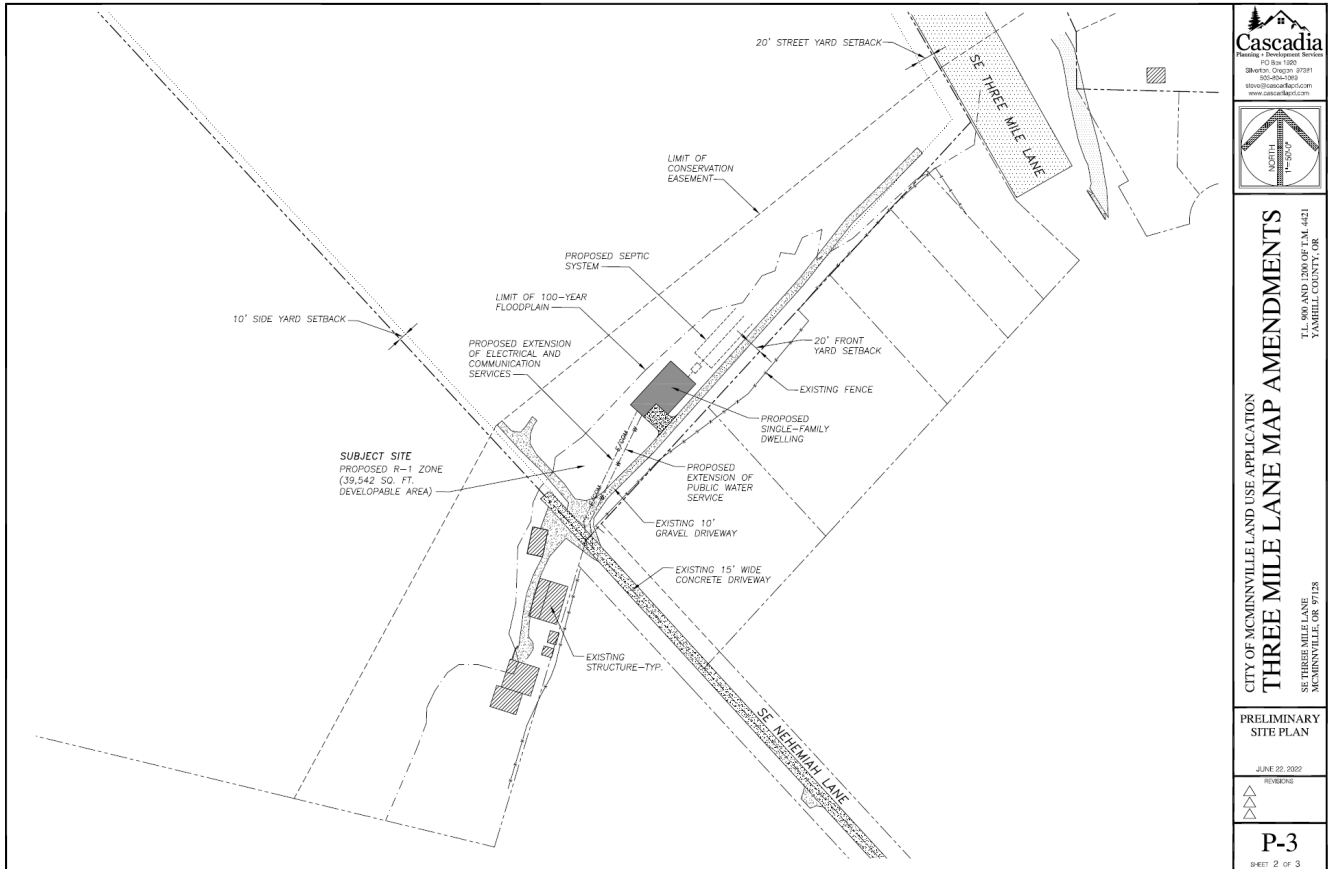
After the landowner(s) have achieved all of the performance metrics of the Annexation Agreement, the City Council then considers the annexation by ordinance. This process is conducted in adherence with ORS 222.

Discussion:

This annexation is fairly simple. It already has a residential comprehensive plan designation and does not need to be part of an area plan or master planning process.

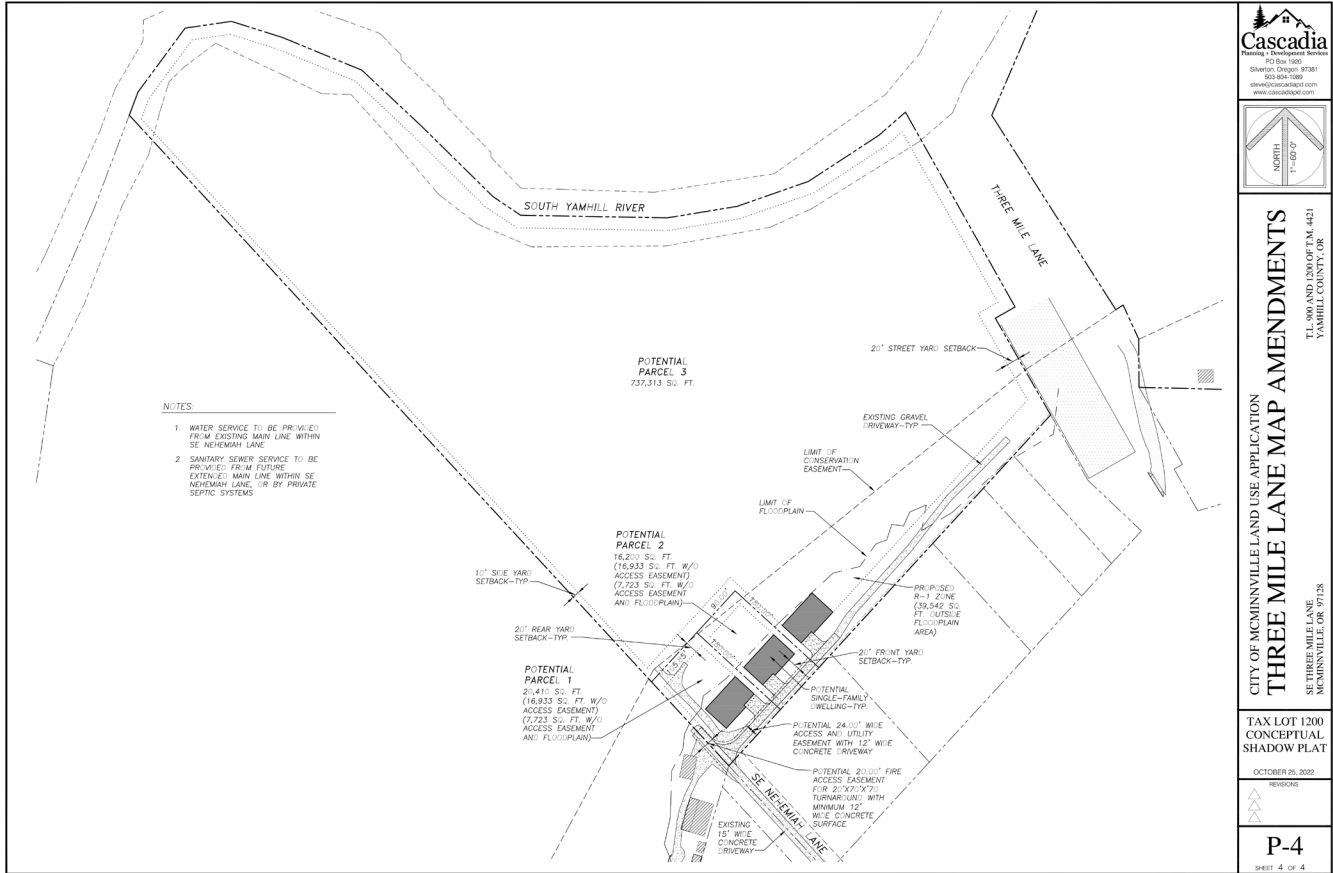
Most of the two parcels are encumbered in a flood plain and a conservation easement, and the site has very little buildable acreage. The property owner intends to build one residential home on the lot as shown in the site plan exhibit to the annexation agreement. However, there is the ability to partition the parcel in the future and build an additional two residential lots.

Current Plan:



Attachments:
Resolution No. 2023-09

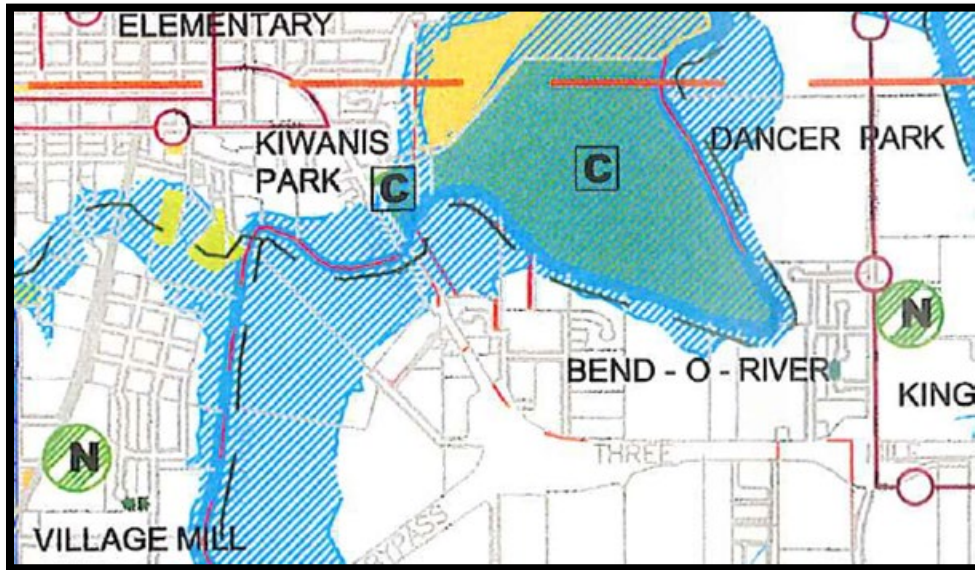
Potential Future Development Plan:



There is a future planned multi-purpose trail along the Yamhill River on the site and the Annexation Agreement which will be recorded on the property states that:

Owner agrees that it will, without any cost to the City, dedicate the necessary rights-of-way or easements for all Planned Improvements identified in the City's Public Facilities Plan. The Public Facilities Plan includes the Wastewater Conveyance Plan, Water Master Plan, Transportation System Plan and Parks and Recreation Plan.

The City's Parks, Recreation, and Open Space Master Plan identifies a future multi-purpose trail along the Yamhill River. When the City is ready to move forward with the construction of the trail, the property owner will dedicate the land for the trail for free, and the dedication will be from the center of the river to the outside edge of the trail section furthest from the river, based on the city's specifications for a multi-purpose trail along the river.



*Excerpt from the Parks, Recreation and Open Space Master Plan
identifying a multi-use trail along the Yamhill River*

The annexation and annexation agreement has been reviewed by the City's executive team for conformity with local plans and regulations.

Attachments:

Resolution No. 2023-09

- Annexation Agreement
- Legal Description and Site Maps

Fiscal Impact:

The property owner has paid for his application fee which is a full cost recovery fee for the review and implementation of the application.

Recommendation:

Staff recommends approving Resolution No. 2023-09 authorizing the City Manager to sign the Annexation Agreement with Anders Johansen.

RESOLUTION NO. 2023 – 09

A Resolution authorizing the City Manager to sign an Annexation Agreement with Anders Johansen, property owner, for the future annexation of Tax Lots R4421 00900 and 01200.

RECITALS:

WHEREAS, on December 8, 2020, the McMinnville City Council adopted Ordinance No. 5098 adopting the *McMinnville Growth Management and Urbanization Plan*; and

WHEREAS, on July 21, 2021, city staff hosted a work session with the McMinnville City Council to review draft amendments to the McMinnville City Code to bring the City’s governing codes in compliance with state laws and the *McMinnville Growth Management and Urbanization Plan* relative to annexations; and

WHEREAS, on September 16, 2021, the Planning Commission held a duly noticed public hearing to consider the proposed amendments and the Planning Commission recommended approval of the proposed amendments; and

WHEREAS, on October 26, 2021, the City Council, being fully informed about said request, found that the requested amendments conformed to the applicable Comprehensive Plan goals and policies, as well as the McMinnville Municipal Code based on the material submitted by the Planning Department and the findings of fact and conclusionary findings for approval, adopting Ordinance No. 5106; and

WHEREAS, on June 22, 2022, Anders Johansen applied for the annexation of his property (Tax Lots R4421 00900 and 01200) to be annexed into the City of McMinnville; and

WHEREAS, on June 22, 2022, the City leadership team reviewed the annexation application and drafted an annexation agreement for the McMinnville City Council and Anders Johansen;

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

1. That the City Council would like to enter into an agreement with Anders Johansen for the annexation of his property into the City of McMinnville (Tax Lots R4421 00900 and 01200).
2. That the City Manager is authorized to sign the attached Annexation Agreement (Exhibit A) on behalf of the City of McMinnville. Passed by the Council this 26th day of October 2021, by the following votes:
3. This Resolution will take effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of February, 2023, by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February, 2023.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

After Recording Return To:

**City of McMinnville
220 NE Second Street
McMinnville, OR 97128**

ANNEXATION AGREEMENT

This Annexation Agreement is made and entered into this ____ day of _____, _____, by and between the City of McMinnville, Oregon, an Oregon municipal corporation (hereinafter "City") and Anders Johansen (hereinafter "Owner").

W I T N E S S E T H

WHEREAS, Owner is the record owner of the property legally described on Exhibit 1 attached hereto and incorporated herein (hereinafter referred to as the "Property"); and

WHEREAS, the Property is within the City's urban growth boundary, contiguous to the currently existing City limits, and is proposed to be annexed to the City; and

WHEREAS, Owner desires to have the Property annexed to the City; and

WHEREAS, Owner will submit a petition for annexation and provide the City with all required consents for annexation; and

WHEREAS, the City is willing to consider annexation of the Property on the terms and conditions, and subject to the provisions, of this Agreement; and

WHEREAS, the City will apply urban zoning upon the successful completion and approval of a land use application for a Zone Map Amendment; and

WHEREAS, the City and Owner desire to enter into this Agreement to regulate the annexation, zoning, use and development of the Property; and

WHEREAS, should a property owner who chooses not to execute the Annexation Agreement, refuses to grant a right-of-way and/or easement across his or her property in accordance with the City's Public Facilities Plans, the City may institute condemnation proceedings to effectuate such right-of-way and/or easement, or modify the Public Facilities Plans to bypass the property, in order to accommodate the orderly construction of the public infrastructure; and

WHEREAS, Council will consider this annexation agreement on February 14, 2023.

NOW, THEREFORE, in consideration of the representations, promises and mutual covenants contained herein, the City and Owner agree as follows:

- 1. RECITALS:** The foregoing recitals are incorporated herein as is fully set forth in this Section.

2. ANNEXATION

a. City agrees that it will initiate an ordinance annexing the Property into the City once the following conditions are met:

1. All required consents have been received by the City. (See McMinnville Municipal Code (MMC) 16.20.020 for a list of required consents.)
2. A signed Annexation Agreement has been received by the City.
3. The Owner has received a final unappealed land-use approval for city zoning on the property.

b. This agreement is void if the Property is not annexed to the City of McMinnville within five years after the effective date of this Agreement and after the City's receipt of all required consents.

c. Owner may terminate this Agreement by serving written notice to the City no less than 60 days prior to the effective date of the termination. The notice must be received by the City at least 60 days prior to the public hearings for council consideration of the annexation. If the City receives such notice, this Agreement terminates as of the effective date of the notice. After the annexation ordinance is adopted by the City, this Agreement may only be terminated or amended by written consent of the Owner and City. Pursuant to this Agreement, the City agrees that an annexation ordinance will be considered by the McMinnville City Council; however, the City cannot guarantee that the annexation ordinance will be adopted by the City Council.

3. COMPREHENSIVE PLAN/ZONING: Prior to the development and annexation of the property, the Owner is required to complete a land-use application for a zoning map amendment for the property in compliance with the McMinnville Comprehensive Plan and McMinnville Zoning Ordinance. Upon successful annexation and a Zone Map Amendment adoption, the City will apply the Zoning designation identified in the land-use application to the property.

4. DEVELOPMENT: Owner agrees as follows:

a. Owner shall waive and shall not assert any claim against the City that may now exist or that may accrue through the date of annexation of the Property that it may claim due to its ownership of the Property. This includes any claim arising out of any land use regulation or under Measure 37 (ORS 197.352), Measure 49, and Measure 56 (ORS 227.186).

b. Owner agrees that any development of the property will comply with the City's Zoning Ordinance as it exists now or is later amended. In addition, the development of the Property shall comply with the applicable approved land-use decisions for the property and will incorporate and follow the City's Great Neighborhood Principles as found in the McMinnville Comprehensive Plan and McMinnville Zoning Ordinance as applicable. The Community Development

Director or Hearings Body shall determine the applicability of the Great Neighborhood Principles to the subject property as necessary. All development must also comply with federal, state and city regulations.

- c. Owner agrees that it will, without any cost to the City, dedicate the necessary rights-of-way or easements for all Planned Improvements identified in the City's Public Facilities Plan. The Public Facilities Plan includes the Wastewater Conveyance Plan, Water Master Plan, Transportation System Plan and Parks and Recreation Plan.

The City's Parks, Recreation, and Open Space Master Plan identifies a future multi-purpose trail along the Yamhill River. When the City is ready to move forward with the construction of the trail, the property owner will dedicate the land for the trail for free, and the dedication will be from the center of the river to the outside edge of the trail section furthest from the river, based on the city's specifications for a multi-purpose trail along the river.

- d. Owner shall remove all water rights from Property, unless partial use is otherwise approved by the McMinnville City Council.
- e. Owner agrees to not remonstrate against the formation of a local improvement district or reimbursement district created for the purpose of funding public improvements that will serve the Property. This waiver applies to the Property until all utility service and all required infrastructure that will service or benefit the Property is completed and accepted by City. If the property is developed in phases, the waiver may be removed on a phase-by-phase basis provided that all utility service and all required infrastructure that will service or benefit the Property is completed and accepted by City.

5. AMENDMENT: This Agreement and any exhibits attached hereto may be amended only by the mutual written consent of both parties.

6. SEVERABILITY: If any provision, covenant or portion of this Agreement or its application to any person, entity, property or portion of property is held invalid, or if any ordinance or resolution adopted pursuant to this Agreement or its application to any person, entity, property or portion of property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement or other ordinances or resolutions passed pursuant hereto, and to that end, all provisions, covenants, and portions of this Agreement and of the ordinances and resolutions adopted pursuant hereto are declared to be severable.

7. NO WAIVER OF RIGHT TO ENFORCE AGREEMENT: Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

8. ENTIRE AGREEMENT: This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the

parties relating to the subject matter hereof. The parties shall have no obligations other than specifically stated in this Agreement except those of general applicability.

9. **SURVIVAL:** The provisions contained in this Agreement shall survive the annexation of the property and shall not be merged or expunged by the annexation of the property or any part thereof to the City.
10. **SUCCESSORS AND ASSIGNS:** This Agreement shall run with the land described on Exhibit B and inure to the benefit of, and be binding upon, the successors in title of the Owners and their respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successor municipalities.
11. **TERM OF AGREEMENT:** This Agreement shall be binding upon the parties and their respective successors and assigns for the full statutory term of twenty (20) years, commencing as of the date of this Agreement
12. **ENFORCEMENT:** Owner agrees that if it fails to perform as required under this Agreement, the City Council may, at the City Council's option, refuse to process any development application submitted for the Property or include as conditions of approval any requirement of this Agreement. Owner hereby waives any claim regarding such conditions of approval, whether to LUBA or to any state or federal court.
13. **ATTORNEY FEES:** In any proceeding to enforce, apply or interpret this Agreement, each party shall bear its own attorneys' fees and costs.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

CITY

OWNER

Jeff Towery, City Manager

Anders Johansen

ATTEST:

Claudia Cisneros, City Recorder

STATE OF OREGON)

) ss.

County of Yamhill)

This instrument was acknowledged before me this ____ day of _____, _____ by Jeff Towery, City Manager, on behalf of the City of McMinnville, who acknowledged that he had authority to sign on behalf of the City of McMinnville and this instrument to be the City's voluntary act and deed.

Notary Public for Oregon

STATE OF OREGON)

) ss.

County of Yamhill)

This instrument was acknowledged before me this ____ day of _____, _____ by Anders Johansen, owner of the property at R4421 00900 and R4421 01200, , who acknowledged this instrument to be his/her voluntary act and deed.

Notary Public for Oregon

EXHIBIT 1:

Legal Description of the Property to Be Annexed:

LEGAL DESCRIPTION
for
Anders Johansen Annexation
April 14, 2022

A portion of those certain tracts of land as conveyed to Anders Johansen as Parcel 3 and Parcel 4 per deed Document No 2015-18740, Yamhill County Records, a part of the Nehemiah Martin Donation Land Claim No. 83 located in Section 21, Township 4 South, Range 4 West, Willamette Meridian, Yamhill County, Oregon, being more particularly described as follows:

Beginning at a point in the centerline of SE Nehemiah Lane, said point being S 22°27'58" W 1713.51 feet from the most Northerly corner of the Nehemiah Martin Donation Land Claim No. 83,

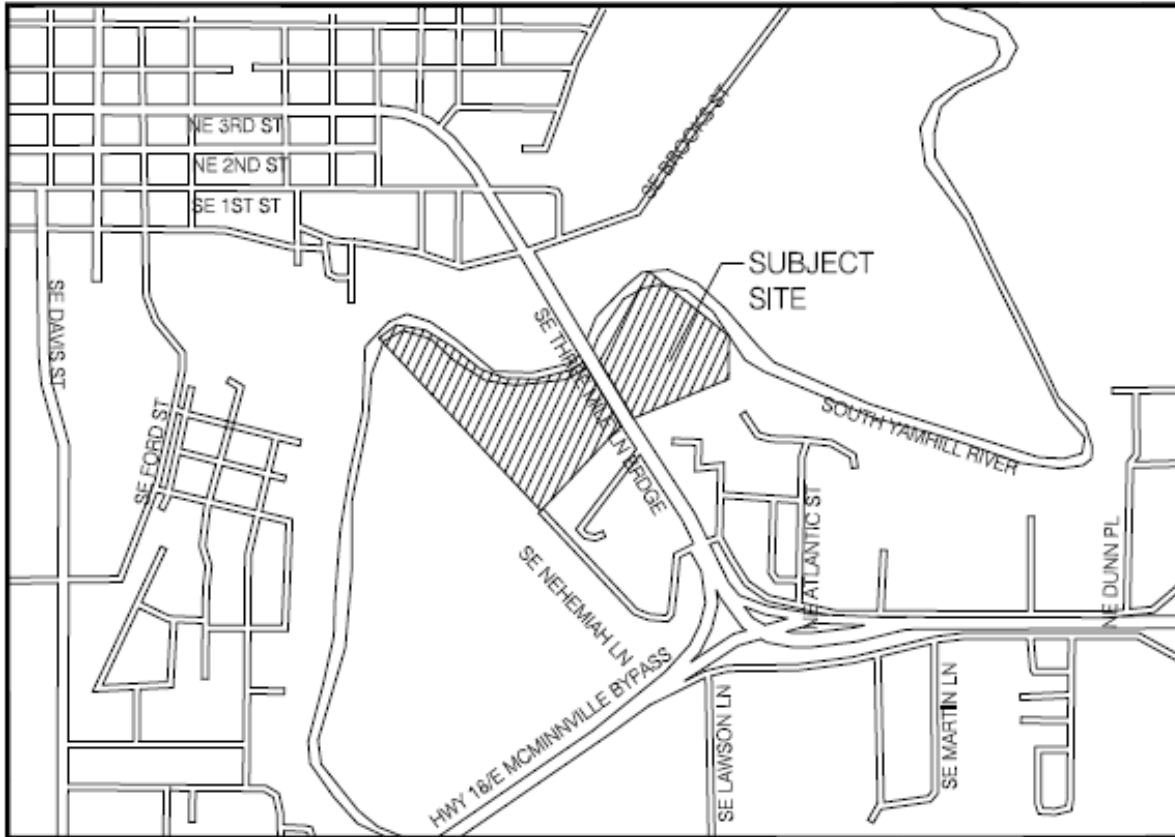
- (COURSE 1) Thence N 42°32'24" E 754.18 feet to the Westerly Right-of-Way line of 3 Mile Lane;
- (COURSE 2) Thence along said Right-of-Way line N 29°46'24" W 82.55 feet;
- (COURSE 3) Thence leaving said Westerly Right-of-Way line N 56°28'47" E 186.49 feet to a 5/8" iron rod on the Easterly Right-of-way line of 3 Mile Lane;
- (COURSE 4) Thence along said Easterly Right-of-Way line S 24°29'10" E 59.79 feet to a 5/8" iron rod;
- (COURSE 5) Thence continuing along said Right-of-Way line, S 00°24'45" W 76.02 feet to a 5/8" iron rod at the Northwest corner of Lot 6, Quail Ridge Subdivision, a Subdivision in said County and State;
- (COURSE 6) Thence leaving said Easterly Right-of-Way line, along the North line of said Quail Ridge Subdivision, S 88°36'09" E 496.99 feet to a 5/8" iron rod;
- (COURSE 7) Thence leaving said North line, N 01°57'06" E 324.55 feet to a 5/8" iron rod;
- (COURSE 8) Thence N 02°01'19" E 371.33 feet, more or less, to a point on the Northeasterly line of said Donation Land Claim No. 83;
- (COURSE 9) Thence along said Claim line, N 59°47'12" W 597.44 feet to the most Northerly Corner of said Claim No. 83;
- (COURSE 10) Thence leaving said Claim line, S 23°17'42" W 98.00 feet, more or less to a point on the centerline of the South Yamhill River;
- (COURSE 11) Thence upstream and Westerly along said centerline to a point that is N 42°40'19" W 1401.40 feet from the Point of Beginning;
- (COURSE) 12 Thence leaving said centerline, S 42°40'19" E 1401.40 feet to the Point of Beginning.

Containing 46.2 acres, more or less.

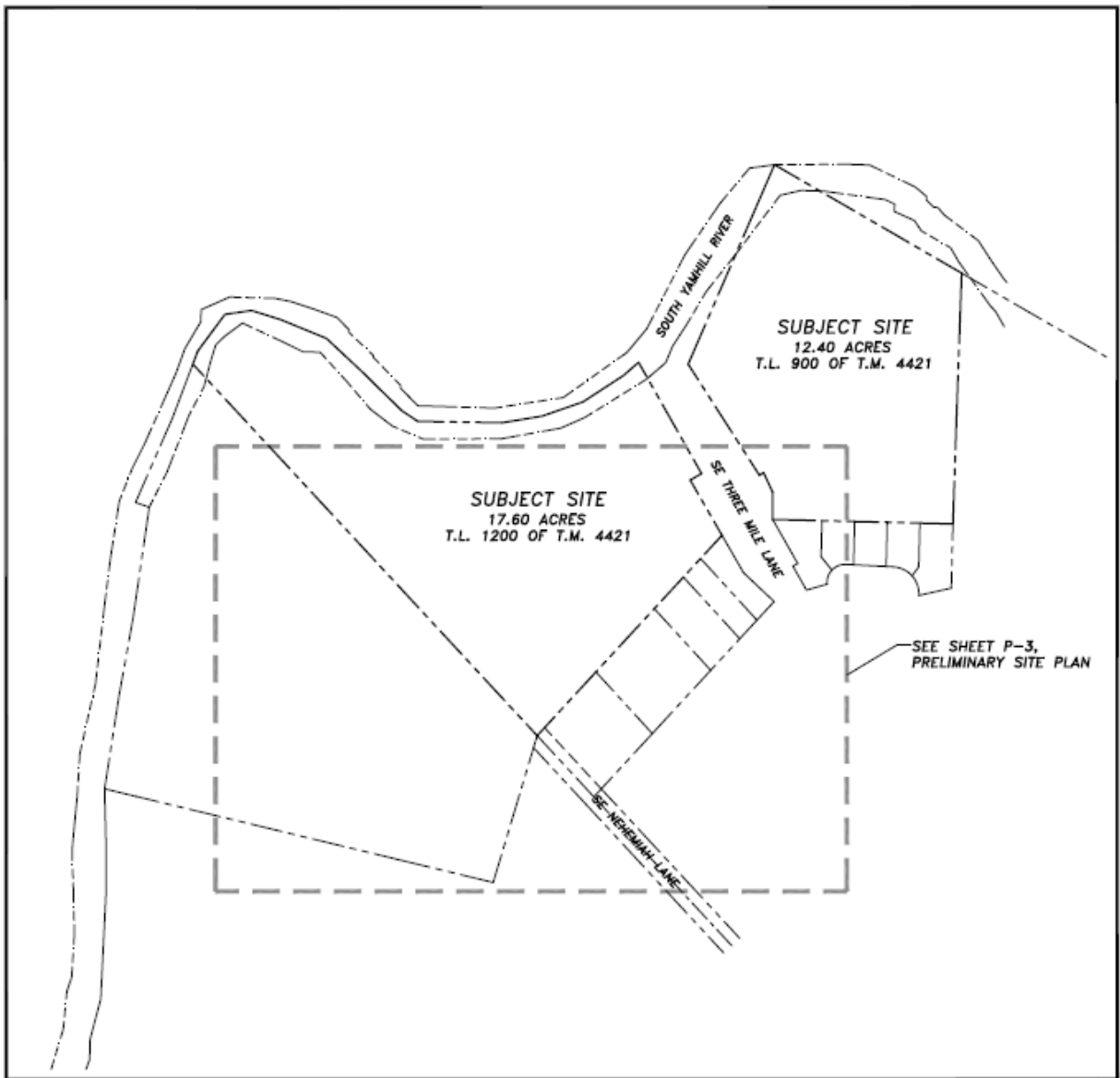
Note: The Basis of Bearings for this description is the State Plane Coordinate System.



RENEWS 06/30/2022



VICINITY MAP



SITE MAP



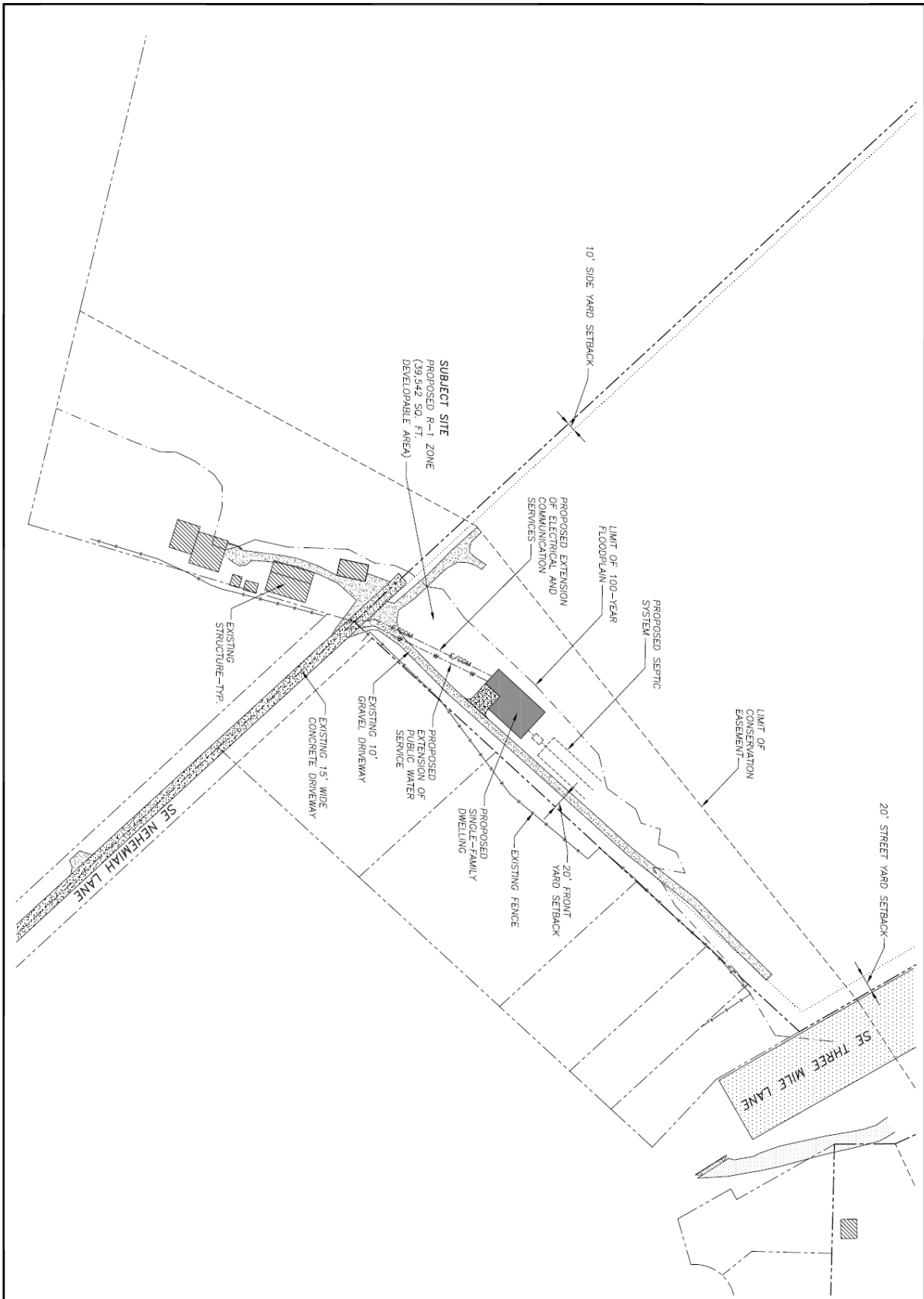
SHEET 2 OF 3
P-2


EXISTING GENERAL LAND USE PLAN
 JAN 22 2020

CITY OF MCMINNVILLE LAND USE APPLICATION
THREE MILE LANE MAP AMENDMENTS
 SE THREE MILE LANE
 MCMINNVILLE, OR 97128

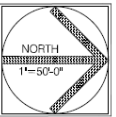


Cascadia
 Planning & Development Services
 31400 NW 10th Street
 Vancouver, Oregon 97110
 Phone: 503.251.0300
 Fax: 503.251.0301
 www.cascadiaplanning.com




 JUNE 22, 2022
 REVISIONS
PRELIMINARY SITE PLAN
P-3
 SHEET 2 OF 3

CITY OF MCMINNVILLE LAND USE APPLICATION
THREE MILE LANE MAP AMENDMENTS
 SE THREE MILE LANE
 MCMINNVILLE, OR 97128
 T.L. 900 AND 1200 OF T.M. 4421
 YAMHILL COUNTY, OR



Cascadia
 Planning & Development Systems
 3100 NE Oregon Street
 Portland, Oregon 97231
 503.281.1198
 www.cascadiaplanning.com

STAFF REPORT

DATE: February 14, 2023
TO: Jeff Towery, City Manager
FROM: Mandy Sharp, Grants Manager and Jennifer Cuellar, Finance Director
SUBJECT: FY2022-23 ARPA Supplemental Budget Resolution



CITY GOVERNMENT CAPACITY

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

Report in Brief: One Supplemental Budget resolution is proposed to appropriate American Rescue Plan Act (ARPA) funds to Council approved projects that we now know will get underway in the current fiscal year. The resolution passed on 1/24/2023 had a clerical error in the Information Service Fund table and therefore is presented in its corrected form for a new vote of Council.

Error being corrected in the resolution:

Original table, including the error

Information Services Fund:	Adopted Budget	Budget Adjustment	Amended Budget
Resources:			
Intergovernmental	\$ 80,000	\$ 119,000	\$ 199,000
All other sources unchanged	1,595,670	-	1,515,670
Total Resources	<u>\$ 1,675,670</u>	<u>\$ 119,000</u>	<u>\$ 1,714,670</u>
Requirements:			
Program	\$ 1,517,278	\$ 119,000	\$ 1,636,278
All other requirements unchanged*	158,392	-	158,392
Total Requirements	<u>\$ 1,675,670</u>	<u>\$ 119,000</u>	<u>\$ 1,794,670</u>

Corrected table

Information Services Fund:	Adopted Budget	Budget Adjustment	Amended Budget
Resources:			
Intergovernmental	\$ 80,000	\$ 119,000	\$ 199,000
All other sources unchanged	1,595,670	-	1,595,670
Total Resources	<u>\$ 1,675,670</u>	<u>\$ 119,000</u>	<u>\$ 1,794,670</u>
Requirements:			
Program	\$ 1,517,278	\$ 119,000	\$ 1,636,278
All other requirements unchanged*	158,392	-	158,392
Total Requirements	<u>\$ 1,675,670</u>	<u>\$ 119,000</u>	<u>\$ 1,794,670</u>

Discussion of Supplemental action related to the ARPA grant:

Oregon Revised Statute (ORS) 294.471 allows a local government to prepare a supplemental budget when state or federal funds are made available that were unknown at the time the budget was prepared. While the City was aware of its total ARPA allocation and Council had authorized projects in Resolution 2021-54, the timing for the projects included in this supplemental budget action was not known at the time the FY2022-23 budget was prepared.

The following Council-approved projects will have supplemental appropriations, moving revenue as well as the anticipated expense to be incurred during FY2022-23:

General Fund

Parks/Recreation Mobile Recreation Vehicle	82,000
Parks/Recreation Planning Project	100,000
Parks Maintenance, Discovery Splashpad Replacement	80,000
Parks Maintenance, Fleet and Equipment	260,000
Parks Maintenance, Irrigation Renovation	50,000
Library Electric Vehicle	53,000

General Fund total: \$625,000

Information Services Fund:

Meeting Room Technology	65,000
Financial Forecasting Software	14,000
Diversity, Equity and Inclusion Software	40,000

Information Services Fund total: \$119,000

Wastewater Services Fund - Stormwater Project \$25,000

Total ARPA supplemental appropriation: \$769,000

Oregon Budget Law also requires that when a fund has a budget amendment that changes its appropriation by more than 10%, a public hearing is required. In the case of all three funds involved, these supplemental actions to add ARPA programming to their FY2022-23 budgets do not total that high of a proportion relative the adopted budgets therefore no public hearing is required.

Fiscal Impact:

Because all supplemental appropriations will be offset by equivalent unbudgeted revenues, the impact on the city's financial standing is neutral.

Council Options:

1. Adopt the FY2022-23 supplemental budget thereby allowing the staff to move forward on previously approved projects during the current fiscal year. The grant funds are available to be spent, the projects have been approved by Council and no general fund unrestricted funds will be needed in this effort. This is staff's recommendation.

2. Do not adopt the proposed FY2022-23 budget. This would place approved ARPA program activity on hold. Should Council decide not to approve this supplemental budget action, staff would request direction from Council as to any additional information or actions needed to move forward the ARPA grant programming.

Documents:

1. Resolution 2023-10 FY2022-23 Supplemental Budget for the General Fund, Wastewater Services Fund and Information Services Fund for approved ARPA projects and Repealing Resolution No. 2023-05.

RESOLUTION NO. 2023 - 10

A Resolution adopting a supplemental budget for fiscal year 2022-2023 and making supplemental appropriations for the General Fund, Wastewater Services Fund and Information Services Fund for approved American Rescue Plan Act (ARPA) projects and Repealing Resolution No. 2023-05.

RECITAL:

This resolution proposes a supplemental budget for the General Fund, Information Services Fund and Wastewater Services Fund. The City anticipates spending on approved ARPA projects during the FY2022-23 year that were not included in the adopted FY2022-23 Budget to total \$769,000 in the three noted funds.

Oregon Revised Statute (ORS) 294.471 allows a local government to prepare a supplemental budget when an occurrence or condition that was not known at the time the budget was prepared requires a change in financial planning. The governing body must adopt a resolution to adopt the supplemental budget and make any necessary appropriations.

At the time of preparing the FY2022-23 budget, the City was aware of its total ARPA allocation and Council has authorized projects but the timing for these projects' implementation was not known then. The projects included in this supplemental budget are as follows for the General Fund: Parks and Recreation Mobile Recreation Vehicle and Planning Project; Park Maintenance Splashpad Replacement, Irrigation Renovation and Fleet and Equipment; Library Electric Vehicle; for the Information Services Fund: Meeting Room Technology, Financial Forecasting Software and Software to support Diversity Equity and Inclusion efforts; and for the Wastewater Services Fund: Stormwater Project.

Because none of the supplemental budgets for the General Fund, Information Services Fund or Wastewater Services Fund expenditures were changed by more than 10%, no public hearings are required.

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

1. **Adopt the following Supplemental Budget:** The Common Council of the City of McMinnville adopts the following Supplemental Budget for 2022-2023 in the General Fund, Information Services Fund and Wastewater Services Fund.
2. **Make Supplemental Appropriations:** The additional appropriations for fiscal year 2022-2023 are hereby appropriated as follows:
3. Resolution No. 2023- 05 is hereby repealed.

General Fund:	Adopted Budget	Budget Adjustment	Amended Budget
Resources:			
Intergovernmental	\$ 6,660,440	\$ 625,000	\$ 7,285,440
All other sources unchanged	<u>35,665,872</u>	<u>-</u>	<u>35,665,872</u>
Total Resources	<u>\$ 42,326,312</u>	<u>\$ 625,000</u>	<u>\$ 42,951,312</u>
Requirements:			
Parks and Recreation	\$ 2,767,168	\$ 182,000	\$ 2,949,168
Parks Maintenance	1,496,644	390,000	1,886,644
Library	2,494,658	53,000	2,547,658
All other requirements unchanged*	<u>35,567,842</u>	<u>-</u>	<u>35,567,842</u>
Total Requirements	<u>\$ 42,326,312</u>	<u>\$ 625,000</u>	<u>\$ 42,951,312</u>

Information Services Fund:	Adopted Budget	Budget Adjustment	Amended Budget
Resources:			
Intergovernmental	\$ 80,000	\$ 119,000	\$ 199,000
All other sources unchanged	<u>1,595,670</u>	<u>-</u>	<u>1,595,670</u>
Total Resources	<u>\$ 1,675,670</u>	<u>\$ 119,000</u>	<u>\$ 1,794,670</u>
Requirements:			
Program	\$ 1,517,278	\$ 119,000	\$ 1,636,278
All other requirements unchanged*	<u>158,392</u>	<u>-</u>	<u>158,392</u>
Total Requirements	<u>\$ 1,675,670</u>	<u>\$ 119,000</u>	<u>\$ 1,794,670</u>

Wastewater Services Fund:	Adopted Budget	Budget Adjustment	Amended Budget
Resources:			
Intergovernmental	\$ 0	\$ 25,000	\$ 25,000
All other sources unchanged	<u>14,638,255</u>	<u>-</u>	<u>14,638,255</u>
Total Resources	<u>\$ 14,638,255</u>	<u>\$ 25,000</u>	<u>\$ 14,663,255</u>
Requirements:			
Program	\$ 5,168,404	\$ 25,000	\$ 5,193,404
All other requirements unchanged*	<u>9,469,851</u>	<u>-</u>	<u>9,469,851</u>
Total Requirements	<u>\$ 14,638,255</u>	<u>\$ 25,000</u>	<u>\$ 14,663,255</u>

Total Budget Amendment **\$ 769,000**

* Total includes unappropriated ending fund balance

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of February 2023 by the following votes:

Ayes: _____

Nays: _____

Approved this 14th day of February 2023.

MAYOR

Approved as to form:

Attest:

CITY ATTORNEY

CITY RECORDER