



**City Council Meeting Agenda**

**Tuesday, May 09, 2023**

**6:15 p.m. – Work Session Meeting**

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

**REVISED 05/05/2023**

*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, May 8th** to [claudia.cisneros@mcminnvilleoregon.gov](mailto:claudia.cisneros@mcminnvilleoregon.gov)*
- *If appearing via telephone only please sign up prior by **12 p.m. on Monday, May 8th** by emailing the City Recorder at [claudia.cisneros@mcminnvilleoregon.gov](mailto:claudia.cisneros@mcminnvilleoregon.gov) as the chat function is not available when calling in zoom;*
- *Join the zoom meeting use the raise hand feature in zoom to request to speak, once your turn is up we will announce your name and unmute your mic. **You will need to provide your First and Last name, Address, and contact information (email or phone) to the City.***

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

[mcm11.org/live](http://mcm11.org/live)

**CITY COUNCIL WORK SESSION & REGULAR MEETING:**

*You may join online via Zoom Meeting:*

<https://mcminnvilleoregon.zoom.us/j/85913401163?pwd=UXYyNk1KaytEYmlyWTYxYkZUbFVrUT09>

*Zoom ID: 859 1340 1163*

*Zoom Password: 681621*

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

*ID: 859 1340 1163*

**6:15 PM – WORK SESSION MEETING – VIA ZOOM AND SEATING AT CIVIC HALL**

1. CALL TO ORDER
2. RECOLOGY RATE INCREASE PRESENTATION
3. ADJOURNMENT OF WORK SESSION

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

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PROCLAMATION
  - a. National Economic Development Week Proclamation
  - b. National Police Week Proclamation

4. 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.*

5. PUBLIC HEARINGS

- a. Public Hearing regarding **Ordinance No. 5132**: An Ordinance Approving a Zone Map Amendment to Apply the Flood Area Zone (FP) to 28.25 Acres and the 9000 Minimum Lot Size Residential Zone (R-1) to 1.65 Acres of Tax Lots R4421 00900 and 01200 Upon Annexation into the City Limits **AND** regarding **Ordinance No. 5133**: An Ordinance Annexing to the City of McMinnville Tax Lots R4421 00900 and R4421 01200.

6. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
- b. Department Head Reports
  1. Administrative parking policy – parks (memo in packet)
- c. January 2023 Cash and Investment Report (in packet)

7. CONSENT AGENDA

- a. Consider the request from Little Hellion Wines for Winery Primary Location, OLCC Liquor License located at 2376 NW Fendle Way.
- b. Consider the Minutes of the April 11, 2023 City Council Regular Meeting.
- c. Consider the Minutes of the April 25, 2023 City Council Regular Meeting.
- d. Consider the request from Extra Virgin LLC dba: Wellspent Market for Limited on-premises and off-premises, OLCC Liquor License located at 1140 NE Alpine Avenue.
- e. Consider **Resolution No. 2023-20**: A Resolution approving Amendment No. 2 to the December 10, 2021, Professional Services Agreement with Jacobs Engineering Group, Inc. (Jacobs) for Services During Construction of the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project No. 2019-10 (Project), formerly known as Water Reclamation Facility Biosolids Storage Tank and Grit System Expansion.
- f. Consider the request from Patton Valley Wines for Winery Primary Location, OLCC Liquor License located at 1182 NW Vista Ct. **(added on 05.05.23)**
- g. Consider the Request to Permit a Waiver of the Noise Ordinance from The Oak for August 25<sup>th</sup> and August 26<sup>th</sup>, 2023. **(added on 05.05.23)**

8. RESOLUTION

- a. Consider **Resolution No. 2023-21**: A Resolution approving the award of a Construction Project to J.W. Fowler, Inc. for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10, and authorizing a construction contingency.
- b. Consider **Resolution No. 2023-24**: A Resolution of the City of McMinnville Approving a Collection Rate Increase Not to Exceed 4% for Recology Inc.
- c. Consider **Resolution No. 2023-22**: A Resolution authorizing the City Manager to enter into a subgrantee agreement with Yamhill Community Action Partnership for pre-construction and construction reimbursement for applicable expenses incurred between July 07, 2021, through June 30, 2023 for the ANYDOOR Place, a McMinnville Navigation Center.

- d. Consider **Resolution No. 2023-23**: A Resolution authorizing the City Manager to Construction Contracts with Fackler Construction Company for the Construction of the ANYDOOR Place, a McMinnville Navigation Center. **(added on 05.05.23)**

9. ORDINANCES

- a. Consider the first reading with a possible second reading of **Ordinance No. 5132**: An Ordinance Approving a Zone Map Amendment to Apply the Flood Area Zone (FP) to 28.25 Acres and the 9000 Minimum Lot Size Residential Zone (R-1) to 1.65 Acres of Tax Lots R4421 00900 and 01200 Upon Annexation into the City Limits.
- b. Consider the first reading with a possible second reading of **Ordinance No. 5133**: An Ordinance Annexing to the City of McMinnville Tax Lots R4421 00900 and R4421 01200.

10. ADJOURNMENT OF REGULAR MEETING



**FOR IMMEDIATE RELEASE**

Contact:  
Mayor Remy Drabkin  
971-901-2084  
[Remy.Drabkin@McMinnvilleOregon.Gov](mailto:Remy.Drabkin@McMinnvilleOregon.Gov);

**City Working to Fix Technical Mapping Error Related to Measure 36-227,  
*Impacts About 250 Residents***

**MCMINNVILLE, Ore. – May 9, 2023** – The City of McMinnville was recently notified of a technical mapping error resulting in 250 residents being excluded from the new McMinnville Fire District that would be established through Measure 36-227. The City is working collaboratively with the state and county to identify technical fixes to this error and impacted residents will experience no interruption in emergency services - regardless of whether the measure passes or not.

The map that was submitted to the Department of Revenue to reflect the tax base of the new district included a discrepancy in properties that were intended to be included. The properties are in the Northwest area of the current McMinnville Rural Fire Protection District, outside McMinnville city limits.

Oregon state statutes do not provide direction on this specific issue. The City is working collaboratively with Yamhill County, the Oregon Department of Revenue, and the Oregon Secretary of State's office to find a resolution. The City will keep the community updated as solutions are found.

**Background**

Measure 36-227 is on the ballot for McMinnville voters this May. Residents of McMinnville currently receive fire and emergency services from the City's Fire Department. If passed, Measure 36-227 would create the McMinnville Fire District, a special district to provide a fully operational fire and medical capability to meet national standards.

McMinnville Rural Fire Protection District voters will see two measures on their ballot, Measures 36-226 and 36-227. Both measures, one creating the new district and one dissolving the existing district, would have to pass for the McMinnville Fire District to be created.

For more information on the measures, visit: <https://iheartmac.org/en/projects/firedistrict>

## PROCLAMATION

**Whereas**, McMinnville is fortunate to have four economic development organizations that partner with the City to ensure our community continues to thrive. This group is colloquially known as the “Stable Table” works collaboratively to help ensure the economic growth and diversity of our community. This group is comprised of the McMinnville Area Chamber of Commerce, McMinnville Downtown Association, McMinnville Economic Development Partnership and Visit McMinnville; and

**Whereas**, each organization provides a unique perspective, representative of a constituency important to the growth and future of our community; and

**Whereas**, McMinnville’s economic vitality leaders promote economic well-being and quality of life for this community by attracting, retaining, and expanding high-quality jobs that facilitate growth, enhance wealth, and provide a stable tax base; and

**Whereas**, economic development partners attract and retain a diversity of businesses which create a vibrant community and improves the quality of life in the region, and

**Whereas**, McMinnville aspires to accelerate and incubate entrepreneurship and innovation to help establish the next generation of new businesses, which is the hallmark of an healthy economy, and

**Whereas**, these partners do everything they can to support our local businesses, helping them through the hurdles of start-ups, nurturing their growth, and celebrating their longevity; and

**Whereas**, these partners provide leadership and excellence in economic development for this community, their respective membership base, and partner through opportunities, networking, training courses, advisory services and research, publications, marketing, public policy advocacy, and initiatives, as well as execute the vision for the strategic plan for the economic vitality of the city outlined in MacTown 2032; and

**Whereas**, these partners are focused on accelerating the growth in family wage jobs, maintaining McMinnville’s positive business climate, expanding talent and attraction efforts, being a leader in hospitality and placed-based tourism, and improve infrastructure to better serve local businesses, visitors, and residents; and

**Whereas**, our economic vitality partners work in the City of McMinnville within the State of Oregon.

**NOW, THEREFORE**, I, Remy Drabkin, Mayor of the City of McMinnville do hereby proclaim May 8-12, 2023, as

### **National Economic Development Week**

in the City of McMinnville and remind individuals of the importance of this community celebration which supports expanding career opportunities and improving quality of life. I also invite all to visit [www.iedconline.org/edw](http://www.iedconline.org/edw) to learn more about Economic Development week.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the OFFICIAL Seal of the City of McMinnville to be affixed this 9<sup>th</sup> day of May 2023.

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Remy Drabkin, Mayor



# PROCLAMATION

**Whereas,** The Congress and President of the United States have designated May 15 as Peace Officers' Memorial Day, and the week in which May 15 falls as National Police Week; and

**Whereas,** the members of the law enforcement agency of McMinnville play an essential role in safeguarding the rights and freedoms of McMinnville; and

**Whereas,** it is important that all community members know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

**Whereas,** the members of the law enforcement agency of McMinnville unceasingly provide a vital public service.

**Now, Therefore, I, Remy Drabkin** Mayor of the City of McMinnville, do hereby proclaim May 14-20, 2023 to be:

## **National Police Week**

and call upon all McMinnville community members to observe the week of May 14 – 20, 2023, as **Police Week** with appropriate ceremonies and observances in which all of our people may join in commemorating law enforcement officers, past and present, who, by their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable reputation for preserving the rights and security of all community members.

I further call upon all McMinnville community members to observe May 15, 2023 as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

**In Witness Whereof,** I have hereunto set my hand and caused the official Seal of the City of McMinnville to be affixed this 9<sup>th</sup> day of May, 2023.

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Remy Drabkin, Mayor



## STAFF REPORT

**DATE:** May 9, 2023  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Community Development Director  
**SUBJECT:** Ordinance No. 5132 – Approving ZC 3-22  
**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.

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### **Report in Brief:**

This is the consideration of Ordinance No. 5132 approving a Zone Map amendment (ZC 3-22) per the Planning Commission’s recommendation.

The Planning Commission hosted a public hearing on March 16, 2023, and voted to recommend approval to the City Council.

The applicant requests an amendment to the Zone Map to apply the Flood Area Zone (FP) to 28.25 acres and the 9000 Minimum Lot Size Residential Zone (R-1) to 1.65 acres of tax lots R4421 00900 and 01200 upon annexation into the McMinnville city limits.

Per Section 17.72.130 of the Zoning Ordinance, The Planning Commission shall make a recommendation to the City Council to approve or deny the application, or that the proposal be adopted or rejected, or that the application or proposal be approved in a different form.

- a. If the decision of the Planning Commission recommends that an application be granted or that the proposal be adopted, or that the application be approved in a different form, the Planning Commission shall transmit to the City Council, a copy of the application, a scale drawing of the site, the minutes of the public hearing, the decision and findings of the Planning Commission, and any other materials deemed necessary for decision by the City Council.
- b. If the decision of the Planning Commission recommends that the application be denied, or the proposal rejected, no further proceedings shall be held by either the Planning Commission or City Council, unless an appeal of the Commission’s decision is filed.

The applicable criteria are provided in Section 17.74.020 of the Zoning Ordinance. The application is also subject to the applicable Goals and Policies of the Comprehensive Plan and applicable state law.

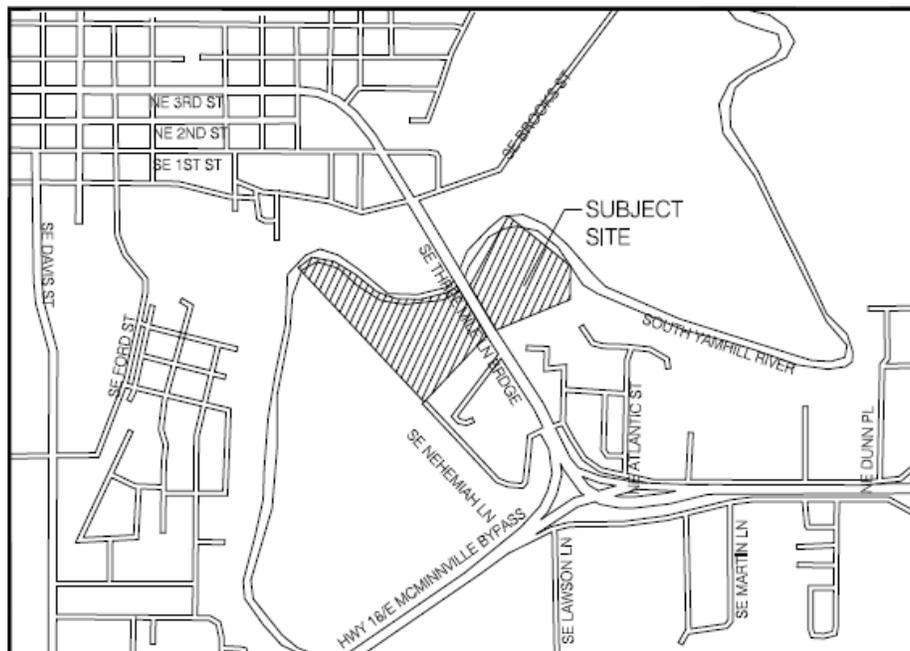
**Background:**

The applicant requests an amendment to the Zone Map to apply the Flood Area Zone (FP) to 28.25 acres and the 9000 Minimum Lot Size Residential Zone (R1) to 1.65 acres of tax lots R4421 00900 and 01200 upon annexation to the city limits. Tax Lot 900 contains approximately 12.40 acres and is located on the east side of the Three Mile Lane Bridge, while Tax Lot 1200 contains 17.6 acres on the west side of the bridge. Both tax lots are currently located within the Urban Growth Boundary (UGB) of McMinnville and are designated Residential and Floodplain on the City Comprehensive Plan Map. Consistent with the Comprehensive Plan, the applicant is proposing to change the current EF-80 (Exclusive Farm Use) zone designation to R-1 (Single-Family Residential) and F-P (Flood Area) when the parcels are annexed. Currently, the properties are in the county in McMinnville’s Urban Growth Boundary with county zoning. **See Vicinity Map (Figure 1), Current Zoning Map (Figure 2), and Proposed Zoning Map (Figure 3).**

The property is being considered for annexation into the city limits by the McMinnville City Council.

Most of the property is located within a flood plain and is not considered buildable. Only land on the edges of the property is considered buildable. An existing conservation easement and a 100-year floodplain are located on both tax lots, roughly paralleling the Yamhill River, which is located along the northern boundary of the site. Since almost all of the subject properties are encumbered by these natural features the property owner would like to initially build one residence on the property, but has the opportunity to partition into three lots in the future.

**Figure 1. Vicinity Map**

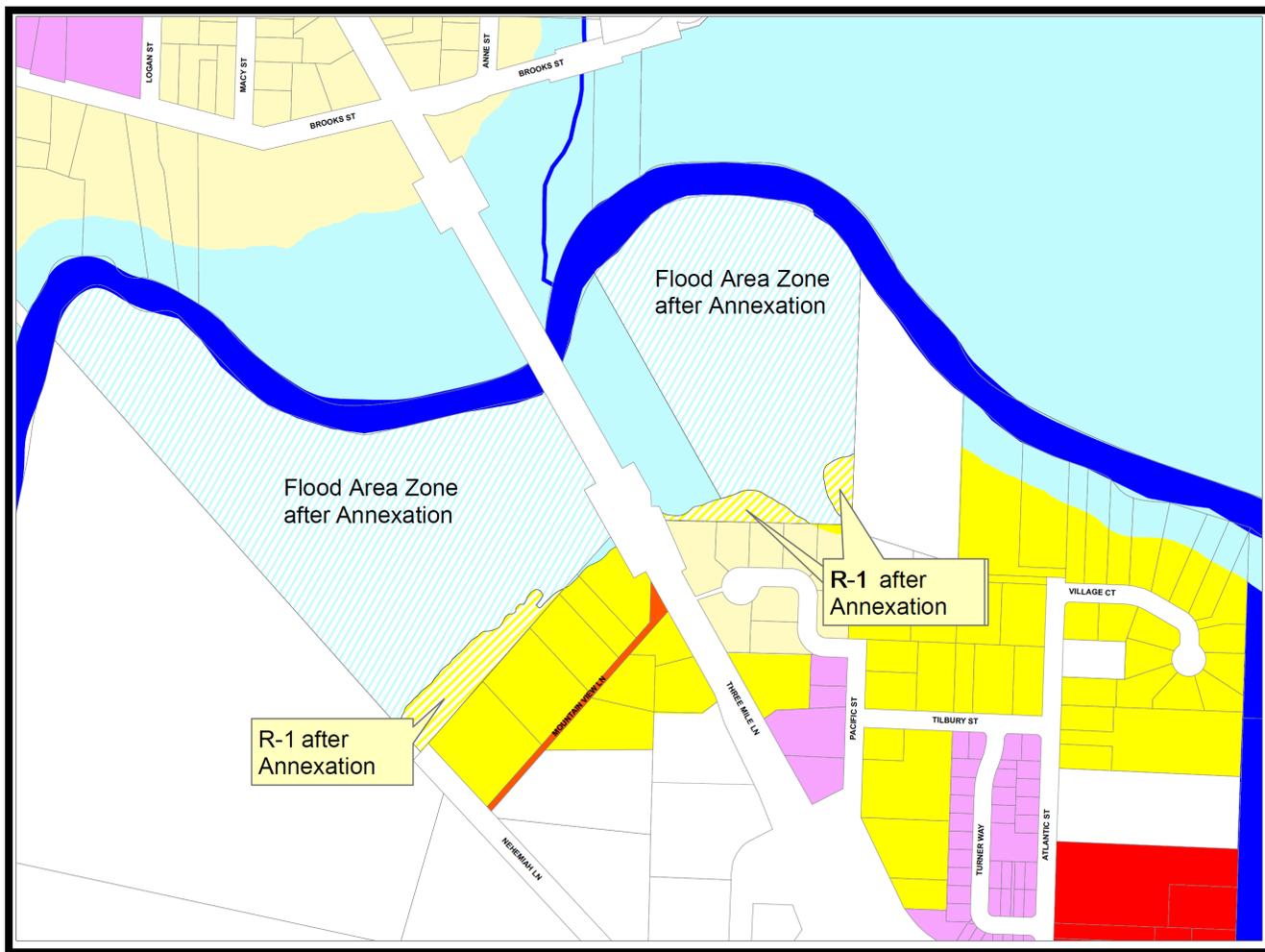


VICINITY MAP

Figure 2. Current Zone Map (with County Zoning)



Figure 3. Proposed Zone Map (with City Zoning)



**Attachments:**

1. Ordinance No. 5132
2. Exhibit A to Ordinance No. 5132 – Decision Document for ZC 3-22
3. ZC 3-22 Application

**City Council Options:**

1. **APPROVE** Ordinance No. 5132, approving the Zone Map amendment as requested and adopting the findings of fact and conclusionary findings in the decision document.
2. **Request** more information.
3. Choose not to approve Ordinance No. 5132 with current findings of approval and direct city staff to write findings of **DENIAL** for future consideration stating the criteria that are not satisfied and the evidence for the denial.

**Suggested Motion:**

**I MOVE TO APPROVE ORDINANCE NO. 5132.**

## ORDINANCE NO. 5132

**AN ORDINANCE APPROVING A ZONE MAP AMENDMENT TO APPLY THE FLOOD AREA ZONE (FP) TO 28.25 ACRES AND THE 9000 MINIMUM LOT SIZE RESIDENTIAL ZONE (R-1) TO 1.65 ACRES OF TAX LOTS R4421 00900 AND 01200 UPON ANNEXATION INTO THE CITY LIMITS.**

### RECITALS:

**WHEREAS**, the Planning Department received an application for the annexation of tax lots R4421 00900 and 01200 into the city limits; and

**WHEREAS**, the McMinnville Municipal Code, Section 16.30.030 requires that all applicants for annexation must enter into an annexation agreement with the City of McMinnville; and

**WHEREAS**, on February 14, 2023, the McMinnville City Council approved Resolution No. 2023-09, an annexation agreement with the applicant; and

**WHEREAS**, the Annexation Agreement stipulates in Section 2(a)(3) that the property owner will receive a final unappealed land-use approval for city zoning on the property; and

**WHEREAS**, the Planning Department received an application for a Zone Map Amendment for the application of city zoning on tax lots R4421 00900 and 01200 upon annexation into the city limits; and

**WHEREAS**, a duly noticed public hearing before the McMinnville Planning Commission was held on March 16, 2023 after due notice had been provided in the local newspaper on February 21, 2023, and written notice had been mailed to property owners within 300 feet of the affected property on February 23, 2023; and

**WHEREAS**, at said public hearing, the application materials and a staff report were presented, and applicant and public testimony was received.

**WHEREAS**, the Planning Commission, being fully informed about said request, found that the requested Zone Change conformed to the applicable Comprehensive Plan goals and policies and review criteria based on the material submitted by the applicant and the findings of fact and conclusionary findings for approval contained in Exhibit A; and

**WHEREAS**, the Planning Commission, by a vote of 9-0, recommended approval of said Zone Map Amendment; and

**WHEREAS**, the City Council having received the Planning Commission recommendation and staff report, hosted a public hearing on May 9, 2023 and having deliberated;

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

1. That the Council adopts the Decision, Conditions, Findings of Fact and Conclusionary Findings as documented in Exhibit A, approving the Zone Map Amendment (ZC 3-22; and
2. That this Ordinance shall take effect 30 days after its passage by the City Council.

Passed by the McMinnville City Council this 9<sup>th</sup> day of May 2023, by the following votes:

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

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

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

**EXHIBITS:**

- A. Decision Document for Docket ZC 3-22

**DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPLICATION FOR AN AMENDMENT TO THE ZONE MAP TO APPLY THE FLOOD AREA ZONE (FP) TO 28.25 ACRES AND THE 9000 MINIMUM LOT SIZE RESIDENTIAL ZONE (R1) TO 1.65 ACRES OF TAX LOTS R4421-00900 & R4421-01200 UPON ANNEXATION INTO THE CITY LIMITS**

**DOCKET:** ZC 3-22 (Zone Change)

**REQUEST:** An application for an amendment to the Zone Map to apply the Flood Area Zone (FP) to 28.25 acres and the 9000 Minimum Lot Size Residential Zone (R-1) to 1.65 acres of the two tax lots upon annexation into the city limits.

**LOCATION:** Site Address: No assigned address  
Map & Tax Lot: R4421 Tax Lots 00900 and 01200

**CURRENT ZONING:** EF-80, Exclusive Farm Use (County Zoning – Still in the Urban Growth Boundary)

**APPLICANT:** Steve Kay, Cascadia Planning,  
prepared for Anders Johansen, property owner.

**PROPERTY OWNER:** Anders Johansen

**STAFF:** Heather Richards, Community Development Director

**DATE DEEMED COMPLETE:** February 14, 2023

**HEARINGS BODY & ACTION:** The McMinnville Planning Commission makes a recommendation to the City Council. A Planning Commission recommendation of approval is transmitted to the City Council for a decision. A Planning Commission recommendation/decision of denial becomes the final decision unless that decision is appealed to the City Council.

**PLANNING COMMISSION**

**HEARING DATE**

**& LOCATION:** March 16, 2023 at 6:30 P.M., 200 NE 2<sup>nd</sup> Street, McMinnville, OR 97128.  
Zoom meeting ID: 864 3046 1362, Passcode: 904774

**DECISION-MAKING**

**BODY:** The McMinnville City Council makes the final decision, unless the Planning Commission recommendation/decision is denial, in which case that is the final decision unless the Planning Commission decision is appealed to City Council.

**MEETING DATE  
& LOCATION:**

May 9, 2023, at 7:00 PM, 200 NE 2<sup>nd</sup> Street, McMinnville, OR 97128  
Zoom meeting ID: 859 1340 1163, Passcode: 681621

**PROCEDURE:**

An application for a Zone Map amendment is processed in accordance with the procedures in Section 17.72.120 of the McMinnville Municipal Code. The application is reviewed by the Planning Commission in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the McMinnville Municipal Code.

**CRITERIA:**

The applicable criteria for a Zone Map Amendment is specified in Section 17.74.020 of the McMinnville Municipal Code. In addition, the goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land use decisions must conform to the applicable goals and policies of Volume II. "Proposals" specified in Volume II are not mandated, but are to be undertaken in relation to all applicable land use requests. The proposal must also be consistent with applicable provisions of state law.

**APPEAL:**

The Planning Commission makes a recommendation to the City Council. If the Planning Commission recommendation is approval, the recommendation is forwarded to City Council to make the final decision. As specified in Section 17.72.190 of the McMinnville Municipal Code, the City Council's decision may be appealed to the Land Use Board of Appeals (LUBA) within 21 (twenty-one) days of the date written notice of decision is mailed.

**COMMENTS:**

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Ziplly Fiber (formerly Frontier Communications); Comcast; Recology; Northwest Natural Gas; Oregon Department of State Lands; and Oregon Department of Transportation. Their comments are provided in Section IV of this document.

Based on the findings and conclusionary findings, the City Council finds that the applicable criteria are satisfied and **APPROVES WITH CONDITIONS** the Zone Map Amendment (ZC 3-22).

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**DECISION: APPROVAL WITH CONDITIONS**  
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City Council: \_\_\_\_\_  
Remy Drabkin, Mayor of McMinnville

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

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

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

## **I. APPLICATION SUMMARY:**

### ***Subject Property & Request***

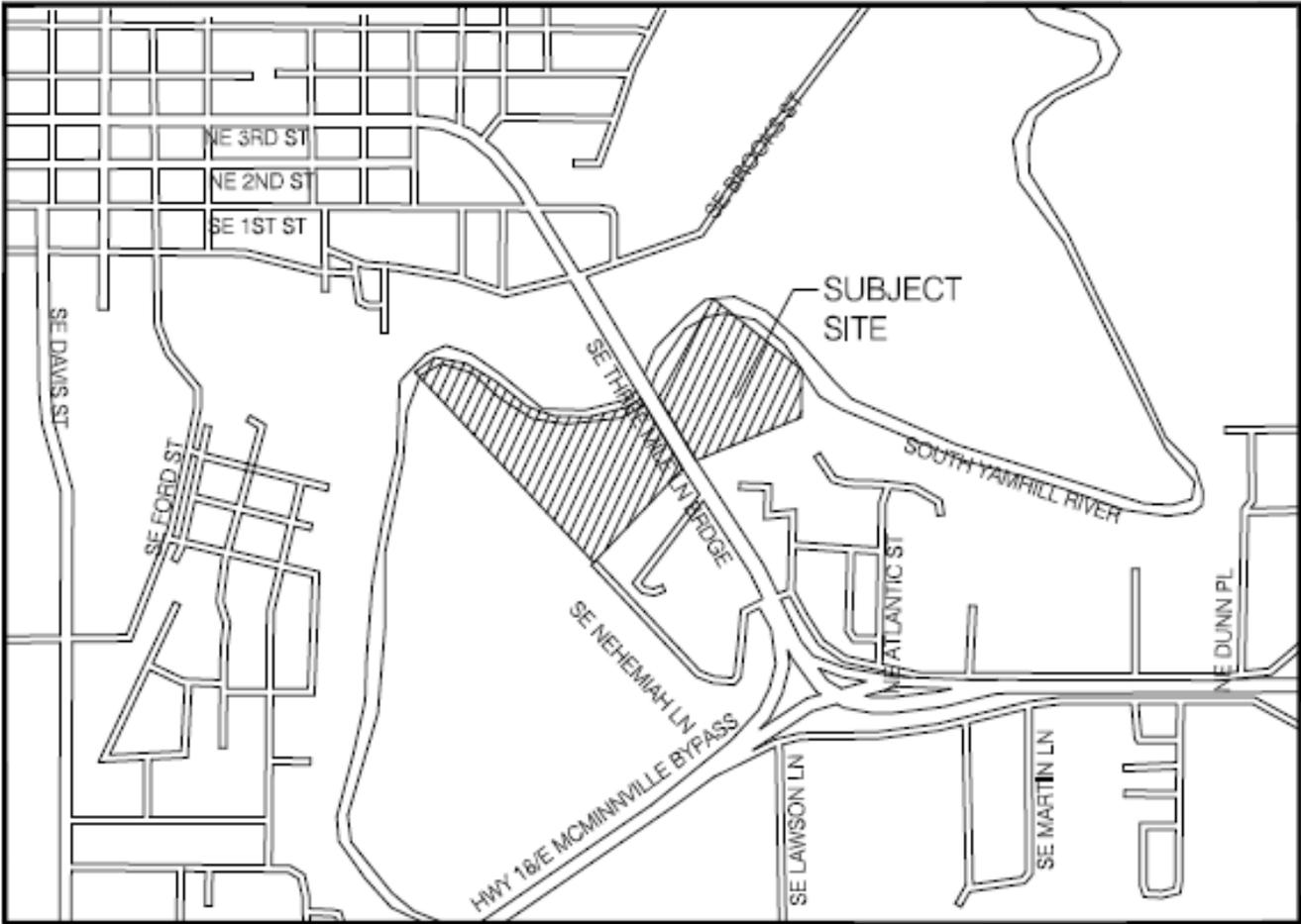
The applicant requests an amendment to the Zone Map to apply the Flood Area Zone (FP) to 28.25 acres and the 9000 Minimum Lot Size Residential Zone (R1) to 1.65 acres of tax lots R4421 00900 and 01200 upon annexation to the city limits. Tax Lot 900 contains approximately 12.40 acres and is located on the east side of the Three Mile Lane Bridge, while Tax Lot 1200 contains 17.6 acres on the west side of the bridge. Both tax lots are currently located within the Urban Growth Boundary (UGB) of McMinnville and are designated Residential and Floodplain on the City Comprehensive Plan Map. Consistent with the Comprehensive Plan, the applicant is proposing to change the current EF-80 (Exclusive Farm Use) zone designation to R-1 (Single-Family Residential) and F-P (Flood Area) when the parcels are annexed. Currently, the properties are in the county in McMinnville's Urban Growth Boundary with county zoning **See Vicinity Map (Figure 1), Current Zoning Map (Figure 2), and Proposed Zoning Map (Figure 3).**

R-1 and R-2 zoned parcels to the south of the site are located within the city limits of McMinnville and are developed with single-family dwellings. To the east and west of the site are EF-80 zoned parcels under Yamhill County jurisdiction. To the north of the site, across the South Yamhill River, are F-P and R-1 zoned parcels that are developed with single-family residential uses.

The property is being considered for annexation into the city limits by the McMinnville City Council. Upon annexation the property will need to have city zoning. At their meeting on February 14, 2023, the McMinnville City Council adopted Resolution No. 2023-09 authorizing the City Manager to sign an annexation agreement with the property owner. One of the stipulations of the annexation agreement was that the property owner would successfully obtain land-use approval for city zoning on the subject properties. **(See attached Annexation Agreement)**

Most of the property is located within a flood plain and is not considered buildable. Only land on the edges of the property is considered buildable. An existing conservation easement and a 100-year floodplain are located on both tax lots, roughly paralleling the Yamhill River, which is located along the northern boundary of the site. Since almost all of the subject properties are encumbered by these natural features the property owner would like to initially build one residence on the property, but has the opportunity to partition into three lots in the future. **See Future Development Plan with One Residence (Figure 4) and Future Development Plan with Land Division (Figure 5).**

Figure 1. Vicinity Map

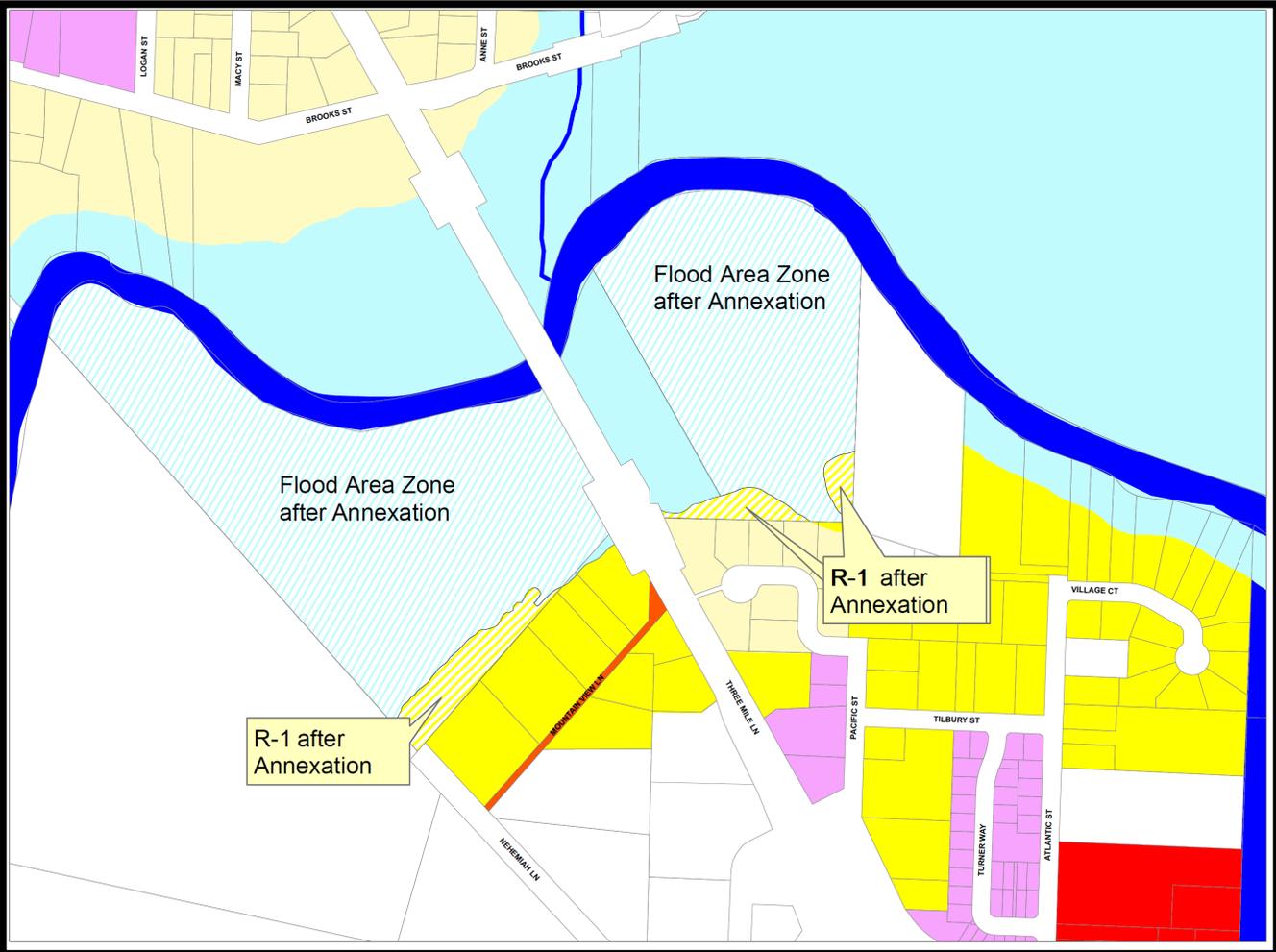


VICINITY MAP

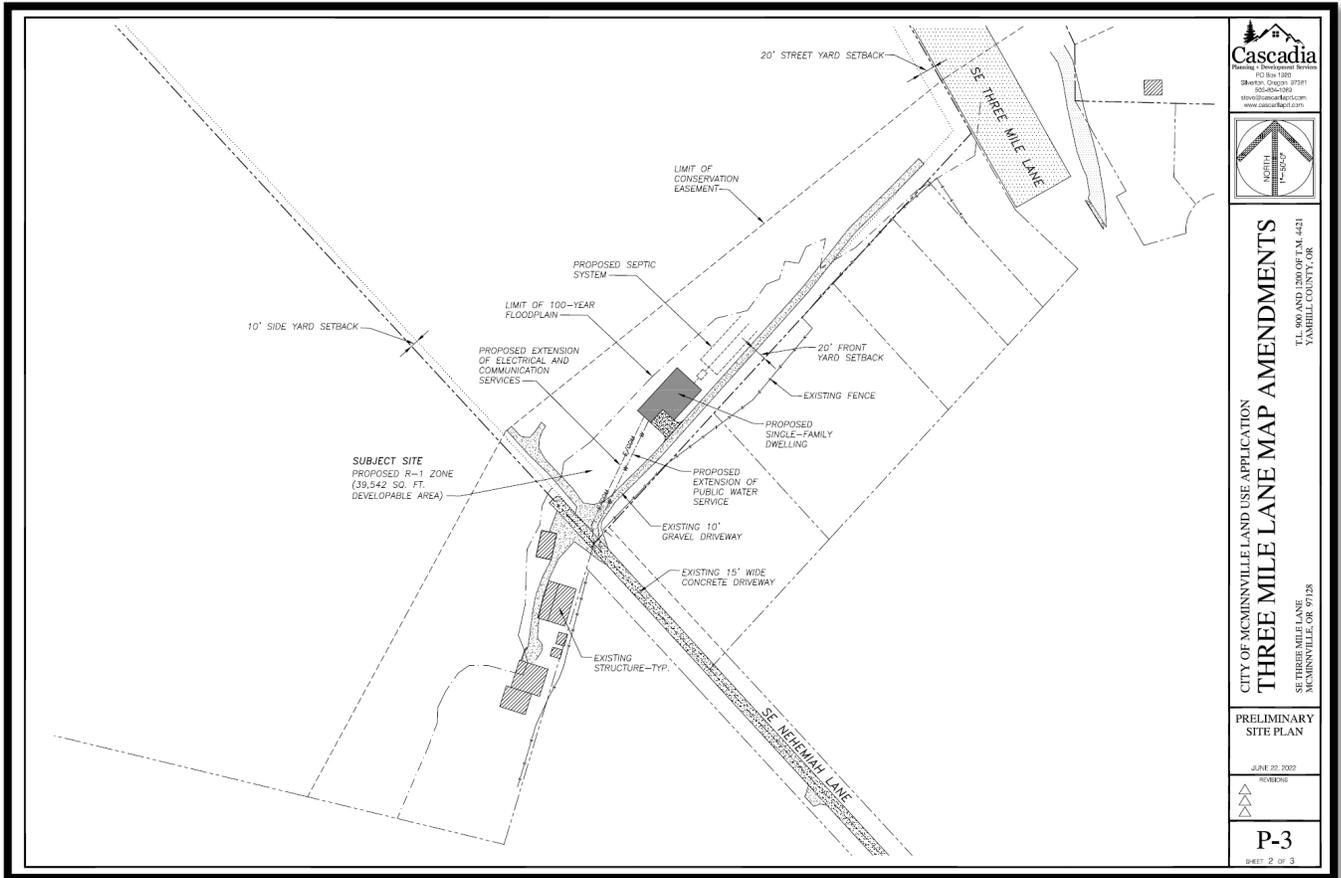
Figure 2. Current Zone Map (with County Zoning)



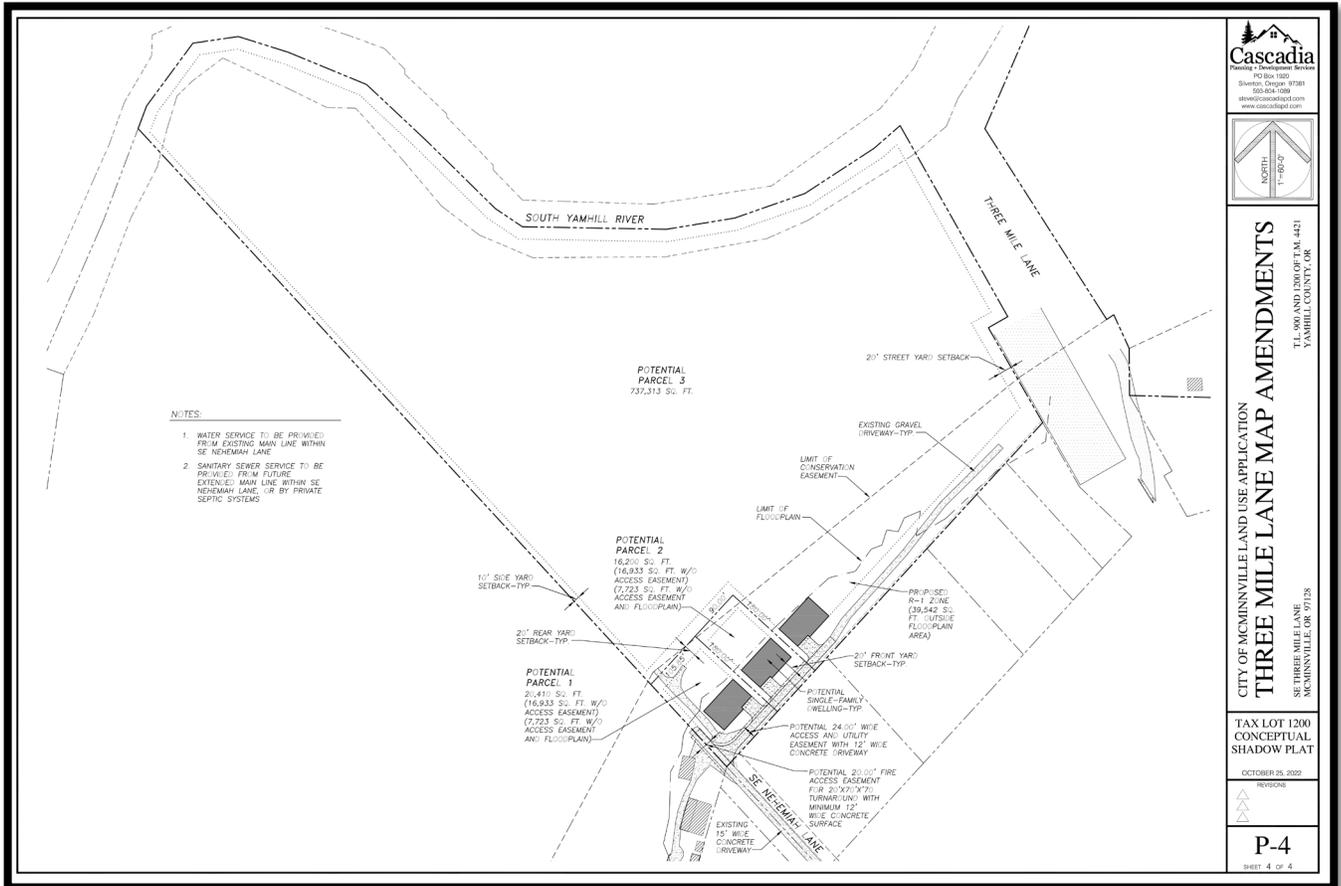
Figure 3. Proposed Zone Map (with City Zoning)



**Figure 4. Future Development Plan with One Residence**



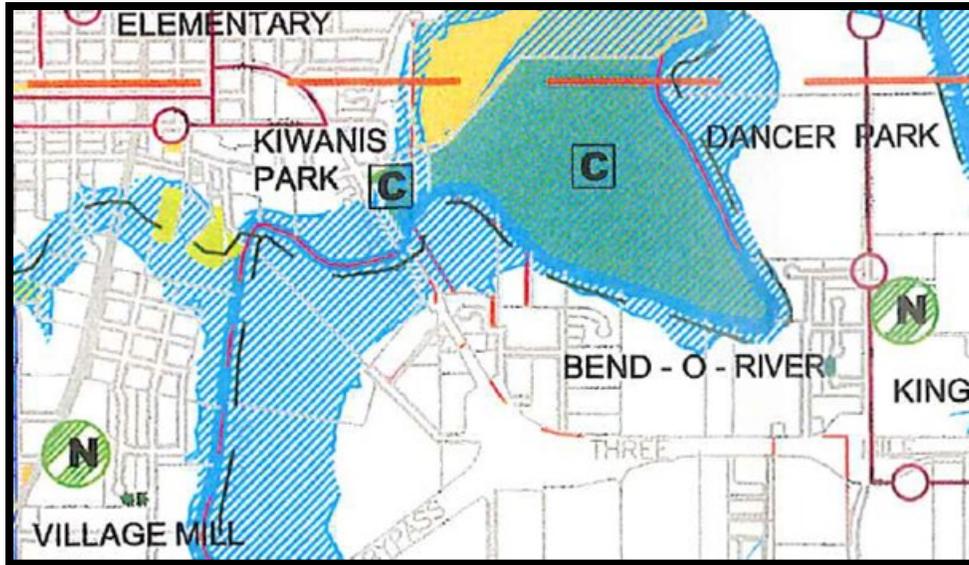
**Figure 5. Future Potential Land Division Plan**



There is a future planned multi-purpose trail along the Yamhill River on the site and the Annexation Agreement which is 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*

## **II. CONDITIONS:**

1. This land-use approval will not be in effect until the subject site is annexed into the McMinnville city limits, at which time, these zones will be applied to the subject site.

## **III. ATTACHMENTS (on file with the Planning Department):**

1. ZC 3-22 Application and Attachments
2. Annexation Agreement

## **IV. COMMENTS:**

### **Agency Comments**

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Ziplly Fiber (formerly Frontier Communications); Comcast; Recology; Northwest Natural Gas; Oregon Department of Transportation; and Oregon Department of State Lands.

Responses were received from the following agencies, provided below:

- McMinnville Building Department
- McMinnville Engineering Department
- McMinnville Fire Department
- McMinnville Water & Light
- McMinnville Fire Department
- Comcast
- Department of State Lands

Most of the comments do not create conditions of approval for the Zone Map amendment land-use decision but are important comments for the applicant when developing on the property.

- McMinnville Building Department

No building code issues for this referral. Fire department access will be evaluated at time of building permit application and is regulated under the authority of the Fire Department. The noted "POTENTIAL" easements and driveways may not be adequate. Adequacy will be determined by the Fire Department at the time building permits are processed.

- McMinnville Engineering Department

We will want to see a Local Improvement District and a waiver of remonstrance for any street improvements.

- McMinnville Fire Department

After reading through, I see that they are looking to add only one residence. In the past we have allowed these with the 15ft easement/driveway. It appears that there is a hydrant right on the corner so that would take care of water supply issues. The only issue we would have would be if the house were to be located more than 150ft from the roadway. If it is further we would require turnout and a turn around.

The Fire Department would allow the surface to be gravel, paved or concrete.

I would add that we will need a fire flow test from the nearby hydrant prior to any construction.

- McMinnville Water & Light

Property owner should identify existing electric transmission easement on east boundary of TL 900 and provide for access to the high-voltage transmission lines from Three-Mile Lane to provide for tree-trimming to mitigate risk of fire within the urban growth boundary. Geographic features make accessing the area from the north (river) or south (steep terrain) impractical.

McMinnville Water and Light records indicate that 50' of a 100' wide power easement (v117p204) exists on the east line of parcel 900. The easement should be included in the Three Mile Lane Map Amendments.



It appears that the existing home on tax lot 1200 will remain. If the new single family home site will be on its own tax lot, MW&L will need an easement to extend power from 1200 to the new parcel.

Need to identify and provide for access on the subject property (tax lot 900) to MW&L high-voltage transmission lines to provide for fire containment to mitigate risk of wildfire and to respond to fire. Due to geographic barriers along existing electric transmission easement, from the north (river) and south (steep terrain), current access is inadequate for emergency services.

Water is available on SE Mountain View.

Power is available on SE Mountain View.

- Comcast  
If this development relocates the power poles along Nehemiah Lane, then Comcast would need to be notified to relocate our facilities.
- Department of State Lands  
Thank you for including the Department of State Lands within the general notification list for this annexation. Please note that both 04S04W21 #900 & 1200 contain a wide swath of predominantly hydric soils as mapped on the Statewide Wetlands Inventory, see clip. Therefore there is a higher likelihood that wetlands may occur within this area. Please provide wetland land use notices when the City receives applications for land alteration, PUD or subdivision of these properties. Wetland Delineation and DSL removal-fill permits may be needed. Also note that the Yamhill River is designated essential salmonid habitat and therefore any activity below the ordinary high water elevation of the river may require a DSL permit. Again, please follow WLUN submittal guidance. The DSL ownership program will provide comments separately if needed.

## Public Comments

Notice of this request was mailed to property owners located within 300 feet of the subject site. No public testimony was submitted.

## V. FINDINGS OF FACT - PROCEDURAL FINDINGS

1. The application was submitted with the appropriate fees provided on June 30, 2022 as part of an annexation application. The applicant submitted the necessary documentation to demonstrate a neighborhood meeting was noticed and held in accordance with the provisions of Section 17.72.095 of the Zoning Ordinance.
2. The application was deemed complete on February 14, 2023, when an annexation agreement was authorized by the McMinnville City Council.
3. On February 10, 2023, notice of the application was provided to the Oregon Department of Land Conservation and Development (DLCD).
4. On February 13, 2023, notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.120 of the Zoning Ordinance: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, Public Works Department, Waste Water Services, and City Manager; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Planning Department; Ziplly Fiber (formerly Frontier Communications); Comcast; Recology; Northwest Natural Gas; Oregon Department of Transportation; and Oregon Department of State Lands. Notice of the application was also subsequently provided to the City Attorney.

Comments received from agencies are addressed in Section IV of this Decision Document.

5. On February 23, 2023, notice of the application and the March 16, 2023, Planning Commission public hearing was mailed to property owners within 300 feet of the subject property in accordance with Section 17.72.120 of the Zoning Ordinance.
6. On February 21, 2023, notice of the application and the March 16, 2023 Planning Commission public hearing was published in the newspaper in accordance with Section 17.72.120 of the Zoning Ordinance.
7. The Planning Commission held a public hearing on March 16, 2023 to consider the request and voted to recommend approval of the zone map amendment to the City Council.
8. A public hearing notice was advertised in the News Register on May 2 and May 9 for a public hearing with the City Council
9. On May 9, the City Council hosted a public hearing and voted to approve the Zone Map Amendment.

## VI. FINDINGS OF FACT - GENERAL FINDINGS

1. **Location:**
  - **Site Address:** No site address at this time.

- **Map & Tax Lot:** R4421 00900 & 01200
- 2. **Size:** 29.90 acres
- 3. **Comprehensive Plan Map Designation:** Residential and Floodplain
- 4. **Zoning:** Currently EF 80 Yamhill County Zoning
- 5. **Current Development:** Undeveloped
- 6. **Inventoried Significant Resources:**
  - a. **Historic Resources:** None Identified
  - b. **Other:** None Identified
- 7. **Transportation and Access:** The property is served by Nehemiah Lane, a county local road.

## **VII. CONCLUSIONARY FINDINGS:**

The Conclusionary Findings are the findings regarding consistency with the applicable criteria for the application. The applicable criteria and standards for a Zone Map Amendment are found in Chapter 17.74 of the Zoning Ordinance.

In addition, the goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land use decisions as criteria for approval, denial, or modification of a proposed request. Goals and policies are mandated; all land use decisions must conform to the applicable goals and policies of Volume II. "Proposals" specified in Volume II are not mandated, but are to be undertaken in relation to all applicable land use requests.

Amendments to the City's adopted and acknowledged planning documents, including amendments to the Comprehensive Plan Map and Zoning Map, are also subject to certain Statewide Planning Goals and associated statutes and administrative rules.

### **Comprehensive Plan Volume II:**

The following Goals, Policies, and Proposals from Volume II of the Comprehensive Plan provide criteria applicable to this request:

The implementation of many of the goals, policies, and proposals as they apply to quasi-judicial land use applications are accomplished through the provisions, procedures, and standards in the city codes and master plans, which are sufficient to adequately address applicable goals, polices, and proposals as they apply certain applications, and are not addressed below

The following findings are made relating to specific Goals and Policies:

## **CHAPTER II. NATURAL RESOURCES**

### **GOAL II 1: TO PRESERVE THE QUALITY OF THE AIR, WATER, AND LAND RESOURCES WITHIN THE PLANNING AREA.**

**APPLICANT'S RESPONSE:** The applicant is proposing to annex the 30 +/- acre site into the city limits of McMinnville and change the current EF-80 zoning to R-1 and F-P designations. The

Topographic Survey demonstrates that the annexation territory is currently vacant. An existing conservation easement and a 100-year floodplain follow the South Yamhill River in the northern boundary of the site. The Preliminary Site Plan indicates that this riparian corridor will be preserved and only 39,542 sq. ft. (0.91 acres) of the 30 acre site will be developed with a single-family use.

**FINDING: SATISFIED.**

*Policies - Land*

- 1.00 *Urbanizable lands outside the city limits, but inside the Urban Growth Boundary, shall be retained, whenever possible, in agricultural use until such time as they are needed for urban development.*

**APPLICANT'S RESPONSE:** As illustrated on the attached Existing General Land Use Plan, the subject site is urbanizable land that is currently located within the McMinnville UGB. The submitted Topographic Survey indicates that most of the 30 acre site is located within a conservation easement, therefore it cannot be put into agricultural use. Per the attached Preliminary Site Plan, development of a home site is proposed for a small buildable area of Tax Lot 1200. Since other areas which are located outside of the floodplain and conservation easement on Lot 900 are too small for a home site, the applicant could continue farming those areas after the site is annexed.

**FINDING: SATISFIED.**

- 2.00 *The City of McMinnville shall continue to enforce appropriate development controls on lands with identified building constraints, including, but not limited to, excessive slope, limiting soil characteristics, and natural hazards.*

**APPLICANT'S RESPONSE:** The applicant's General Land Use Plan indicates that a floodplain is located on the subject site. As required, the proposed development is located outside of the mapped floodplain so that natural hazards are minimized.

**FINDING: SATISFIED.**

*Policies - Water*

- 8.00 *The City of McMinnville shall continue to seek the retention of high water quality standards as defined by federal, state, and local water quality codes, for all the water resources within the planning area.*
- 9.00 *The City of McMinnville shall continue to designate appropriate lands within its corporate limits as "floodplain" to prevent flood induced property damages and to retain and protect natural drainage ways from encroachment by inappropriate uses.*
- 10.00 *The City of McMinnville shall cooperate with the Oregon Department of Environmental Quality, the Mid-Willamette Valley Council of Governments, and other appropriate agencies and interests to maintain water quality and to implement agreed upon programs for management of the water resources within the planning area.*
- 11.00 *The City of McMinnville shall cooperate with McMinnville Water and Light, the Bureau of Land Management, and Yamhill County to insure that the land use development actions*

*allowed in and around the municipal watershed do not lessen the water quality of the municipal water system below acceptable federal, state, and local standards.*

**APPLICANT'S RESPONSE:** The submitted Existing General Land Use Plan illustrates the limits of a 100-year floodplain along South Yamhill River. The applicant's Preliminary Site Plan indicates that the applicant intends to develop a low-density residential use in the southwest corner of Lot 1200, near other existing single-family dwelling, and approximately 650-ft. from the river. Since there are no proposed impacts within the conservation easement, water quality standards for the waterway will be maintained. As required, the proposed septic system will comply with DEQ standards, and the applicant will obtain appropriate local and state permits prior to the installation of the improvements.

**FINDING: SATISFIED.**

#### **CHAPTER IV. ECONOMY OF MCMINNVILLE**

**GOAL IV 1: TO ENCOURAGE THE CONTINUED GROWTH AND DIVERSIFICATION OF MCMINNVILLE'S ECONOMY IN ORDER TO ENHANCE THE GENERAL WELL-BEING OF THE COMMUNITY AND PROVIDE EMPLOYMENT OPPORTUNITIES FOR ITS CITIZENS.**

**APPLICANT'S RESPONSE:** The Existing General Land Use Plan indicates that the subject property is located within the UGB and adjacent to the city limits of McMinnville. The subject parcels are currently designated Residential on the City's Comprehensive Plan Map. The applicant is proposing to annex Tax Lots 900 and 1200 and change the zoning to R-1 and F-P when the area is brought into the city limits. The proposed map amendments will allow the development of a single-family dwelling, providing additional housing opportunities for the workforce in McMinnville. Residents that live in the proposed dwelling will also purchase local goods and services, helping to contribute to the local economy. In addition, the annexation will provide additional property tax revenue for the City to use for providing public services.

**FINDING: SATISFIED.**

#### **CHAPTER V. HOUSING AND RESIDENTIAL DEVELOPMENT**

**GOAL V 1: TO PROMOTE DEVELOPMENT OF AFFORDABLE, QUALITY HOUSING FOR ALL CITY RESIDENTS**

*General Housing Policies:*

58.00 *City land development ordinances shall provide opportunities for development of a variety of housing types and densities.*

61.00 *The City of McMinnville shall monitor the conversion of lands to residential use to insure that adequate opportunities for development of all housing types are assured. Annual reports on the housing development pattern, housing density and mix shall be prepared for city review.*

**APPLICANT'S RESPONSE:** The City's draft Housing Needs Analysis indicates that single-family and multi-family dwelling needs will be met through the development of 4,657 housing units during the 2021-2041 planning period. However, if all inventoried residential land supply is

developed by 2041, the City will still maintain a deficiency of 1,926 dwelling units during the planning period. Therefore, annexation of the subject site is essential when addressing the public need for additional housing. As demonstrated by the attached Preliminary Site Plan, the proposed single-family dwelling unit on Tax Lot 1200 is consistent with the existing land use pattern, and the development will contribute towards the development of a variety of housing types for the community.

**FINDING: SATISFIED.**

**GOAL V 2: TO PROMOTE A RESIDENTIAL DEVELOPMENT PATTERN THAT IS LAND INTENSIVE AND ENERGY-EFFICIENT, THAT PROVIDES FOR AN URBAN LEVEL OF PUBLIC AND PRIVATE SERVICES, AND THAT ALLOWS UNIQUE AND INNOVATIVE DEVELOPMENT TECHNIQUES TO BE EMPLOYED IN RESIDENTIAL DESIGNS.**

*Policies:*

68.00 *The City of McMinnville shall encourage a compact form of urban development by directing residential growth close to the city center, to designated neighborhood activity centers, and to those areas where urban services are already available before committing alternate areas to residential use. (Ord. 5098, December 8, 2020)*

**APPLICANT'S RESPONSE:** The City's draft Housing Needs Analysis indicates that single-family and multi-family dwelling needs will be met through the development of 4,657 housing units during the 2021-2041 planning period. However, if all inventoried residential land supply is developed by 2041, the City will still maintain a deficiency of 1,926 dwelling units during the planning period. Therefore, annexation of the subject site is essential when addressing the public need for additional housing. As demonstrated by the attached Preliminary Site Plan, the proposed single-family dwelling unit on Tax Lot 1200 is consistent with the existing land use pattern, and the development will contribute towards the development of a variety of housing types for the community.

**FINDING: SATISFIED.**

71.00 *The City of McMinnville shall designate specific lands inside the urban growth boundary as residential to meet future projected housing needs. Lands so designated may be developed for a variety of housing types. All residential zoning classifications shall be allowed in areas designated as residential on the Comprehensive Plan Map.*

**APPLICANT'S RESPONSE:** The subject site is currently designated Residential and Floodplain on the Comprehensive Plan Map, therefore the proposed R-1 and F-P zoning is consistent with the planned use of the parcels. The applicant is proposing to develop a single-family dwelling on the R-1 zoned portion of the site, in conformance with the above policy.

**FINDING: SATISFIED.**

71.05 *The City of McMinnville shall encourage annexations and rezoning which are consistent with the policies of the Comprehensive Plan so as to achieve a continuous five-year supply of buildable land planned and zoned for all needed housing types. (Ord.4840, January 11, 2006; Ord. 4243, April 5, 1983; Ord. 4218, November 23, 1982)*

**APPLICANT'S RESPONSE:** The draft Housing Needs Analysis indicates that 4,657 dwelling units need to be developed during the 2021-2041 planning period. Therefore, approximately 1,164 dwelling units need to be constructed during the next 5 years to meet the projected demand. It is anticipated that at the end of the planning period, the City will have a projected deficiency of 1,926 dwelling units. Since the current residential land supply will only last about 12 years, and a portion of the available land supply is located outside of the city limits, the proposed annexation and residential development is timely and will serve a public need.

**FINDING: SATISFIED.**

71.06 *Low Density Residential Development (R-1 and R-2) Low-density residential development should be limited to the following:*

1. *Areas which are committed to low density development and shown on the buildable lands inventory as "developed" land;*
2. *Areas where street facilities are limited to collector and local streets;*
3. *Areas with mapped development limitations such as steep slopes, floodplains, stream corridors, natural drainageways, and wetlands; and*
4. *Areas with limited capacity for development identified in approved facility master plans, including sanitary sewer, water, drainage, and transportation facilities, unless such plans specify funded and scheduled improvements which will alleviate the problem and which can be provided concurrent with adequate capacity for the use. (Ord. 5098, December 8, 2020; Ord. 4796, October 14, 2003)*

**APPLICANT'S RESPONSE:** The subject site is currently designated Residential and Floodplain on the Comprehensive Plan Map. The proposed home site is accessed from SE Nehemiah Lane, a Local Street. Therefore, the proposed R-1 and F-P zoning is consistent with the above policies.

As demonstrated by the Existing General Land Use Plan, the area proposed for annexation is partially encumbered by a floodplain and conservation easement along the South Yamhill River.

Since the nearest sanitary sewer main line is located approximately 1,600-ft. from the site at the intersection of SE Nehemiah Lane and SE Three Mile Lane, the applicant is proposing to install a private septic system to serve the proposed home. Existing improvements to the section of SE Nehemiah Lane serving the subject site consist of a 15-ft. wide paved surface within a 60-ft. right-of-way. However, the Local Street has adequate capacity since only 3 other dwellings and 1 new dwelling will be served by the roadway.

**FINDING: SATISFIED.**

71.07 *The R-1 zoning designation shall be applied to limited areas within the McMinnville urban growth boundary. These include:*

2. *Neighborhoods and properties within the current urban growth boundary that are developed or have been approved for such densities (Michelbook, for example);*

**APPLICANT'S RESPONSE:** The subject site is currently designated Residential and Floodplain on the Comprehensive Plan Map, therefore the proposed R-1 and F-P zoning is consistent with approved densities for the site.

**FINDING: SATISFIED.**

*Urban Policies:*

- 99.00 *An adequate level of urban services shall be provided prior to or concurrent with all proposed residential development, as specified in the acknowledged Public Facilities Plan. Services shall include, but not be limited to:*
1. *Sanitary sewer collection and disposal lines. Adequate municipal waste treatment plant capacities must be available.*
  2. *Storm sewer and drainage facilities (as required).*
  3. *Streets within the development and providing access to the development, improved to city standards (as required).*
  4. *Municipal water distribution facilities and adequate water supplies (as determined by City Water and Light). (as amended by Ord. 4796, October 14, 2003)*
  5. *Deleted as per Ord. 4796, October 14, 2003.*

**APPLICANT'S RESPONSE:** The Existing General Land Use Plan demonstrates that public utility and transportation facilities are located in the vicinity of the subject site and can be extended when the proposed home site is developed. Public water can be provided to the annexation territory by installing a meter and connecting a lateral to the existing main line at the north terminus of SE Nehemiah Lane. Similarly, electrical and communication services can be provided by connecting to existing lines at the north terminus of the right-of-way. Since the nearest sanitary sewer main line is located approximately 1,600- ft. from the site at the intersection of SE Nehemiah Lane and SE Three Mile Lane, the applicant is proposing to install a private septic system to serve the proposed home. As required, stormwater from impervious surfaces will be managed on-site in accordance with City standards. The attached Preliminary Site Plan indicates that this portion of SE Nehemiah Lane is currently developed with a 15-ft. paved surface, which is adequate for the 3 existing homes which access the roadway and the proposed single-family dwelling

**FINDING: SATISFIED.**

**CHAPTER VI. TRANSPORTATION SYSTEM**

**GOAL VI 1: TO ENCOURAGE DEVELOPMENT OF A TRANSPORTATION SYSTEM THAT PROVIDES FOR THE COORDINATED MOVEMENT OF PEOPLE AND FREIGHT IN A SAFE AND EFFICIENT MANNER.**

*Policies - Streets:*

117.00 *The City of McMinnville shall endeavor to insure that the roadway network provides safe and easy access to every parcel.*

**APPLICANT'S RESPONSE:** The submitted Topographic Survey and Preliminary Development Plan illustrate that SE Nehemiah Lane provides safe and easy access to the buildable portion of Lot 1200.

**FINDING: SATISFIED.**

118.00 *The City of McMinnville shall encourage development of roads that include the following design factors:*

1. *Minimal adverse effects on, and advantageous utilization of, natural features of the land.*
2. *Reduction in the amount of land necessary for streets with continuance of safety, maintenance, and convenience standards.*
3. *Emphasis placed on existing and future needs of the area to be serviced. The function of the street and expected traffic volumes are important factors.*
4. *Consideration given to Complete Streets, in consideration of all modes of transportation (public transit, private vehicle, bike, and foot paths). (Ord.4922, February 23, 2010)*
5. *Connectivity of local residential streets shall be encouraged. Residential cul-de-sac streets shall be discouraged where opportunities for through streets exist*

**APPLICANT'S RESPONSE:** As demonstrated by the Cover Sheet/Vicinity Map and General Land Use Plan, existing development, the floodplain, and an existing conservation easement limit how street connectivity can occur around and adjacent to the subject site. Due to low traffic volumes and since only 4 dwellings will be served by the 15-ft. wide section of SE Nehemiah Lane, all modes of travel can safely be accommodated by the existing roadway. As such, the existing street system is consistent with the above policies.

**FINDING: SATISFIED.**

119.00 *The City of McMinnville shall encourage utilization of existing transportation corridors, wherever possible, before committing new lands.*

120.00 *The City of McMinnville may require limited and/or shared access points along major and minor arterials, in order to facilitate safe access flows.*

121.00 *The City of McMinnville shall discourage the direct access of small-scale residential developments onto major or minor arterial streets and major collector streets.*

**APPLICANT'S RESPONSE:** As required, access to the buildable area of Tax Lot 1200 is from SE Nehemiah Lane, an existing Local Street.

**FINDING: SATISFIED.**

122.00 *The City of McMinnville shall encourage the following provisions for each of the three functional road classifications:*

3. *Local Streets*

- Designs should minimize through-traffic and serve local areas only.*
- Street widths should be appropriate for the existing and future needs of the area.*
- Off-street parking should be encouraged wherever possible*
- Landscaping should be encouraged along public rights-of-way.*

**APPLICANT'S RESPONSE:** As discussed above, the existing width of SE Nehemiah Lane is appropriate for low traffic generated by existing and proposed development using the roadway. The Preliminary Site Plan demonstrates that off-street parking can be provided within a 2-car garage and in the driveway serving the proposed home site.

**FINDING: SATISFIED.**

***Policies – Parking***

126.00 *The City of McMinnville shall continue to require adequate off-street parking and loading facilities for future developments and land use changes.*

127.00 *The City of McMinnville shall encourage the provision of off-street parking where possible, to better utilize existing and future roadways and rights-of-way as transportation routes.*

**APPLICANT'S RESPONSE:** As mentioned above, the Preliminary Site Plan demonstrates that off-street parking can be provided within a 2-car garage and in the driveway serving the proposed home site.

**FINDING: SATISFIED.**

***Policies – Bike Paths***

130.00 *The City of McMinnville shall encourage implementation of the Bicycle System Plan that connects residential areas to activity areas such as the downtown core, areas of work, schools, community facilities, and recreation facilities.*

**APPLICANT'S RESPONSE:** Due to the low traffic volume and travel speeds on SE Nehemiah Lane, bicycles and vehicles safely share the roadway. Nehemiah Lane connects to SE Three Mile Lane to the southeast of the site, which in turn provides opportunities for biking to other community destinations.

**FINDING: SATISFIED.**

***Policies - Complete Streets***

132.24.00 *The safety and convenience of all users of the transportation system including pedestrians, bicyclists, transit users, freight, and motor vehicle drivers shall be accommodated and balanced in all types of transportation and development projects and through all phases of a project so that even the most vulnerable McMinnville residents – children, elderly, and persons with disabilities – can travel safely within the public right-of-way. Examples of how the Complete Streets policy is implemented:*

1. *Design and construct right-of-way improvements in compliance with ADA accessibility guidelines (see below).*
2. *Incorporate features that create a pedestrian friendly environment, such as:*
  - a. *Narrower traffic lanes;*
  - b. *Median refuges and raised medians;*
  - c. *Curb extensions (“bulb-outs”);*
  - d. *Count-down and audible pedestrian signals;*
  - e. *Wider sidewalks;*
  - f. *Bicycle lanes; and*
  - g. *Street furniture, street trees, and landscaping*

**APPLICANT’S RESPONSE:** As mentioned above, a total of 4 dwellings will be served by the 15-ft. wide section of SE Nehemiah Lane once the proposed single-family dwelling is developed on Tax Lot 1200. Due to the low traffic volume and travel speeds on SE Nehemiah Lane, all modes of travel can safely share the roadway. As such, the existing improvements are consistent with the above policies.

**FINDING: SATISFIED.**

## **CHAPTER VII. COMMUNITY FACILITIES AND SERVICES**

**GOAL VII 1: TO PROVIDE NECESSARY PUBLIC AND PRIVATE FACILITIES AND UTILITIES AT LEVELS COMMENSURATE WITH URBAN DEVELOPMENT, EXTENDED IN A PHASED MANNER, AND PLANNED AND PROVIDED IN ADVANCE OF OR CONCURRENT WITH DEVELOPMENT, IN ORDER TO PROMOTE THE ORDERLY CONVERSION OF URBANIZABLE AND FUTURE URBANIZABLE LANDS TO URBAN LANDS WITHIN THE McMinnville Urban Growth Boundary.**

### *Policies – Sanitary Sewer*

- 136.00 *The City of McMinnville shall insure that urban developments are connected to the municipal sewage system pursuant to applicable city, state, and federal regulations.*
- 140.00 *The City of McMinnville shall continue to limit sewer service extensions to the areas within the urban growth boundary, except where service is granted to comply with state or federal laws. Areas outside the city limits, but within the urban growth boundary, shall be granted sewer service hook-ups only under policies adopted by the City.*
- 141.00 *The City of McMinnville shall continue to separate storm and sanitary sewers where they are connected to reduce the inflow of storm sewer waters to the sewage treatment plant. Ongoing*

*maintenance and improvements of the existing system shall also be undertaken to reduce infiltration of rain water into the system.*

**APPLICANT'S RESPONSE:** Since the nearest sanitary sewer main line is located approximately 1,600-ft. from the site at the intersection of SE Nehemiah Lane and SE Three Mile Lane, the applicant is proposing to install a private septic system to serve the proposed home. As required, appropriate local and state permits will be obtained prior to construction of the improvements.

**FINDING: SATISFIED.**

*Policies – Storm Drainage:*

142.00 *The City of McMinnville shall insure that adequate storm water drainage is provided in urban developments through review and approval of storm drainage systems, and through requirements for connection to the municipal storm drainage system, or to natural drainage ways, where required.*

143.00 *The City of McMinnville shall encourage the retention of natural drainage ways for storm water drainage.*

**APPLICANT'S RESPONSE:** As required, an on-site storm system will be designed to meet City standards. Stormwater from impervious surfaces will be managed so that it is released on-site at the pre-development rate.

**FINDING: SATISFIED.**

*Policies – Water System:*

144.00 *The City of McMinnville, through McMinnville Water and Light, shall provide water services for development at urban densities within the McMinnville Urban Growth Boundary.*

145.00 *The City of McMinnville, recognizing McMinnville Water and Light as the agency responsible for water system services, shall extend water services within the framework outlined below:*

1. *Facilities are placed in locations and in such a manner as to insure compatibility with surrounding land uses.*
2. *Extensions promote the development patterns and phasing envisioned in the McMinnville Comprehensive Plan.*
3. *For urban level developments within McMinnville, sanitary sewers are extended or planned for extension at the proposed development densities by such time as the water services are to be utilized.*
4. *Applicable policies for extending water services, as developed by the City Water and Light Commission, are adhered to.*

**APPLICANT'S RESPONSE:** Public water can be extended to the annexation territory by installing a meter and connecting a lateral to the existing main line at the north terminus of SE Nehemiah Lane. As mentioned above, a private septic system will serve the proposed single-family dwelling on Tax Lot 1200.

**FINDING: SATISFIED.**

**Water and Sewer-Land Development Criteria**

151.00 *The City of McMinnville shall evaluate major land use decisions, including but not limited to urban growth boundary, comprehensive plan amendment, zone changes, and subdivisions using the criteria outlined below:*

1. *Sufficient municipal water system supply, storage and distribution facilities, as determined by McMinnville Water and Light, are available or can be made available, to fulfill peak demands and insure fire flow requirements and to meet emergency situation needs.*
2. *Sufficient municipal sewage system facilities, as determined by the City Public Works Department, are available, or can be made available, to collect, treat, and dispose of maximum flows of effluents.*
3. *Sufficient water and sewer system personnel and resources, as determined by McMinnville Water and Light and the City, respectively, are available, or can be made available, for the maintenance and operation of the water and sewer systems.*
4. *Federal, state, and local water and waste water quality standards can be adhered to.*
5. *Applicable policies of McMinnville Water and Light and the City relating to water and sewer systems, respectively, are adhered to.*

**APPLICANT'S RESPONSE:** An existing public water line that is located at the north terminus of SE Nehemiah Lane has the capacity to serve the proposed single-family dwelling on Tax Lot 1200. As required, the developer will be responsible for the cost to install a meter and extend a lateral to serve the new home site. Since the new dwelling is located 1,600-ft. from the nearest public sanitary sewer line, the applicant is proposing to install a private septic system to serve the site. Prior to development of the proposed improvements, detailed plans will be submitted for building permits, demonstrating that federal, state, and local wastewater standards are met.

**FINDING: SATISFIED.**

*Policies – Police and Fire Protection:*

152.00 *The City of McMinnville shall encourage the provision of adequate police and fire facilities and personnel to meet the needs of the community as it expands.*

155.00 *The ability of existing police and fire facilities and services to meet the needs of new service areas and populations shall be a criterion used in evaluating annexations, subdivision proposals, and other major land use decisions.*

**APPLICANT'S RESPONSE:** It is anticipated that City of McMinnville police and fire services have the capacity to serve the proposed single-family use on the subject site. As

demonstrated by the attached Preliminary Site Plan, a turnaround meeting Fire Code standards is provided at the terminus of SE Nehemiah Lane.

**FINDING: SATISFIED.**

## **CHAPTER IX. URBANIZATION**

**GOAL IX 1: TO PROVIDE ADEQUATE LANDS TO SERVICE THE NEEDS OF THE PROJECTED POPULATION TO THE YEAR 2023, AND TO ENSURE THE CONVERSION OF THESE LANDS IN AN ORDERLY, TIMELY MANNER TO URBAN USES.**

**APPLICANT'S RESPONSE:** The City has recently prepared a draft Housing Needs Analysis which projects housing needs during the 2021- 2041 planning period. This analysis indicates that single-family and multi-family needs will be met through the development of 4,657 dwelling units during the planning period. However, the existing residential land supply will not meet the projected demand. Even if all of the available residential land supply is developed by 2041, the City will have a projected deficiency of 1,926 dwelling units during the planning period. Therefore, annexation of the subject site is essential when addressing the public need for additional housing.

**FINDING: SATISFIED.**

## **CHAPTER X. CITIZEN INVOLVEMENT AND PLAN AMENDMENT**

**GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF McMinnville.**

**GOAL X 2: TO MAKE EVERY EFFORT TO ENGAGE AND INCLUDE A BROAD CROSS SECTION OF THE COMMUNITY BY MAINTAINING AN ACTIVE AND OPEN CITIZEN INVOLVEMENT PROGRAM THAT IS ACCESSIBLE TO ALL MEMBERS OF THE COMMUNITY AND ENGAGES THE COMMUNITY DURING DEVELOPMENT AND IMPLEMENTATION OF LAND USE POLICIES AND CODES.**

**GOAL X 3: TO PERIODICALLY REVIEW AND AMEND THE McMinnville Comprehensive Plan TO REFLECT CHANGES IN COMMUNITY CIRCUMSTANCES, IN CITIZEN DESIRES, AND IN THE STATEWIDE GOALS.**

188.00 *The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.*

189.00 *The City of McMinnville shall establish procedures for amending the Comprehensive Plan, Volumes I and II, and the implementation ordinances and measures in Volume III, which allow for citizen review and comment.*

**APPLICANT'S RESPONSE:** The requested land use actions are to annex the site into the City of McMinnville and change the Zoning Map designation from EF-80 to R-1 and F-P when the subject parcels are brought into the city limits. As required, citizens will have the opportunity to

comment on the proposed map amendments at public hearings before the Planning Commission and City Council prior to issuance of the land use decision.

**FINDING: SATISFIED.**

**McMinnville Zoning Ordinance (Title 17 of the Municipal Code)**

The following Sections of the Zoning Ordinance provide criteria applicable to the request:

**Chapter 17.74. Review Criteria**

**Section 17.74.010. Purpose.** The purpose of this chapter is to provide the approval criteria for the following applications:

- Comprehensive Plan Map Amendment
- ...
- Zone Change

**FINDING: SATISFIED/APPLICABLE.** The criteria of this Chapter and applicable sections are the applicable criteria for the proposed Zone Map Amendment.

**Section 17.74. 020. Comprehensive Plan Map Amendment and Zone Change – Review Criteria**

**17.74.020. Comprehensive Plan Map Amendment and Zone Change - Review Criteria.** *An amendment to the official zoning map may be authorized, provided that the proposal satisfies all relevant requirements of this ordinance, and also provided that the applicant demonstrates the following:*

- A. *The proposed amendment is consistent with the goals and policies of the Comprehensive Plan;*

**APPLICANT'S RESPONSE:** *[Staff Note: These applicant's responses regarding the Comprehensive Plan are addressed in the Section above].*

**FINDING: SATISFIED.** Findings regarding consistency with the goals and policies of the Comprehensive Plan are provided above and are satisfied.

- B. *The proposed amendment is orderly and timely, considering the pattern of development in the area, surrounding land uses, and any changes which may have occurred in the neighborhood or community to warrant the proposed amendment;*

**APPLICANT'S RESPONSE:** The Existing General Land Use Plan indicates that the subject site is part of an enclave of unannexed parcels that are bordered on multiple sides by properties that are located within the city limits of McMinnville. To the south are R-1 and R-2 zoned parcels which have already been developed with single-family dwellings. The applicant's proposal to annex the subject site will help resolve the patchwork of annexed and unannexed parcels along the south side of the river, and the proposed single-family dwelling will compliment the existing land use pattern in the area.

**FINDING: SATISFIED.** The City concurs with the applicant's response.

- C. *Utilities and services can be efficiently provided to serve the proposed uses or other potential uses in the proposed zoning district.*

*When the proposed amendment concerns needed housing (as defined in the McMinnville Comprehensive Plan and state statute), criterion "B" shall not apply to the rezoning of land designated for residential use on the plan map.*

**NOTE:** Residential use and development is not permitted within the M-1 zone, but is permitted within both the C-3 zone and Northeast Gateway Subarea 1 as a separate use or as part of a mixed-use development.

*In addition, the housing policies of the McMinnville Comprehensive Plan shall be given added emphasis and the other policies contained in the plan shall not be used to: (1) exclude needed housing; (2) unnecessarily decrease densities; or (3) allow special conditions to be attached which would have the effect of discouraging needed housing through unreasonable cost or delay.*

**APPLICANT'S RESPONSE:** The Topographic Survey and Preliminary Site Plan demonstrate that needed public utilities are located in the vicinity of the site and can be extended when Tax Lot 1200 is developed with a single-family dwelling. Public water can be provided to the annexation territory by installing a meter and connecting a lateral to the existing main line at the north terminus of SE Nehemiah Lane. Similarly, electrical and communication services can be efficiently extended by connecting to existing lines at the north terminus of the right-of-way. Since the nearest sanitary sewer main line is located approximately 1,600-ft. from the site at the intersection of SE Nehemiah Lane and SE Three Mile Lane, the applicant is proposing to install a private septic system to serve the proposed home. As required, stormwater from impervious surfaces will be managed on-site in accordance with City standards.

The City's current Housing Needs Analysis indicates that single-family and multi-family needs will be met through the development of 4,657 dwelling units during the 2021-2041 planning period. However, the existing residential land supply cannot meet the projected demand for housing units. It has been determined that the City will have a projected deficiency of 1,926 dwelling units during the planning period even if all of the available residential land supply is developed. Therefore, annexation of the subject site is essential when addressing the public need for additional housing.

**FINDING: SATISFIED.**

### **Statewide Planning Goals and Applicable State Law**

#### **Goal 1: Citizen Involvement**

**APPLICANT'S RESPONSE:** The requested land use actions are to annex the site into the City of McMinnville, change the Zoning Map designation for the site from EF-80 to R-1 and F-P. As required, citizens will have the opportunity to comment on the proposed map amendments at public hearings before the Planning Commission and City Council.

**FINDING: SATISFIED.**

#### **Goal 2: Land Use Planning**

**APPLICANT'S RESPONSE:** As discussed throughout this Applicant's Statement, the subject site is included in McMinnville's UGB and is designated Residential and Floodplain

in the Comprehensive Plan. The subject site was selected for inclusion in the city limits is based on a number of locational factors including its access to the local street system, the ability to provide orderly and economic provision of public facilities and services, and compatibility with adjacent residential uses.

**FINDING: SATISFIED.**

### **Goal 3: Agricultural Lands**

**APPLICANT'S RESPONSE:** The subject site is currently located within the City of McMinnville Urban Growth Boundary and is under transitional farm use. The parcels are currently under Yamhill County jurisdiction and are zoned EF-80. With the proposed annexation and zone change, the buildable portion of the site will be limited to the southeast corner of Tax Lot 1200. If desired by the property owner, the portion of Tax Lot 900 that is not encumbered by the conservation easement may continue to be used for limited agricultural purposes.

**FINDING: SATISFIED.**

### **Goal 4: Forest Lands**

**APPLICANT'S RESPONSE:** The Existing General Land Use Plan illustrates that vegetated riparian areas are located adjacent to the South Yamhill River, along the north boundary of the property. However, since the subject property does not include designated forest lands, Goal 4 is not applicable to the proposed land designation.

**FINDING: SATISFIED.**

### **Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources**

**APPLICANT'S RESPONSE:** The subject site does not contain any designated open spaces, scenic, or historic areas. The attached Topographic Survey and Existing General Land Use Plan demonstrates that South Yamhill River, its adjacent floodplain, and low-lying areas within the subject site could potentially contain wetlands. A conservation easement occurs along the South Yamhill River in addition to the area's floodplain. The applicant's Preliminary Site Plan indicates that the proposed home site does not encroach into the floodplain or conservation easement areas on the site..

**FINDING: SATISFIED.**

### **Goal 6: Air, Water and Land Resources Quality**

**APPLICANT'S RESPONSE:** If the proposed annexation and zoning designations are approved, specific site development plans will be submitted for building permit review. The permitting process will ensure compliance with local, state, and federal air, water, and land resource quality standards.

**FINDING: SATISFIED.**

### **Goal 7: Areas Subject to Natural Disasters and Hazards**

**APPLICANT'S RESPONSE:** City maps and the Existing General Land Use Plan indicate that the subject site contains floodplain areas along the bank of the South Yamhill River. The applicant's Preliminary Site Plan indicates that no residential uses are proposed within hazardous areas of the site. Therefore, the submitted Annexation and Zoning Change applications are consistent with Goal 7.

**FINDING: SATISFIED.**

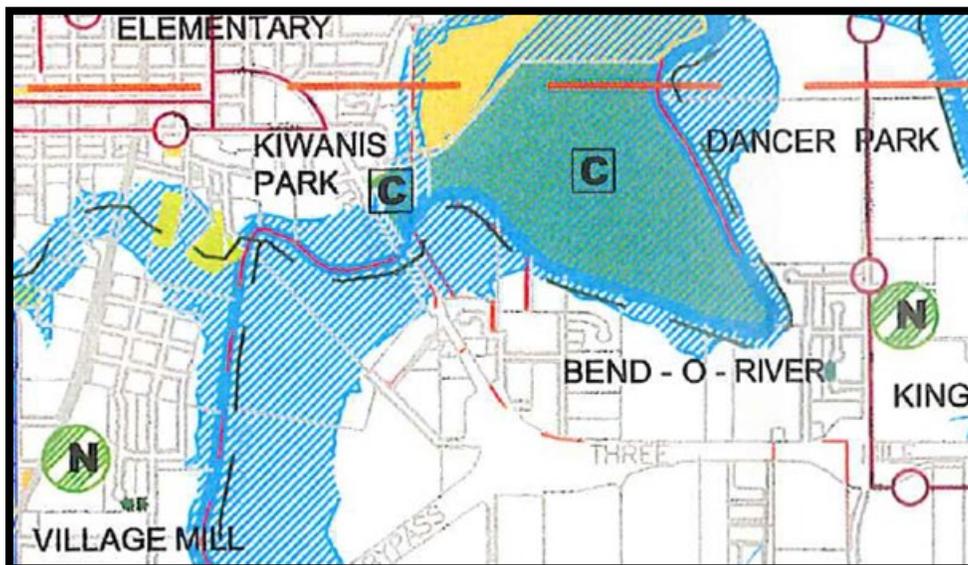
### Goal 8: Recreation Needs

**APPLICANT'S RESPONSE:** The McMinnville Parks and Recreation Plan does not identify park facilities on the subject site. However, due to the presence of the conservation easement and proposed F-P zoning on the parcels, the riparian area along South Yamhill River will continue to be protected as open space.

**FINDING: SATISFIED.** There is a future planned multi-purpose trail along the Yamhill River on the site and the Annexation Agreement which is 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*

## Goal 9: Economic Development

**APPLICANT'S RESPONSE:** The 30-acre subject site is currently designated Residential and Floodplain on the City's Comprehensive Plan Map. Currently the subject property is located within the UGB and outside the city limits of McMinnville. Since this proposal does not involve existing commercial or industrial lands, the proposed annexation and zoning map amendments are consistent with Goal 9

**FINDING: NOT APPLICABLE.**

## Goal 10: Housing

**APPLICANT'S RESPONSE:** The submitted Preliminary Site Plan proposes the development of 1 single-family detached dwelling in the southwest corner of Tax Lot 1200. The proposed home site preserves natural resources and will not encroach into the floodplain along the South Yamhill River. The proposed development of a single-family dwelling helps to meet the need for additional residential units as identified in the 2003-2023 McMinnville Growth Management and Urbanization Plan. The City's more recent Housing Needs Analysis indicates that the City is maintaining a deficient residential land supply when addressing housings needs during the 2021-2041 planning period. As such, annexation and development of the subject site is essential when addressing the public housing need.

**FINDING: SATISFIED.**

## Goal 11: Public Facilities and Services

**APPLICANT'S RESPONSE:** The Topographic Survey and Preliminary Site Plan demonstrate that needed public utilities are located in the vicinity of the site and can be extended when Tax Lot 1200 is developed with a single-family dwelling. Public water can be extended to the annexation territory by installing a meter and connecting a lateral to the existing main line at the north terminus of SE Nehemiah Lane. Similarly, electrical and communication services can be provided by connecting to existing lines at the north terminus of the right-of-way. Since the nearest sanitary sewer main line is located approximately 1,600-ft. from the site at the intersection of SE Nehemiah Lane and SE Three Mile Lane, the applicant is proposing to install a private septic system to serve the proposed home. As required, stormwater from impervious surfaces will be managed on-site in accordance with City standards. With annexation of the property, the subject site will also have access to City fire and police services. Therefore, the proposed map amendments comply with Goal 11.

**FINDING: SATISFIED.**

## Goal 12: Economic Development

**APPLICANT'S RESPONSE:** The submitted Preliminary Site Plan indicates that, due to the presence of the floodplain and conservation easement, only 1 single-family dwelling will be developed on the site. Per the 11<sup>th</sup> Edition of the ITE Manual, the proposed dwelling will generate 10 average daily trips, 0.75 AM peak hour trips, and 1 PM peak hour trip. Based on the low impact of the development on existing transportation facilities, the applicant is not proposing to install improvements to SE Nehemiah Lane. The site plan

indicates that the adjacent portion of SE Nehemiah Lane is currently developed with a 15-ft. paved surface, which is adequate for the 3 existing homes which access the roadway and the proposed single- family dwelling.

**FINDING: SATISFIED.**

#### **Goal 14: Urbanization**

**APPLICANT'S RESPONSE:** The City's draft Housing Needs Analysis indicates that single-family and multi-family needs will be met through the development of 4,657 dwelling units during the 2021-2041 planning period. However, even if all available residential land supply is developed by 2041, the City will have a projected deficiency of 1,926 dwelling units during the planning period. Therefore, annexation of the subject site is essential when addressing the public need for additional housing.

The subject property is designated as a Residential and Floodplain on the City of McMinnville Comprehensive Plan Map. As discussed above, there is a documented need to develop additional housing to meet the needs of the projected population. The proposed annexation and zone changes will help meet this need for additional housing while preserving the floodplain areas of the site as open space.

**FINDING: SATISFIED.**

# Comprehensive Plan Map Amendment & Zone Change Information & Submittal Requirements



Planning Department  
231 NE Fifth Street • McMinnville, OR 97128  
(503) 434-7311 Office • (503) 474-4955 Fax  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## Overview

The comprehensive plan map describes the long-term direction and vision for the growth and development of our community. The zoning map describes the various zoning classifications for each parcel in McMinnville, as it exists today. Requests to amend either of these maps can be initiated by a property owner and are subject to review and approval by the McMinnville Planning Commission and City Council. Prior to submitting a request to amend either map, you are strongly encouraged to meet with Planning Department staff to discuss application and submittal requirements, scheduling, and the details of your proposal and its consistency with the McMinnville comprehensive plan. Further information regarding these processes can be found in Sections 17.72.120 (Applications – Public Hearings) to 17.72.0130 (Public Hearing Process) and 17.74.020 (Comprehensive Plan Map Amendment and Zone Change - Review Criteria) of the McMinnville Zoning Ordinance.

## Application Submittal

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

- A completed Comprehensive Plan Map Amendment and/or Zone Change application form. If additional explanation or materials would assist or support the request, include them with the application form.
- A site plan (drawn to scale, with a north arrow, legible, and of a reproducible size), indicating existing and proposed features within and adjacent to the subject site, such as: access; lot and street lines with dimensions; distances from property lines to structures; improvements; and significant features (slope, vegetation, adjacent development, drainage, etc.). If of a larger size, provide five (5) copies in addition to **an electronic copy** with the submittal.
- A legal description of the subject site, preferably taken from the deed.
- Compliance of Neighborhood Meeting Requirements
- Payment of the applicable review fee.

## Review Process

A request to amend the zoning map or comprehensive plan map is subject to review by the Planning Commission at a public hearing, who then forwards a recommendation to the City Council for their approval. In advance of the Commission hearing, notice is mailed to neighboring property owners advising them of the requested action and inviting their participation in the upcoming hearing. The process for providing notification and reviewing a request to amend the zoning map or comprehensive

plan map is outlined in Sections 17.72.120 (Applications-Public Hearings) and 17.72.130 (Public Hearing Process) of the Zoning Ordinance. While a complete application for a request to amend the zoning map must be submitted 35 (thirty-five) days prior to the date of the first public hearing, a request to amend the comprehensive plan map must be submitted 45 (forty-five) days prior to the date of the public hearing to ensure that notice of the application is provided to the Department of Land Conservation and Development, as required by State law.

The Planning Commission will use the following criteria in reaching a decision to approve, approve with conditions, or deny an application to amend the zoning map or comprehensive plan map.

- A. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan;
- B. The proposed amendment is orderly and timely, considering the pattern of development in the area, surrounding land uses, and any changes which may have occurred in the neighborhood or community to warrant the proposed amendment; and
- C. Utilities and services can be efficiently provided to serve the proposed uses or other potential uses in the proposed zoning district.

The Planning Commission will make a recommendation to the City Council to either approve or deny the request or approve the request in a different form. The City Council will either adopt an ordinance reflecting the proposed map amendment or zone change, or call for a public hearing.

The decision made by the Planning Commission may be appealed to the City Council as stated in Section 17.72.180 (Appeal from Ruling of Planning Commission) of the Zoning Ordinance. A decision of the City Council may be appealed to the Oregon Land Use Board of Appeals (LUBA), if filed in accordance with the requirements of State law.



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<b>Office Use Only:</b>	
File No.	_____
Date Received	_____
Fee	_____
Receipt No.	_____
Received by	_____

## Comprehensive Plan Map Amendment/ Zone Change Application

### Applicant Information

**Applicant is:**  Property Owner    Contract Buyer    Option Holder    Agent    Other \_\_\_\_\_

Applicant Name Anders Johansen Phone 541-972-5812

Contact Name Steve Kay Phone 503-804-1089

*(If different than above)*

Address PO Box 1920

City, State, Zip Silverton, OR 97381

Contact Email steve@cascadiapd.com

### Property Owner Information

Property Owner Name Anders Johansen Phone 541-972-5812

*(If different than above)*

Contact Name Same as Above Phone Same as Above

Address 1805 SE Nehemiah Lane

City, State, Zip McMinnville, OR 97128

Contact Email johansena86@hotmail.com

### Site Location and Description

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

Property Address No Assigned Address

Assessor Map No. R4 421 (Map) T.L. 900 and 1200 Total Site Area 30.00+/- Acres

Subdivision \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Comprehensive Plan Designation Residential Zoning Designation EF-80

This request is for a:

**Comprehensive Plan Amendment**

**Zone Change**

1. What, in detail, are you asking for? State the reason(s) for the request and the intended use(s) of the property.

The applicant is proposing to annex the property. To provide consistency with the Comprehensive Plan Map, the applicant is submitting a concurrent Zone Change application to change the site's designation from EF-80 to R-1.

2. Show in detail, by citing specific goals and policies, how your request is consistent with applicable goals and policies of the McMinnville Comprehensive Plan (Vol. 2).

Please see attached narrative.

3. If your request is subject to the provisions of a planned development overlay, show, in detail, how the request conforms to the requirements of the overlay.

The subject site is not subject to the provisions of a planned development overlay.

4. If you are requesting a Planned Development, state how the proposal deviates from the requirements of the Zoning Ordinance and give justification for such deviation. \_\_\_\_\_

The applicant is not requesting a Planned Development with  
this application.

5. Considering the pattern of development in the area and surrounding land uses, show, in detail, how the proposed amendment is orderly and timely. \_\_\_\_\_

Please see the attached narrative.

6. Describe any changes in the neighborhood or surrounding area which might support or warrant the request. \_\_\_\_\_

Please see the attached narrative.

7. Document how the site can be efficiently provided with public utilities, including water, sewer, electricity, and natural gas, if needed, and that there is sufficient capacity to serve the proposed use.

Please see the attached narrative.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Describe, in detail, how the proposed use will affect traffic in the area. What is the expected trip generation?

Please see the attached narrative.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

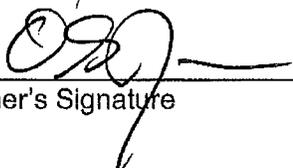
In addition to this completed application, the applicant must provide the following:

- A site plan (drawn to scale, with a north arrow, legible, and of a reproducible size), indicating existing and proposed features within and adjacent to the subject site, such as: access; lot and street lines with dimensions; distances from property lines to structures; improvements; and significant features (slope, vegetation, adjacent development, drainage, etc.). If of a larger size, provide five (5) copies in addition to **an electronic copy** with the submittal.
- A legal description of the parcel(s), preferably taken from the deed.
- Compliance of Neighborhood Meeting Requirements.
- Payment of the applicable review fee, which can be found on the Planning Department web page.

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

  
\_\_\_\_\_  
Applicant's Signature

6/27/2022  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Property Owner's Signature

6/27/2022  
\_\_\_\_\_  
Date

# MINUTES

March 16, 2023  
Planning Commission  
Regular Meeting

3:00 pm  
Hybrid Meeting  
McMinnville, Oregon

**Members Present:** Sidonie Winfield, Beth Rankin, Dan Tucholsky, Matt Deppe, Gary Langenwaller, Lori Schanche, Megan Murray, Sylla McClellan, and Brian Randall

**Members Absent:**

**Staff Present:** Heather Richards – Community Development Director, Tom Schauer – Senior Planner, John Swanson – Senior Planner, Adam Tate – Associate Planner, and Carrie Richter – Bateman Seidel Legal Counsel

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## 1. Call to Order

Chair Winfield called the meeting to order at 3:00 p.m.

## 2. Citizen Comments

None

## 3. Minutes

- **January 19, 2023**

Commissioner Langenwaller MOVED to APPROVE the January 19, 2023 minutes. SECONDED by Commissioner Murray. The motion PASSED 9-0.

## 4. Public Hearings

**A. Judicial Hearing: Appeal of Historic Landmarks Committee of Denial for three Certificates of Approval for the demolition of a historic resource at 609, 611 and 619 NE Third Street (HL 6-22, HL 7-22 and HL 8-22), and the compliance of the new construction of the Gwendolyn Hotel with the Downtown Design Guidelines and Standards (Docket DDR 2-22).**

***Continuation from March 2, 2023***

**Request:** Request to demolish three historic resources and build a new five-story hotel with ground floor commercial, programmed roof deck and underground parking structure.

**Docket:** **AP 1-23 (HL 6-22)**, (Certificate of Approval for Demolition, 609 NE Third Street) Property Owner –Oregon Lithoprint Inc, represented by Jon Bladine.

**AP 2-23 (HL 7-22)**, (Certificate of Approval for Demolition, 611 NE Third Street) Property Owner – Bladine Family Limited Partnership, represented by Jon Bladine,

**AP 3-23 (HL 8-22)**, (Certificate of Approval for Demolition, 619 NE Third Street) Property Owner - Wild Haven LLC, represented by Philip Frischmuth,

**AP 4-23 (DDR 2-22)**, (Downtown Design Review – New Construction – Gwendolyn Hotel, 609, 611 and 619 NE Third Street) **Location:** 609 NE Third St. (TL 4500, Sec. 21BC, T.4S., R.4 W., W.M.), 611 NE Third St. (TL 4300, Sec. 21BC, T.4S., R.4 W., W.M.), 619 NE Third St. (TL 4201, Sec. 21BC, T.4S., R.4 W., W.M).

**Applicant:** Mark Vuong, HD McMinnville LLC

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

Commissioner McClellan recused herself from participating in the hearing as she wrote a letter to the Historic Landmarks Committee about this application.

Chair Winfield asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing. There was none.

Staff Report: Community Development Director Richards said this was a continuation of the hearing from March 2. The Historic Landmarks Committee had denied the applications, and the applicant had appealed their decision to the Planning Commission. She reviewed the subject site, quasi-judicial land use decisions, structures requested to be demolished, McMinnville downtown historic district, McMinnville historic resources inventory, notice of appeal for the demolition, demolition criteria, new hotel project, notice of appeal for the new construction, new design code criteria, downtown design standards and guidelines, clarifications regarding parking, construction details, new construction in the historic district, waivers, building setbacks vs. step backs, public testimony, and the Commission's decision.

Applicant's Testimony: Andrew Clark, developer, discussed what this proposed development would mean to McMinnville. They wanted to create something new in order to serve the community into the future.

Garrett Stephenson, legal counsel, highlighted additional materials they provided to the Planning Commission based on the questions the Commission asked at the last meeting, memorandum explaining how they would honor the history and legacy of the buildings to be demolished and how the architectural features of the district influenced the design, cost estimates for two additional reuse scenarios, and what the wage mix would be for the hotel.

Gary Reddick, architect, said the Commission had asked to show them more clearly and specifically where he had taken inspiration from the older historic buildings on Third Street and to show examples from his design where he referenced and honored the legacy of the buildings to be demolished. He explained the process that was done of studying the historic buildings in downtown, inspiration they took from Third Street, and how they would honor the historic legacy of the early automobile industry in McMinnville. They would be cataloguing and carefully removing and saving every part of the interior that could be reused. They would name places inside the building after historically significant people and add historic photographs. He pointed out the 80 foot height was originally put in place in 1981.

The Commission asked questions about the wages, configuration and function of the parking, hotel operator, and air conditioning.

## Public Testimony:

Proponents: Doug Hurl, McMinnville resident, discussed other historic buildings that had been torn down. He thought the hotel was something they wanted in the downtown core. The applicant met all of the requirements. He was in favor of demolishing the old buildings and building something new.

Phil Frischmuth, McMinnville resident, owned the 619 NE Third Street building. He discussed Third Street and how in the area of his building the buildings were not charming and there was no vibrant atmosphere or foot traffic. This proposal would change that. He listed the many benefits to the hotel and discussed how the developer had tried to accommodate every request. The most important aspect was the hotel would bring people downtown and make it vibrant and fun. He explained the renovations he had done to the building, and how there were more issues that needed to be addressed. He did not think it could be preserved.

Jeb Bladine spoke on behalf of the owners of 609 and 611 Third Street. The applications for demolition met the criteria related to local land use code, historic resource criteria, complex environmental issues, economic benefits to the community, appropriate financial hardship to the owners in retaining the properties, and appropriate conditions for redevelopment. He noted for 611, half of the building's life had been in the newspaper industry, not just the auto industry.

There was discussion regarding other offers on these properties, and how investors had walked away after their investigations.

Opponents: Ernie Munch, architect for the Taylor Dale building restoration and addition, reviewed the information he submitted to the Commission including the definition of dangerous building from the Building Code, how the demolition of the building for his project was not a significant resource, and the purposes of the code for demolition. This was a historic district and the buildings should be preserved due to their history with the auto industry and significant families in the area. He discussed options for what else could be done. He thought there should be an agreement of what the City wanted to see there and then an RFP should be put out for developers who could build it.

Community Development Director Richards noted the City could not put an RFP on property it did not own.

Mr. Munch said it was something the owners could look at as an option.

Katherine Hewitt, McMinnville resident, discussed the importance of the historic district, which had already been drawing tourists before the other hotels came in. She gave a history of main street and the auto industry. McMenamins was an example of what historic preservation brought, not only to the downtown historic district, but new life to areas that weren't listed on the national register. It was a template to show how the stories of the community could contribute to the success and preservation of these three buildings.

Daniel Keizer, McMinnville resident, thought the project would be done by outside companies, and the hospitality company they were going to use was not local. He did not think there was enough space in the parking garage for the air conditioning units and any equipment on the roof would be visible. He did not think they were meeting code for the elevation and massing. There were a lot of background buildings on Third Street, including the ones being requested to demolish, and they added to the intangible quality of the cozy, cohesive architectural fabric of Third Street. The buildings had the potential to be restored and no photos in the lobby would make up for the loss if they were demolished.

Margaret Cross, McMinnville resident, said they had to base their decision on the legal criteria relative to historic preservation and restoration. The applicant's argument that the HLC's findings were unreasonable was an opinion. She suggested the corner building be used as a tourist information center after restored to its original design. McMinnville was a living, organic town, not a fake town for tourists.

Marilyn Cozal, McMinnville resident, discussed and showed pictures of how she and her husband had renovated the old JC Penney building in McMinnville. The project showed that restoration could be done and there were a lot of creative uses for those buildings.

Nathan Coopriders, thought they should renovate the historic buildings. He was opposed to the demolitions because he did not believe alternatives had been closely studied. Consultants investigating the buildings had not been hired until after the designs were presented to the neighborhood and the alternative designs were not submitted until after the design proposal for the hotel were submitted. If historic preservation and this hotel could not co-exist on the site, it was a self-imposed problem which could easily be remedied by an alternative site selection. No reports were provided on the deals that fell through on the properties and there was no evidence as to why those sales did not happen.

Applicant's Rebuttal: Mr. Stephenson said a lot of people had looked at these buildings and walked away because these were difficult and expensive buildings to reuse. In the alternatives analysis that was done, it showed every scenario that involved a purchase price and a construction loan did not result in an economically viable project. The three buildings could not generate enough returns to justify a sale or a substantial renovation. The evidence in the record showed that these buildings did not resemble the purposes for which they were originally built. All the facades had been substantially replaced or modified. The historic integrity had been significantly changed and none of the upper floors were currently in use. They had a plan to adapt some of the interior historic characteristics to the hotel. There was no evidence that these buildings could remain profitable or retained enough of their historic characteristics to warrant preservation. It was not required that these buildings be deemed dangerous to justify their demolition. It was a balancing of different factors. They had demonstrated that the buildings required substantial investment that their continued use and configuration did not support. This hotel would be a great economic driver for the City. The adopted policy in the City was to focus on place based tourism and that was the fundamental basis for why this project complied with the Comprehensive Plan and why on balance was more supportive of the Comprehensive Plan policies than doing nothing. It would add to the tax base, underground parking would be added, more jobs would be added, and the contamination below the existing buildings would be removed. The January 5 staff report explained why the project met all the code requirements. He did not think the HLC's findings were based on the evidence and interpreted the code in a way that had not been done before. The question for the Commission was whether or not they met the criteria, and he believed all the criteria were met. Architects had different opinions on design and what should be done, and these were privately owned buildings that could not go through an RFP process. Regarding the massing, the Atticus and Chaos buildings were substantially taller than the existing single story buildings around them. He did not think the criteria meant no higher than one or two stories was allowed. He thought it meant making the massing consistent with the surrounding buildings. Their proposed building was broken up into three different sections with substantial step backs that deemphasized the height and the building on the corner was similar to a two story building. He encouraged the Commission to reverse the HLC's decision.

Mr. Clark noted the hospitality company they would be using was a local company. The land owners had been trying to sell these properties and looked for ways to have their properties be invested in through Urban Renewal or to be restored, and none of that had come to fruition.

Chair Winfield closed the public hearing.

The applicant waived the 7 day period for submitting final written arguments in support of the application.

Chair Winfield took a straw poll for the decision to demolish and decision on the new construction.

Commissioner Deppe was undecided. Commissioner Rankin was no to both demolition and the new construction. Commissioner Randall was also no to both. Commissioner Langenwaller was yes on demolish, but no on new construction. Commissioner Tucholsky was yes to both

demolition and new construction. Commissioner Schanche was no on both. Commissioner Murray was yes on both. Chair Winfield was yes on both.

Commissioner Rankin did not think the hotel fit in this location. Alternatives should have been looked at.

Commissioner Randall said these buildings were approved on the national register based on the density, common scale, materials, and overall design elements providing a visual continuity conveying the evolution of the downtown core. These elements worked to reinforce the two story commercial storefront characteristics that signified the district. He thought that they should preserve the two story storefronts. He did not have an issue with the use as a hotel, but he had issues with the design. He thought there were other alternatives.

Chair Winfield agreed the buildings were part of the background. However, they had allowed other demolitions in the past. The condition of the buildings had changed over time to the point where the original design and intent of the buildings had completely changed. She was concerned about how much they allowed the owners to attempt to preserve buildings to the detriment of what they could be used for within the City and how much they had to keep paying out of pocket. There were no grants to preserve these buildings and the current owners had done what they could to preserve the buildings and find buyers. The value to the community had been diminished and it was a very sleepy corner right now. The new construction would bring more vitality to the downtown. She thought it met the criteria. The applicant had made three separate bays. The Atticus had iron balconies as did other buildings around downtown. She thought it tied in together. The new building had to stay within the height guidelines.

Commissioner Langenwaller thought it was time to let the buildings be demolished. However, he did not think the new construction's massing and configuration was similar to adjacent or nearby historic buildings on the same block.

Commissioner Tucholsky said it was the Commission's duty to apply the rules established by the City. He thought the rules had all been met by the applicant. Old buildings were expensive and difficult to maintain. He had walked by these three buildings many times and they were heavily underutilized. It was a dead spot on Third Street and their historic significance did not outweigh the opportunity in front of them. The hotel would provide jobs, tax revenue, and recreational opportunities. They should not miss this opportunity.

Commissioner Schanche thought the three buildings reflected the cultural history of downtown, specifically in regard to the auto industry. The new building did not reflect any historic elements. The removal of the buildings would create a gap in the historic district that would make this block an artificial downtown environment. The design of the new hotel did not reflect the current buildings or any other buildings on Third Street. It was six stories and would stick out as the largest building in downtown. It was not consistent with the current massing of the street, which were primarily two story buildings. It would have a negative effect on the historic Third Street from both directions.

Commissioner Murray valued the community and the historic significance of these buildings. However, that did not outweigh the opportunity they had. Based on staff's recommendation and the conditions of approval, moving forward was in the best interest of the community. They had good community partners at the table.

Commissioner Deppe was struggling with the massing and configuration. He questioned if they were to rule that something taller than two stories could not be built, how would that affect downtown. He appreciated the change in the design to accommodate a two story appearance from the foot of the hotel. He appreciated what the hotel would do for the downtown businesses and noted it was a vacuum at that location.

Chair Winfield said there was a precedent for demolishing older buildings and building something new that was not within the massing of the buildings that were originally around them. The step backs did provide a diminishing feel of the massing.

Commissioner Randall did not agree with replacing the buildings with the height on the street and the design that had been presented. He would be more in favor of the demolition if the design took into consideration what it was designated as in terms of the commercial feel and two story. He was also concerned about setting precedent.

There was discussion regarding the criteria and how not all of the criteria had to be met.

Commissioner Schanche MOVED to DENY AP 1-23 in support of the Historic Landmarks Committee's denial. SECONDED by Commissioner Langenwalter. The motion FAILED 3-5 with Commissioners Deppe, Winfield, Langenwalter, Tucholsky, and Murray opposed.

Commissioner Langenwalter MOVED to APPROVE AP 1-23 in support of the applicant based on the findings in the January 5 staff report with the amended conditions of approval. SECONDED by Commissioner Murray. The motion PASSED 5-3 with Commissioners Rankin, Randall, and Schanche opposed.

Commissioner Murray MOVED to APPROVE AP 2-23 in support of the applicant based on the findings in the January 5 staff report with the amended conditions of approval. SECONDED by Commissioner Tucholsky. The motion PASSED 5-3 with Commissioners Rankin, Randall, and Schanche opposed.

Commissioner Tucholsky MOVED to APPROVE AP 3-23 in support of the applicant based on the findings in the January 5 staff report with the amended conditions of approval. SECONDED by Commissioner Murray. The motion PASSED 5-3 with Commissioners Rankin, Randall, and Schanche opposed.

Commissioner Tucholsky MOVED to APPROVE AP 4-23 in support of the applicant based on the findings in the January 5 staff report with the amended conditions of approval. SECONDED by Commissioner Murray. The motion FAILED 4-4 with Commissioners Rankin, Randall, Langenwalter, and Schanche opposed.

Commissioner Langenwalter was not in favor of the building being over three stories.

Commissioner Tucholsky said this building was bigger than others downtown, however he thought the City would be better for it, especially future generations. They needed to be good ancestors for tomorrow.

Chair Winfield thought the applicant had demonstrated how they would use the historic ideas in the design process.

Commissioner Tucholsky MOVED to APPROVE AP 4-23 in support of the applicant based on the findings in the January 5 staff report with the amended conditions of approval. SECONDED by Commissioner Murray. The motion PASSED 5-3 with Commissioners Rankin, Langenwalter, and Schanche opposed.

The Commission took a break and reconvened at 6:45 p.m. Commissioner McClellan rejoined the meeting.

**B. Quasi-Judicial Hearing (Docket ZC 3-22): Application for an amendment to the Zone Map to apply the Flood Area Zone (FP) to 28.25 acres and the 9000 Minimum Lot Size Residential Zone (R1) to 1.65 acres of tax lots R4421 00900 and R4421 01200 upon annexation into the city limits.**

**Request:** Amend the Zone Map

**Docket:** ZC 3-22

**Location:** Tax Lots, R4421 00900 and 01200

**Applicant:** Steve Kay, Cascadia Planning, on behalf of Anders Johansen, property owner

**\*\*Recording started here, not at the opening of the hearing.**

Staff Report: Community Development Director Richards said this was a request for a zone map amendment for two tax lots that were not currently in the City. She discussed the subject site, Comprehensive Plan designation, flood area zone, R-1 after annexation, review criteria, annexation process, annexation agreement, future Yamhill River multi-purpose trail, conditions, and public testimony. Staff recommended approval with conditions.

There was discussion regarding the floodplain map and septic system.

Applicant's Testimony: Steve Kay, Cascadia Planning and Development Services, was representing the applicant. The applicant was planning to annex a 30 acre site and change the property zoning to R-1 and FP consistent with the Comprehensive Plan Map designations. The property paralleled the Yamhill River and was mostly encumbered by a 100 year flood plain and conservation easement along the waterway. Therefore, less than an acre was available for development. The site that could be developed was located at the end of Nehemiah Lane and the maximum development was three single family homes. They intended to only build one single family home on the site and it could be connected to all public utilities except sewer. They would be putting in a private septic system. The Council had approved the annexation agreement and the findings supported that all criteria have been met.

Public Testimony: None

Chair Winfield closed the public hearing.

The applicant waived the 7 day period for submitting final written arguments in support of the application.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant and evidence in the record, Commissioner Tucholsky MOVED to RECCOMEND APPROVAL of ZC 3-22 to the City Council with the conditions of approval. SECONDED by Commissioner Langenwalter. The motion PASSED 9-0.

**C. Legislative Hearing (Docket G 1-23): Proposed amendments to the McMinnville Zoning Ordinance, adopting amended standards for Short-Term Rentals**

**Request:** The proposed amendment would amend the standards for Short-Term Rentals in the R-1, R-2, R-3, R-4, R-5, and O-R zones. Short-Term Rentals are listed as a permitted use in these zoning districts, subject to the standards provided in Section 17.12.010(P) of the Zoning Ordinance. The proposed amendment would amend the standards in Section 17.12.010(P). The proposed amendment would also amend the off-street parking provisions for Short-Term Rentals in Chapter 17.60 of the Zoning Ordinance to provide internal consistency with the amended standards.

**Docket: G 1-23**

**Location:** N/A. This is a proposed Zoning Ordinance Text Amendment

**Applicant:** City of McMinnville

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

Staff Report: Senior Planner Schauer gave a presentation on the amendments to the standards for short term rentals in the R-1, R-2, R-3, R-4, R-5, and O-R zones. He explained the background on this item, written testimony received, applicable criteria, principal changes from the current standards, maps showing existing short term rentals based on a 200 foot spacing standard and 500 foot spacing standard, and questions/comments from the last hearing. Staff recommended approval subject to minor punctuation/scrivener's corrections.

There were questions about City law superseding any HOA rules, registering with the Finance Department, and Alpine Avenue overlay district.

Public Testimony:

Opponent: Blake Lundstrom, McMinnville resident, said the proposed 500 foot spacing standard would take away the option for people to rent out rooms in their homes. These were not corporations but McMinnville residents who needed the source of income and if the standard was changed it would only benefit corporations. He thought the 500 feet was excessive for the less than 1% of available homes which were short term rentals. He did not think this was a problem in McMinnville, and the threshold should be higher before considering this change.

Senior Planner Schauer clarified there were two categories for short term rentals, one when the entire home was rented out and the other where the home was occupied but one room was being rented out. The second scenario was not subject to the spacing standard.

Mr. Lundstrom was speaking about both scenarios.

Proponents: Kenneth Yount, McMinnville resident, was in favor of the proposed changes as he had seen many homes go to short term rentals instead of being used to house families. It affected the younger generation who had to live with family members and were displaced from their homes. More homes available to families to live in made better students and citizens in the future.

Jim Kreutzbender, McMinnville resident, asked the Commission to consider including the two blocks of housing in the NE Gateway District in the spacing standard.

Community Development Director Richards explained because the district was intended to be a commercial use, short term rentals were required to get a condition use and would not be subject to the spacing standard.

Jim Kreutzbender said there was one short term rental in this area currently.

There was discussion regarding the process for including these two blocks in the spacing standard.

Mark Davis, McMinnville resident, thought the 500 feet was reasonable. He thought they should have included the commercial zones as well. Short term rentals had a big impact on residential in the commercial zones. There was a lack of affordable housing in the City and short term rentals impacted the amount of housing stock there was in the community.

Anna Barsotti, McMinnville resident, spoke about being a teacher and how difficult it was to afford housing in the City. She thought they needed to protect the housing that was hard to come by for the workforce. Neighborhoods changed when people did not live there and were no longer invested.

Pat Russell, McMinnville land owner, was in support of the changes to protect neighborhoods as residential neighborhoods and a sense of community. Short term rentals affected housing affordability and comfort level of neighbors knowing who was next door to them.

Janette Bailey, McMinnville resident, lived in a condo and her HOA did not allow rentals, which contributed to a high quality neighborhood. She also owned rentals in McMinnville and she thought long term rentals were important, especially for those who could not afford a home of their own. There should be homes for people who lived in McMinnville and people coming from out of state to buy vacation rentals degraded quality of life for those who lived here.

Chair Winfield closed the public hearing.

There was discussion regarding concerns in the letters that were received about advertising based on the number of bedrooms and how parking was tied to the number of bedrooms, posting key City ordinances in a prominent spot in the rental, and having more than one emergency contact. There was also discussion regarding the cons of including the Gateway District in the spacing standard.

Based on the findings of fact, conclusionary findings for approval, and materials submitted by the applicant, Commissioner Tucholsky MOVED to RECOMMEND APPROVAL of G 1-23 to the City Council and to include the underlying residential zone in Zone 3 of the NE Gateway District. SECONDED by Commissioner Langenwalter. The motion PASSED 9-0.

## **5. Commissioner Comments**

None

## **6. Staff Comments**

Community Development Director Richards discussed upcoming meeting agenda items.

## **7. Adjournment**

Chair Winfield adjourned the meeting at 8:18 p.m.

# STAFF REPORT

**DATE:** May 9, 2023  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Community Development Director  
**SUBJECT:** Ordinance No. 5133: Approving Annexation of Tax Lots R4421 00900 and 01200 into the City Limits.

**STRATEGIC PRIORITY & GOAL:**



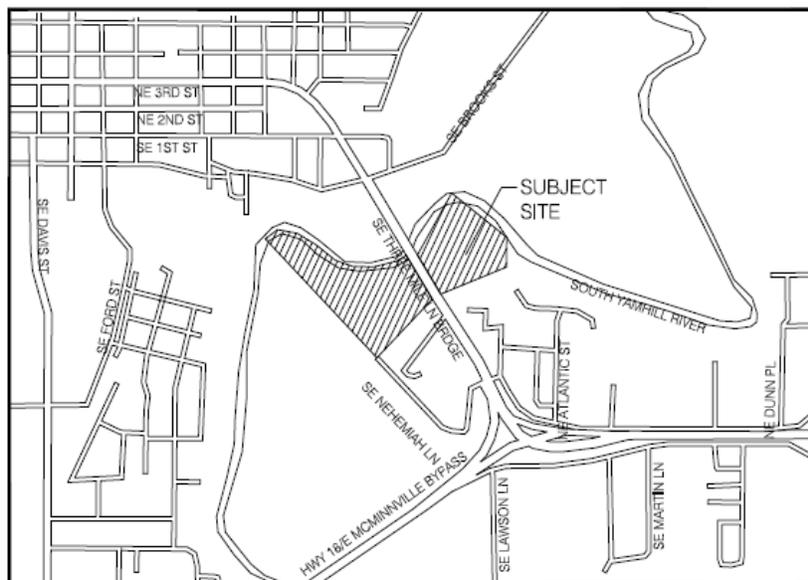
**GROWTH & DEVELOPMENT CHARACTER**  
 Guide growth & development strategically, responsibly & responsibly to enhance our unique character.



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

**Report in Brief:**

This is the consideration of Ordinance No. 5133 to annex tax lots R4421 00900 and R4421 01200 into the McMinnville city limits.



VICINITY MAP



**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.

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.

**Discussion:**

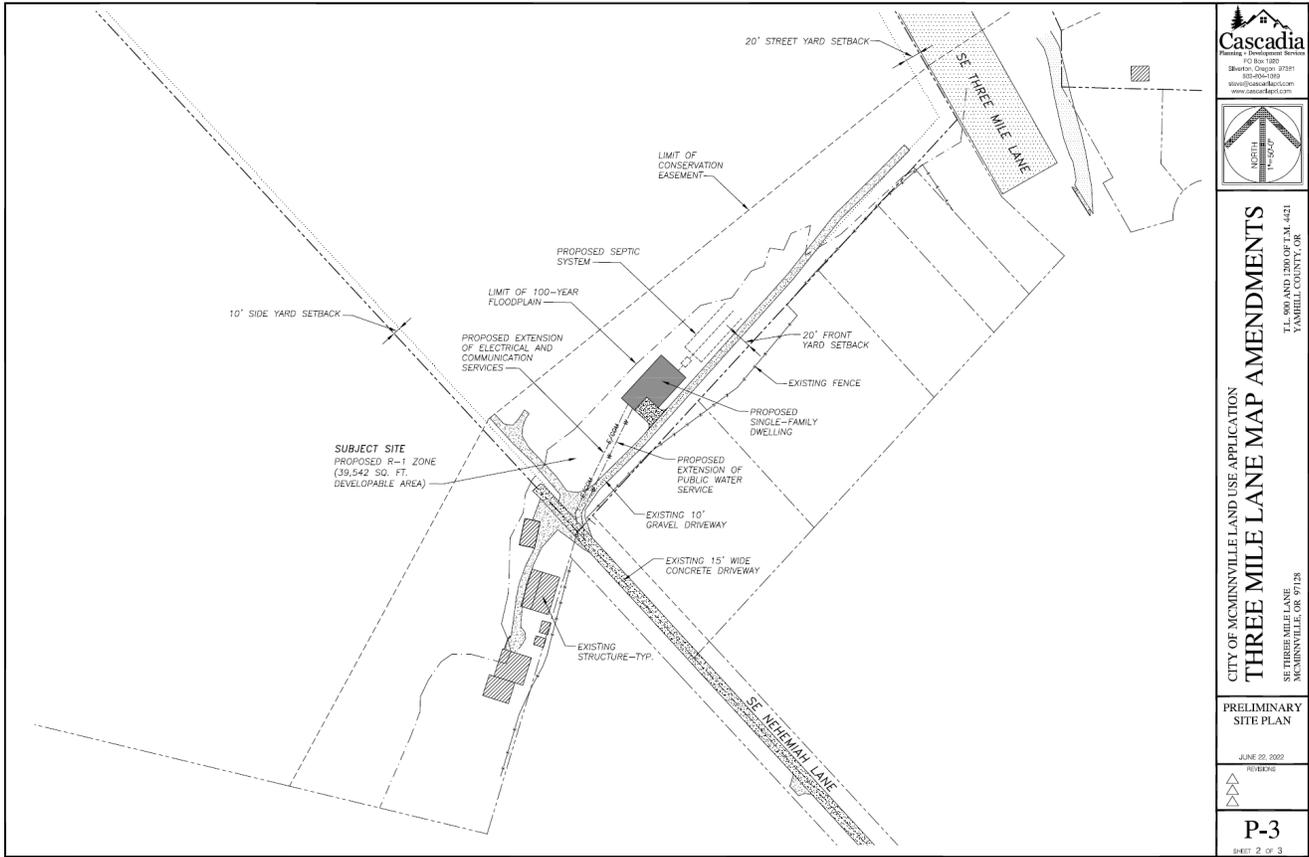
On February 14, 2023, the City Council adopted Resolution No. 2023-09, approving an annexation agreement between the City of McMinnville, and Anders Johansen, property owner of the tax lots to be annexed into the city limits.

The annexation agreement identifies all that needs to occur to annex the property into the city limits, including a land-use approval for a zone map amendment to apply city zoning to the property upon annexation. The property owner has initiated this land-use process, and the City Council will be approving Ordinance No. 5132 to consider the application and findings prior to this annexation ordinance.

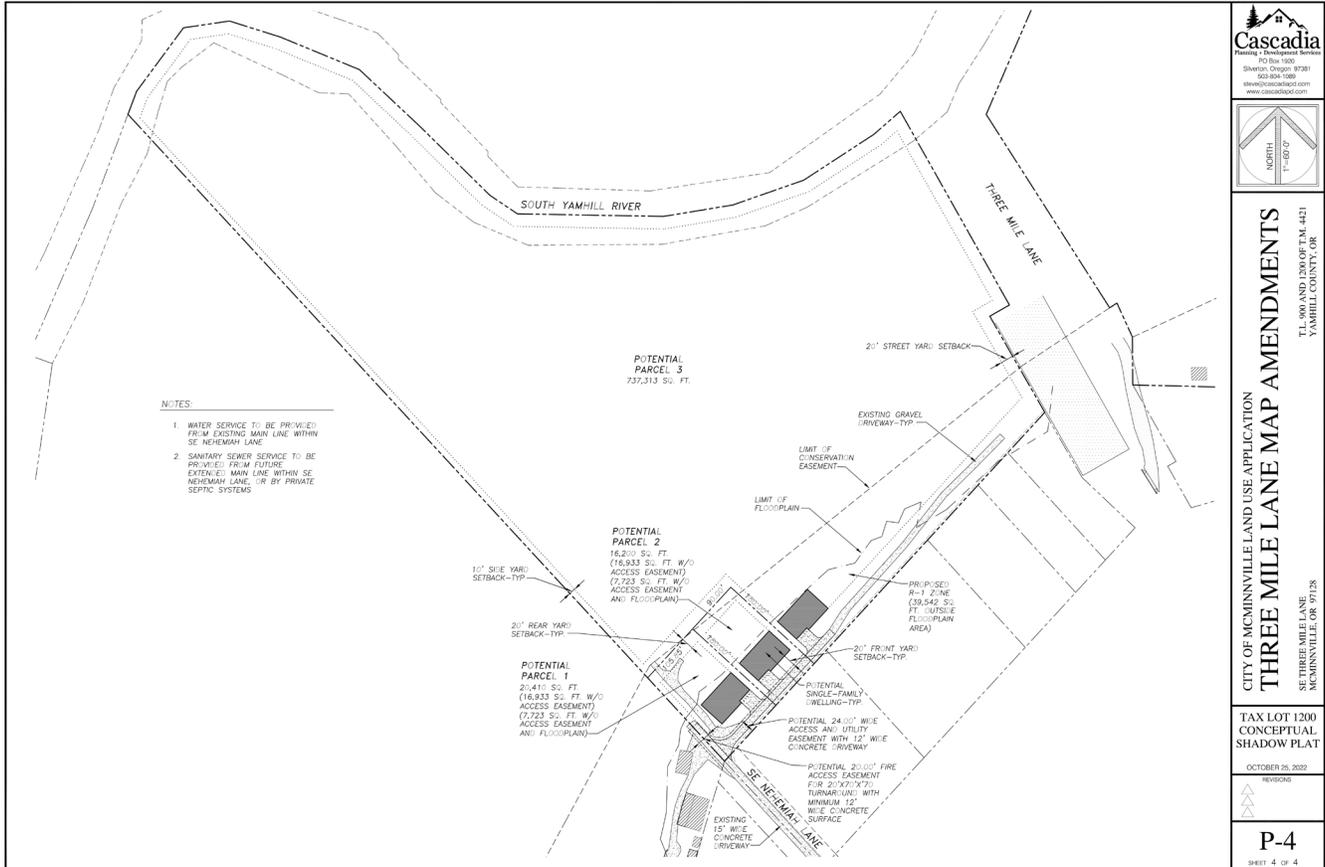
Most of the two parcels are encumbered in a flood plain and a conservation easement, and the site has very little buildable acreage. The property owner intends to build one residential home on the lot and potentially partition the parcel in the future and build an additional two residential lots. Please see current plan and future development plan site maps below.

City departments and state agencies were all contacted for their comments on the annexation proposal, and all were supportive.

**Current Plan:**



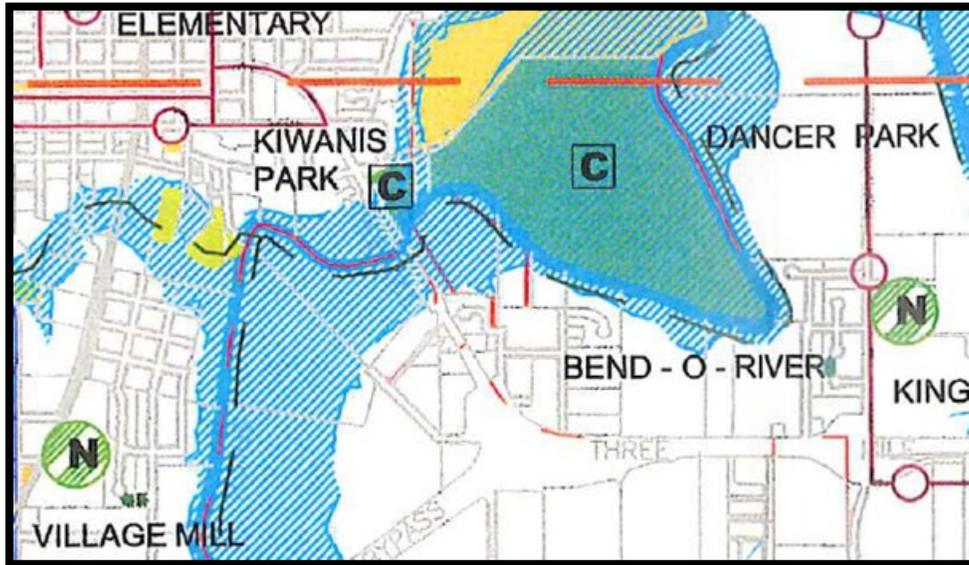
# Potential Future Development Plan:



There is a future planned multi-purpose trail along the Yamhill River on the site and the Annexation Agreement which was recorded on the property on February 21, 2023 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:**

Ordinance No. 5133

- Exhibit A – Legal Description and Annexation Map
- Exhibit B – Annexation Agreement

**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.

**City Council Options:**

1. **APPROVE** Ordinance No. 5133, declaring the property annexed into the city limits and directing the City Recorder to send notice to the appropriate county and state agencies.
2. **Request** more information.
3. Choose not to approve Ordinance No. 5133.

**Suggested Motion:**

**I MOVE TO APPROVE ORDINANCE NO. 5133.**

## ORDINANCE NO. 5133

### AN ORDINANCE ANNEXING TO THE CITY OF MCMINNVILLE TAX LOTS R4421 00900 AND R4421 01200.

#### RECITALS:

**WHEREAS**, Anders Johansen, the owner of the tract of land described in Exhibit "A", which is attached hereto and by this reference incorporated herein has either petitioned or consented to the annexation of said territory to the City of McMinnville (ANX 1-22); and

**WHEREAS**, Per ORS 222.120(2), the City of McMinnville conducted a public hearing on May 9, 2023 to consider the annexation of the subject property described in Exhibit A of this ordinance; and

**WHEREAS**, Per ORS 222.120(3) notice of the hearing was published once each week for two successive weeks in the News Register; and

**WHEREAS**, Per ORS 222.120(4)(b), the electors and landowners of the subject property consented in writing to the annexation and the consent is on file in the Planning Division of the City of McMinnville, Oregon, and there has been no objection to the proposed annexation by residents within said area and territory; and

**WHEREAS**, Per ORS 222.180(1), the effective date of annexation shall be the date of filing with the Secretary of State as provided in ORS 222.177 and ORS 222.900; and

**WHEREAS**, Per McMinnville Municipal Code 16.30.030, the landowner entered into an Annexation Agreement by Resolution 2023-09 with the City of McMinnville on February 14, 2023 and recorded it on the property on February 21, 2023, as demonstrated by Exhibit B to this ordinance; and

**WHEREAS**, Per the Annexation Agreement Section 2(a)(3) and Section 3, the owner has applied for a Zone Map Amendment for the property; and

**WHEREAS** the City Council approved Ordinance No. 5132 adopting findings for Docket ZC 3-22 demonstrating compliance with state regulations, the McMinnville Comprehensive Plan, and the McMinnville Municipal Code.

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

1. That the subject area and territory as described in Exhibit A of this ordinance is annexed to the city; and
2. That this Ordinance shall take effect 30 days after its passage by the City Council.
3. That when this ordinance takes effect, the Recorder of the City of McMinnville, Yamhill County, Oregon, is hereby authorized and directed to make and submit to the Secretary of State of the State of Oregon, the Assessor of Yamhill County, State of Oregon and the County Clerk of Yamhill County, State of Oregon, a certified copy of the following documents:
  - a. A copy of this ordinance.
  - b. A copy of written consent of landowners and electors of said area and territory.

Passed by the McMinnville City Council this 9<sup>th</sup> day of May 2023, by the following votes:

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

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

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

**EXHIBITS:**

- A. Legal Description and Annexation Map
- B. Annexation Agreement



DAVID SCHLOSSER - LAND SURVEYOR

720 NW 4<sup>th</sup> Street, Corvallis, Oregon 97330 Phone 541-757-

**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.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JUNE 10, 2014  
DAVID LEE SCHLOSSER JR.  
72617

RENEWS 06/30/2022

**BASIS OF BEARINGS**

BASIS OF BEARINGS AND BENCHMARK WERE DERIVED FROM USING STATE PLANE COORDINATE SYSTEM. (ZONE: OREGON NORTH 3601, HORIZONTAL DATUM: NAD 83)

THE RIVER LOCATION HAS BEEN SCALED FROM AERIAL PHOTOGRAPHY AS STATED FOR CS 1119

WPR EASEMENT, CITY LIMIT LINE AND NEW ANNEXATION ALONG CENTERLINE OF RIVER 2659' M/L COURSE 11

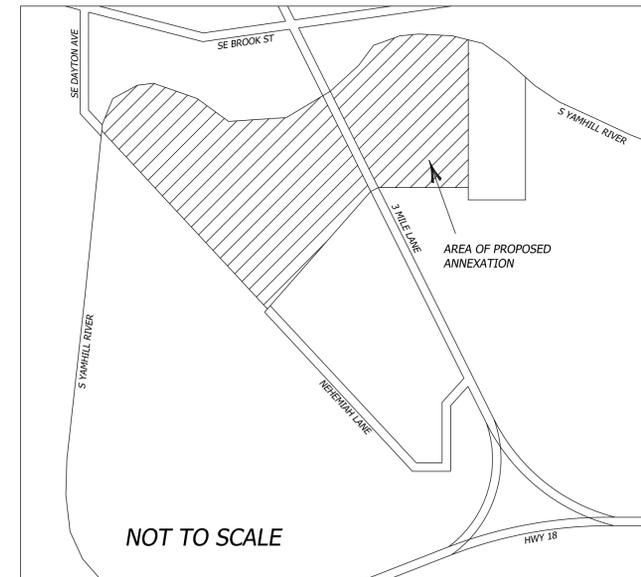
JOHANSEN WPR EASEMENT 66-0436-8-8018  
PORTION WEST OF 3 MILE LANE 17.8 ACRES M/L - INCLUDING RIVER

JOHANSEN WPR EASEMENT 66-0436-8-8018  
PORTION EAST OF 3 MILE LANE 9.8 ACRES M/L - INCLUDING RIVER

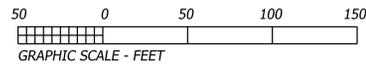
**LEGEND**

- .... FOUND MONUMENT - 5/8" IRON RODS - PER VARIOUS RECORDS
  - + .... COMPUTED POINT, NOTHING FOUND OR SET
- RECORD DATA FROM THE FOLLOWING:
- [ ] .... CS 11019      { } .... QUAIL RIDGE SUBDIVISION
  - \* \* .... CS 12808      # # .... CS 2526-1
  - ( ) .... CS 10659      < > .... FILM VOLUME 107 PAGE 1131
  - ..... CITY LIMIT BOUNDARY PER CITY OF MCMINVILLE
  - N.A.P. .... NOT A PART

**VICINITY MAP**



NOT TO SCALE



PROJECT LOCATION  
**SECTION 21**  
**T 4 S, R 4 W, W. M.**  
**YAMHILL COUNTY, OREGON**

ANNEXATION MAP  
PREPARED FOR:  
**ANDERS JOHANSEN**

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON  
JUNE 10, 2014  
DAVID LEE SCHLOSSER JR.  
72617

RENEWS: 06/30/2022

DATE 04/06/2022

PROJECT 22024

22024 JOHANSEN TOPO

DRAFTED BY RB

REVISION	DATE
No. 1	6/20/22

SHEET 1 OF 1

OFFICIAL YAMHILL COUNTY RECORDS  
KERI HINTON, COUNTY CLERK

202301425

After Recording Return To:

City of McMinnville  
220 NE Second Street  
McMinnville, OR 97128

00650444202300014250100107

\$126.00

02/21/2023 11:48:47 AM

DMR-AGRDMR Cnt=1 Stn=3 SUTTONS  
\$50.00 \$5.00 \$11.00 \$60.00**ANNEXATION AGREEMENT**

This Annexation Agreement is made and entered into this 14<sup>th</sup> day of February, 2023, by and between the City of McMinnville, Oregon, an Oregon municipal corporation (hereinafter "City") and Anders Johansen (hereinafter "Owner").

## WITNESSETH

**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.

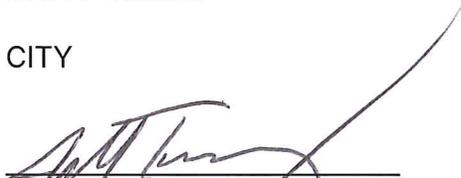
**8. ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the

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

  
\_\_\_\_\_  
Jeff Towery, City Manager

OWNER

  
\_\_\_\_\_  
Anders Johansen

ATTEST:

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

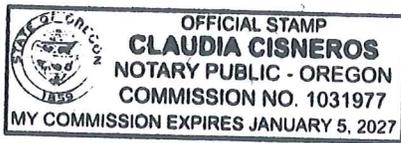
Claudia Cisneros, City Recorder

STATE OF OREGON )  
 ) ss.  
County of Yamhill )

This instrument was acknowledged before me this 15<sup>th</sup> day of February, 2023 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.

Claudia Cisneros

Notary Public for Oregon



STATE OF OREGON )  
 ) ss.  
County of Yamhill )

This instrument was acknowledged before me this 21<sup>st</sup> day of February, 2023 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.

Katherine Alicia Land

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.

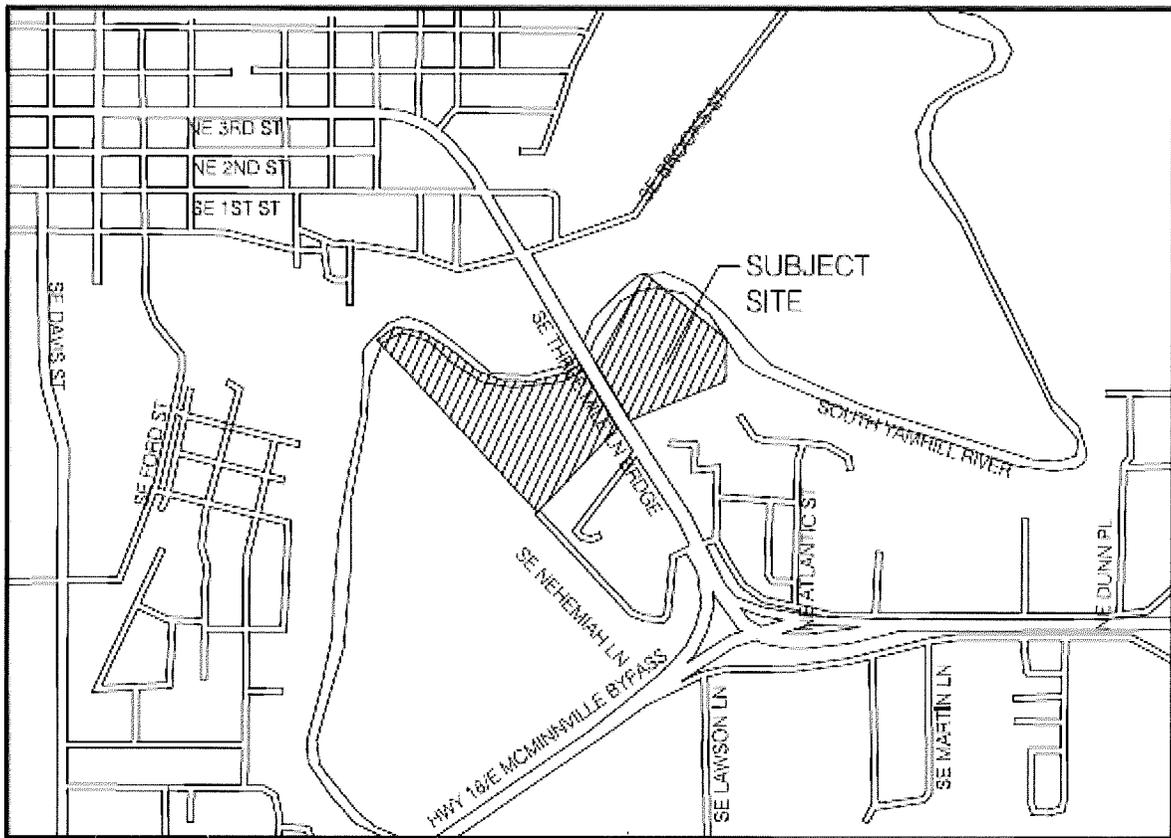
Note: The Basis of Bearings for this description is the State Plane Coordinate System.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

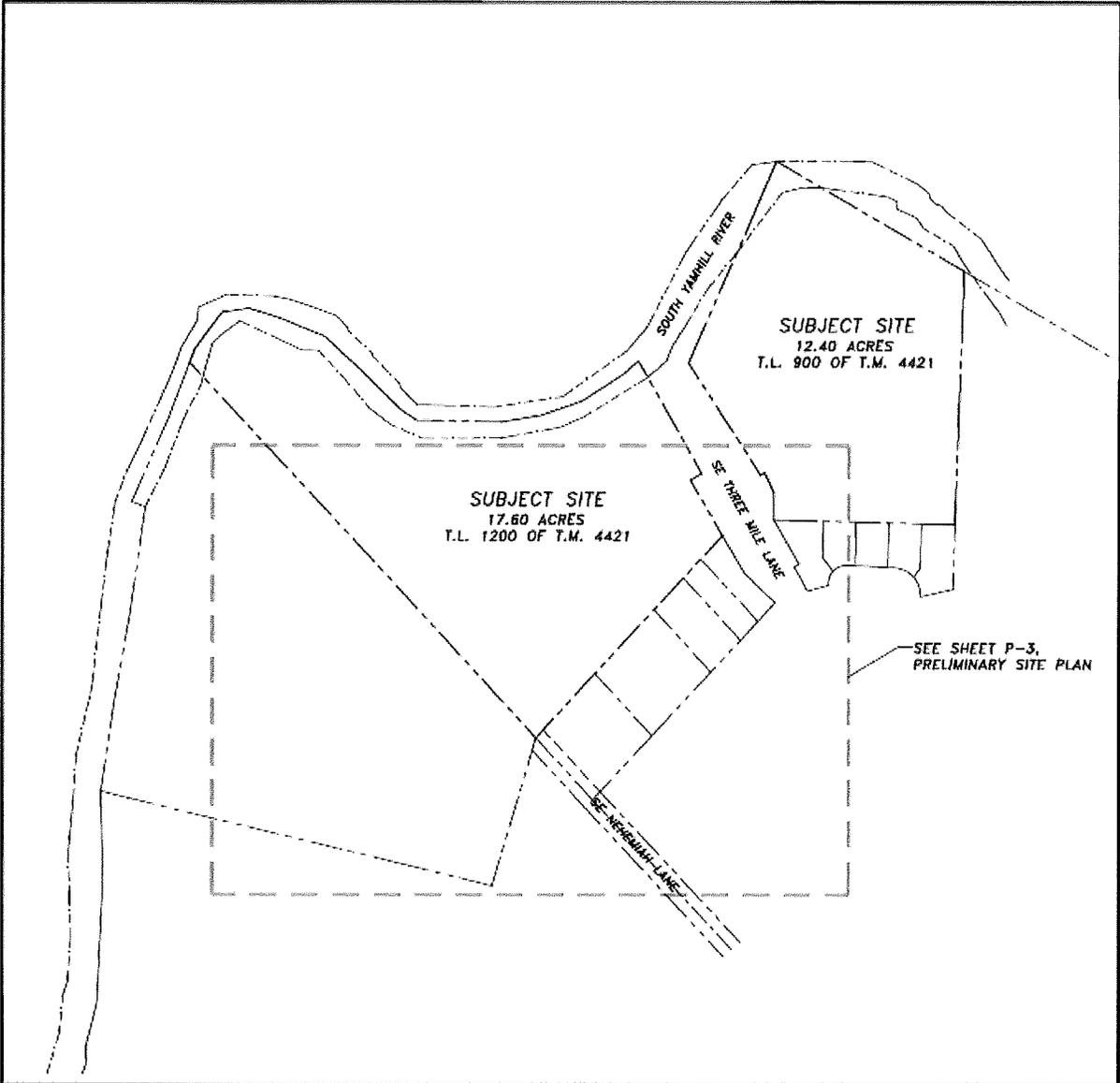


OREGON  
JUNE 10, 2014  
DAVID LEE SCHLOSSER JR.  
72617

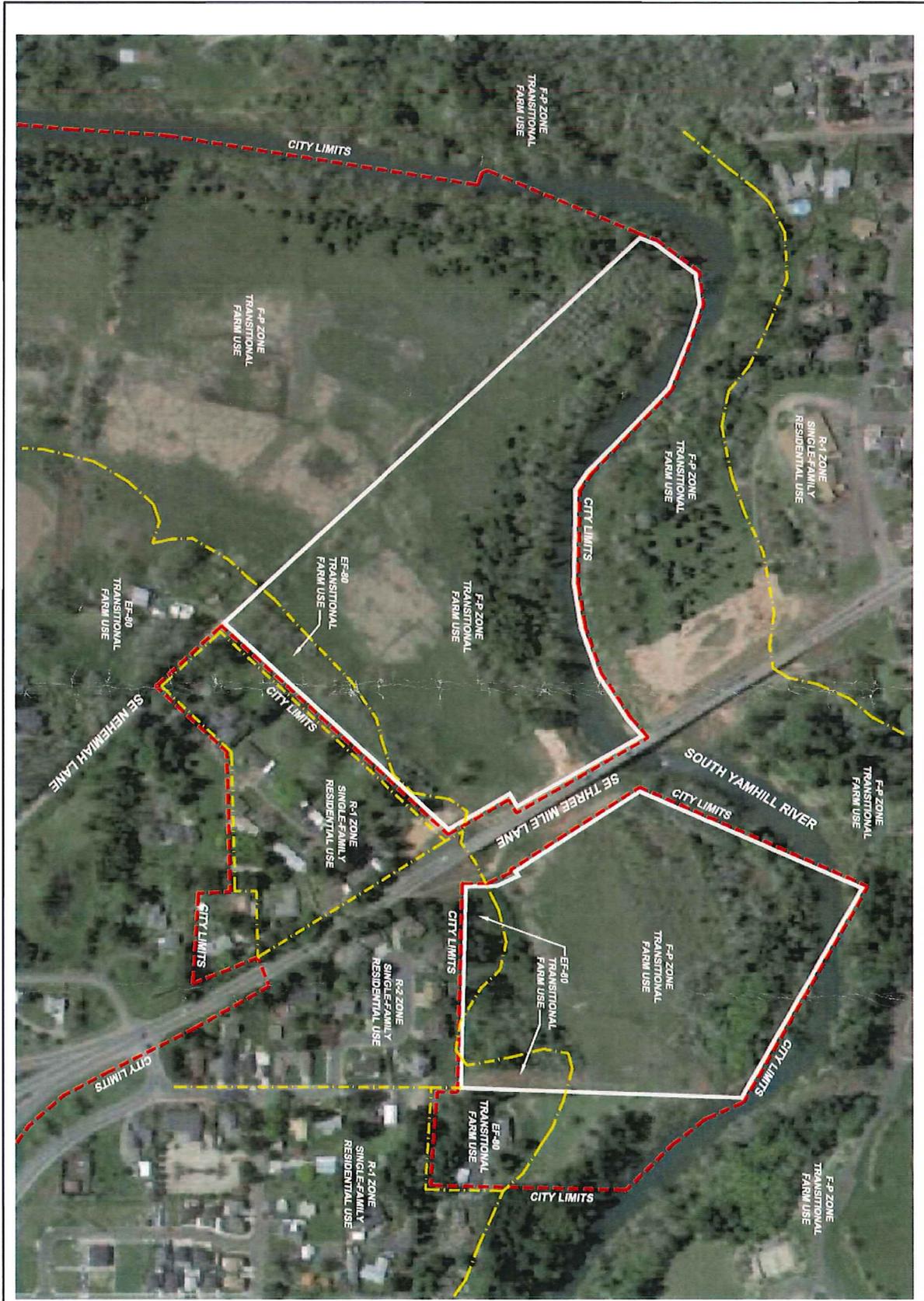
RENEWS 06/30/2022



VICINITY MAP

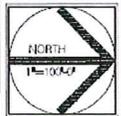


SITE MAP



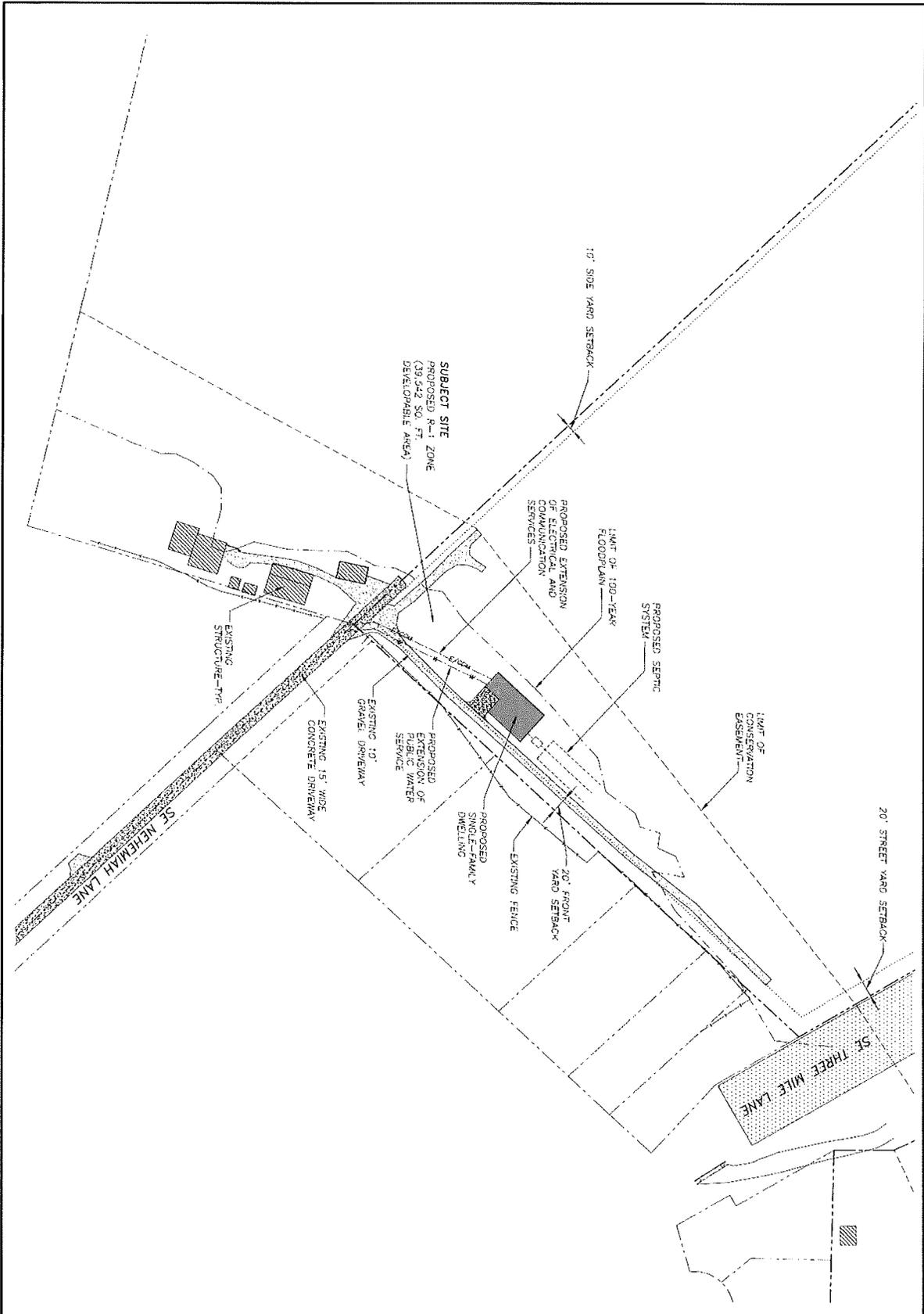
  
**P-2**  
 SHEET 2 OF 3

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



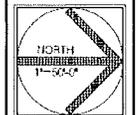
**Cascadia**  
 Planning & Development Services  
 3110 NE 13th Ave, Suite 100  
 McMinnville, OR 97128  
 Phone: 503-438-4200  
 Fax: 503-438-4201  
 www.cascadiaplanning.com

Amended on 05.09.23  
77 of 367



PRELIMINARY  
 SITE PLAN  
 JUNE 29, 2006  
 PROJECT:

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



**Cascadia**  
 Planning & Development Services  
 2810 1/2 SW 12th St  
 Portland, OR 97204  
 503.241.4143  
 www.cascadiaplanning.com

**P-3**  
 SHEET 2 OF 3

T.L. 900 AND 1200 OF T.M. 4421  
 YAMHILL COUNTY, OR



**City of McMinnville**  
**Parks and Recreation**  
600 NE Evans Street  
McMinnville, OR 97128  
(503) 434-7310  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## MEMO

**DATE:** May 2, 2023  
**TO:** Mayor and City Councilors  
**FROM:** Susan Muir, Parks & Recreation Director  
**SUBJECT:** Administration of park rules related to oversized and towed vehicles in parks  
**STRATEGIC PRIORITY & GOAL:**



### COMMUNITY SAFETY & RESILIENCY

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

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**Summary:** City parks have been experiencing an increase in RV's and trailers in parking lots, most notably in East Wortman and Joe Dancer. While we did not track the numbers of these oversize vehicles in past years, anecdotally we estimate the number of RV's/trailers and non-running vehicles that gather during the open park hours at Joe Dancer has doubled and maybe tripled since last fall (we have found very few incidents of vehicles illegally remaining in the parks at night). The Police Chief and I both have taken many calls regarding this over the last several months, and you have received testimony from multiple parties regarding the situation.

While we will continue to welcome all people who follow the rules to our parks, we do find it necessary to remedy the negative impacts related to large vehicles, towed vehicles and trailers in our lots. Our park parking lots were not designed to accommodate oversized vehicles as evidenced in the included photos (many of them don't fit in one parking spot width wise, and length wise hang over well beyond the parking stall and into the travel lane or sidewalk if backed in). Additionally, the temporary storage of trailers and non-running vehicles (those that are towed in) are preventing the lots and spots from being used for their purpose, which is to allow people to park their vehicle and enjoy the connected park.

We believe we have the administrative authority within our existing parks code, to prohibit anything other than passenger vehicles as defined by [ODOT](#). City vehicles and buses used to transport teams/patrons for city programs and events will be exempt, and we will be able to administratively grant exemptions if needed on a case by case basis. We will give park users notice to let them know this change is coming.

**Background:**

We are experiencing some of the largest registration numbers for our youth rec programs than we have seen in over 20 years, which is increasing competition for parking spots and potential conflicts. In addition, over the summer the City's Summer Fun program, typically run out of parks, is drawing more and more attendees and participation rates are increasing to thousands of people being served at events. In addition:

- The Police Chief, Parks and Recreation Director, Public Works Department and other city employees are fielding complaints from people participating in city programs about feeling unsafe in parks due to abandoned looking recreational vehicles spread throughout the park.
- The city has experienced non-working and abandoned trailers being left in parks and require posting and removal, at the cost of the city.
- At least one abandoned trailer recently posed a safety hazard for kids due to it being partly dismantled.
- Limited resources and city employees that would normally be running recreation programs or keeping parks clean and safe are being pulled into dealing with enforcement, conversations, complaints and impacts rather than their job to create and provide clean and safe parks and fun programs for our community.

Staff finds the current code gives the administrative (staff) authority to limit motorized vehicles in park parking lots to those defined as a passenger vehicle as defined by ODOT. Several chapters of the McMinnville City Code (MCC) are relevant to this issue. The relevant code sections, with emphasis added, are:

## MCC 12.36 – City Parks

### **12.36.020 Definitions**

**(3) “Park areas” shall include all parcels of land, beaches or bodies of water owned, leased, controlled or administered by the city of McMinnville for recreation or open space purposes which have been designated by the city as a “park”, “linear park”, “greenway”, “open space”, “playground”, “recreation facility” or as “natural areas”. For purpose of this chapter, the term “park” or “park areas” shall also include the McMinnville public library, aquatic center, senior center, community center, and City Hall including the grounds, plazas, walkways, sidewalks and surface parking lots immediately surrounding these facilities.**

**“Vehicle” means any wheeled conveyance, whether motor powered, animal drawn, or self propelled. The term includes any trailer in tow of any size, kind, or description.** Exception is made for baby carriages, battery operated carts used by individuals with physical impairments, and vehicles in service of city parks.

### **12.36.30 Administration and Enforcement**

(B) *Authority.* The director and chief shall have the authority to do all things necessary to administer the provisions of this chapter and the rules and regulations adopted under it.

12.36.040(B) Any section or part of any park may be **declared closed to the public by the director at any time and for any interval of time**, either temporarily or at regular intervals (daily or otherwise) and either entirely or merely **to certain uses and/or users**, as the director finds reasonably necessary to ensure the health, safety, and enjoyment of all park users.

### **12.36.080 – Special Provisions**

(B) Upon issuance of a citation for violation of MMC 12.36.050 (A)(3), (A)(4) and (A)(5), the peace officer issuing the citation may authorize the offending vehicle to be removed if the peace officer reasonably believes that the vehicle creates a hazard, impedes traffic, and/or may be damaged if left within the park area. The owner of the vehicle shall be responsible for all towing and storage costs.

*Based on the authority found in MCC12.36.30(B) and 12.36.040(B):*

*Beginning June 1, 2023 the Parks and Recreation Director is prohibiting all recreational vehicles, trailers and towed vehicles from City Parks. Other than city maintenance vehicles or buses transporting children, sports teams or associated City programs, only vehicles meeting the definition of passenger vehicle according to ODOT are allowed in parks.*

*Other exemptions to this rule will be extremely limited and must be pre-approved by either the Parks and Recreation Director, Police Chief or Library Director.*

*Any violations to this will be handled through the process in 12.36.080(B).*

**Discussion:** Several related conversations have occurred and the following Q&A is designed to address concerns raised to date:

Q: What's the impact on the capacity of the Police Department?

A: Chief Scales has indicated the Police Department will deal with this, or any impacts that would push RV's or other vehicles out into the right of ways or private property in the same manner that is currently being enforced, which is through the camping and parking ordinances. Realistically it will result in additional calls for service due to the disbursement of the vehicles throughout the city and it will take some time to get a true sense of what the overall exact workload impact will be.

Q: If this does push more daytime camping to city streets, should the city look at the requirements in the camping ordinance and change the requirement of vehicles needing to move 1,000 square feet every 72 hours?

A: The 72 hour limitation is in state statute and the city cannot be more restrictive.

Q: Where will people who currently comply with the city's camping ordinance on Marsh Lane and other rights of ways, and roll into parks during the day go?

A: Without a designated camping area, which has been discussed previously by City Council, the rights of way and street parking remain available for parking in compliance with the city's camping ordinance. The City is extremely limited under case law and state rules to further restrict street parking within the rights of ways when it comes to camping.

Q: What happens if the current RV's and campers who are on Marsh Lane decide to stay in the same location, violating the city's camping code?

A: Enforcement under the city's camping ordinance would kick in and vehicles remaining in the same location after 72 hours will be abated adhering to the state statutes and our MMC.

Q: If residents or businesses see illegal camping or other code violations occurring in the right of way, what can they do?

A: Unless it is an emergency, people should call the YCOM non-emergency phone number, 503.434.6500.

Q: Why can't the Police Department enforce vehicles on the streets (or in parks) that have expired tags or are without insurance?

A: "Abandoned" vehicles with expired tags can be towed within 24 hours, however court cases have made it clear, if there is a sign of a vehicle being used as shelter, it would fall under the city's camping ordinance, regardless of tags or other non-moving violations.

Q: What about the people who take their trailers, or RV's down to Joe Dancer to watch soccer games?

A: This would apply to all vehicles at any time. No trailers of any kind would be allowed. Staff have observed rented hauling trailers, 'toy' trailers, trailers used for businesses and RV's at Joe Dancer during soccer games this spring. Those will no longer be allowed in parks. Notices/signs will be posted at the entrances to parks

prior to enforcement the effective date of June 1, 2023. In addition, Parks and Recreation will provide notice to participants in city programs.

Keeping city parks safe and clean is a high priority for our community. Initial responses from the Parks, Recreation and Open Space Master Plan outreach are clearly showing this. We know more needs to be done in our parks and staff has consistently asked for additional resources to address this. As the Police Chief and Parks and Recreation Director told the City Council on July 26, 2022 during the work session related to camping on city property: increased resources for law enforcement, maintenance and park programming are all a part of the solution.

This action is designed to address:

- Public perception of a lack of safety with groups of RV's in the parks.
- Oversized and large vehicles parking in lots that are not designed for those vehicles.

**Next Steps:**

The Parks and Recreation Director, Police Chief and Public Works Director are all available to respond to questions related to this, and will be addressing this item at the May 9, 2023 City Council meeting under items from department heads. In the meantime, staff have begun the process to notify the public that this new park prohibition will go into effect June 1, 2023.

2023 photos of parking lots at parks illustrating parking challenges with oversized vehicles:



CITY OF MCMINNVILLE - CASH AND INVESTMENT BY FUND  
January 2023

FUND #	FUND NAME	GENERAL OPERATING		TOTAL
		CASH IN BANK	INVESTMENT	
01	General	\$3,197,998.58	\$8,942,538.87	\$12,140,537.45
05	Grants & Special Assessment	\$651.94	\$7,126,057.52	\$7,126,709.46
07	Transient Lodging Tax	\$724.96	\$19,000.00	\$19,724.96
08	Affordable Housing	\$830.06	\$1,507,000.00	\$1,507,830.06
10	Telecommunications	\$943.51	\$1,030.00	\$1,973.51
15	Emergency Communications	\$898.46	\$142,094.81	\$142,993.27
20	Street (State Tax)	\$264.06	\$2,344,891.22	\$2,345,155.28
25	Airport Maintenance	\$52.14	\$763,749.03	\$763,801.17
45	Transportation	\$502.43	\$3,790,494.92	\$3,790,997.35
50	Park Development	\$896.92	\$2,159,441.49	\$2,160,338.41
58	Urban Renewal	\$681.77	\$109,406.71	\$110,088.48
59	Urban Renewal Debt Service	\$349.23	\$1,056,821.38	\$1,057,170.61
60	Debt Service	\$672.95	\$121,518.79	\$122,191.74
70	Building	\$219.88	\$1,923,240.37	\$1,923,460.25
75	Wastewater Services	\$854.85	\$2,398,610.83	\$2,399,465.68
77	Wastewater Capital	\$486.05	\$43,401,103.65	\$43,401,589.70
80	Information Systems & Services	\$244.69	\$200,742.38	\$200,987.07
85	Insurance Reserve	\$229.30	\$420,290.54	\$420,519.84
CITY TOTALS		3,207,501.78	76,428,032.51	79,635,534.29

MATURITY DATE	INSTITUTION	TYPE OF INVESTMENT	INTEREST RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.55%	\$ 3,237,501.78
N/A	Key Bank of Oregon	Money Market Savings Account	0.40%	\$ 19,466,817.10
N/A	State of Oregon	Local Government Investment Pool (LGIP)	3.37%	\$ 55,932,125.79
N/A	State of Oregon	Urban Renewal Loan Proceeds (LGIP)	3.37%	\$ 115,019.82
N/A	MassMutual Financial Group	Group Annuity	3.00%	\$ 884,069.80
				<u>\$ 79,635,534.29</u>
				\$ -

## Liquor License Recommendation

---

BUSINESS NAME / INDIVIDUAL: Little Hellion Wines  
BUSINESS LOCATION ADDRESS: 2376 NW Fendle Way  
LIQUOR LICENSE TYPE: Winery primary location

Is the business at this location currently licensed by OLCC

Yes  No

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

-----

Hours of operation: 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:** 4/17/2023

Optional: Date Stamp

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date



4.a. Anydoor Place (Navigation Center) Report

Community Development Director Heather Richards introduced the topic and shared a PowerPoint presentation on AnyDoor providing an update on the project providing updates on the history of the project, the project logistics, the design concepts and the next steps.

5. ADVICE/ INFORMATION ITEMS

5.a. Reports from Councilors on Committee & Board Assignments

Councilor Chenoweth had nothing to report.

Councilor Geary reported DEIAC meets this Thursday, MURAC met last week to hear about the public art property assistance program and Third Street Improvement project request for proposals update. The Public Safety task force met today and talked to employees from the jail and talked about their process.

Councilor Peralta reported Council of Governments adopted its services fees list and their request for \$5 million from the legislature in planning funding for Rural capacity is moving forward.

Councilor Payne had nothing to report.

Councilor Menke shared Affordable Housing Committee met and receives reports from various agencies. Provided a list of some of the subcommittees.

Council President Garvin stated Visit McMinnville, YCOM and Airport Commission have not met. Fire districting continuing to move forward.

Mayor Drabkin gave a shout-out to Noelle Amaya for the great employee newsletter. On April 17<sup>th</sup> she and Community Development Director Richards will be attending the Yamhill Community Care Organization (YCCO) board meeting at 3:00 pm to present on funding request. Will also be doing a keynote speech to International City/County Management Association (ICMA) with City Manager Towery on successful intergovernmental agreements. Lastly, hosted Congresswoman Salinas with the Fire Department. Reminded everyone of the Community Fair at the State of the City Address on May 25<sup>th</sup>.

5.b. Department Head Reports

City Manager Jeff Towery had nothing to report.

Community Development Director Richards shared two things; received an appeal for the Gwendolyn Hotel Decisions, the Public Hearing for April 18<sup>th</sup> from 6:00 pm-10:00 pm and April 19<sup>th</sup> from 6:00 pm-10:00 pm. In about two weeks will be sending a mailing to businesses about three different business assistance programs they have available.

Fire Chief Leipfert recognized the services of city employees. Next week will be taking delivery of a refurbished ambulance from Centralia and the other one is scheduled for an August delivery.

City Recorder Cisneros stated item 6b on the consent agenda Scribner error listed on the agenda with an added number listed on the address and no impact if the consent agenda is approved. The May 9<sup>th</sup> and May 10<sup>th</sup> Joint meetings with MW&L and DBS Consulting have been rescheduled to Tuesday, June 13<sup>th</sup> during the regular work session from 5:30 pm – 7:00 pm and the joint meeting on Wednesday, June 14<sup>th</sup> from 4:00 pm – 7:00 pm.

Finance Director Cuellar had nothing to report.

Library Director Berg invited all to the Library Saturday, April 15<sup>th</sup> at 11:00 am to read to a dog and also look at the refresh of the Library Plaza.

Human Resources Manager Hedges last week County Insurance Services (CIS) provided staff with harassment discrimination training and sent out a benefits survey to all employees to understand what employees' needs are.

6. CONSENT AGENDA

a. Consider **Resolution 2023-16**: A Resolution awarding the contract for the 2023 Slurry Seal project, Project 2023-1, to Doolittle Construction LLC.

b. Consider the request from Acorn to Oak Wine, LLC dba: Acorn to Oak Wine Experience for Winery 2nd location, OLCC Liquor License located at 546 NE 3rd Street.

c. Consider the request from Genius Loci LLC dba: Lundeen Wines for Winery Primary Location, OLCC Liquor License located at 475 NE 17th Street.

d. Consider the request from Fox Farms Vineyard LLC for Winery 2nd Location, OLCC Liquor License located at 475 NE 17th Street.

- e. Consider the request from Parra Wine Co. LLC for Winery 2nd Location, OLCC Liquor License located at 475 NE 17th Street.
- f. Consider the request from Roshni Vineyard for Winery Primary Location, OLCC Liquor License located at 1400 NE Alpha Drive.
- g. Consider the request from Recipe LLC for Commercial Location, OLCC Liquor License located at 328 NE Evans Street.
- h. Consider the request from Dundee Hills Distilling Company LLC for Distillery Location, OLCC Liquor License located at 1245 NE Alpha Drive Bldg 3 Units A, B, and C.
- i. Consider the request from Family & Family LLC dba: Kate Arnold Wines for Winery Primary Location, OLCC Liquor License located at 829 NE 5th Street Suite #100-300.
- j. Consider the Minutes of the March 14, 2023 City Council Regular Meeting.
- k. Consider the Minutes of the March 22, 2023 Joint City Council & McMinnville School District Board of Directors Work Session Meeting.
- l. Consider the Minutes of the March 28, 2023 City Council Work Session & Regular Meeting.

*Councilor Geary MOVED to adopt the consent agenda with the amendment as stated by City Recorder for Item b; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.*

7. RESOLUTION

- a. Consider **Resolution No. 2023-17**: A Resolution Authorizing the City Manager to sign a contract with Micro Enterprise Services of Oregon in the amount of \$235,000 for McMinnville Loan Forgiveness Program

Community Development Director Richards stated this grant comes from Representative Noble in the amount of \$750,000 to serve the business community and help them with recovery from COVID.

Councilor Payne noticed a typo on page 224 of the packet or page 3 of the contract under section 4.1 a link embedded in the document did not work and what it should say is “except as otherwise set forth in this section the city agrees to pay consultant on a time and materials basis”.

There was a discussion of what conditions were placed for the use of the money.

*Councilor Chenoweth MOVED to adopt Resolution No. 2023-17; contract with Micro Enterprise Services of Oregon in the amount of \$235,000 for McMinnville Loan Forgiveness Program as amended by Community Development Director Richards; SECONDED by Council President Garvin. Motion PASSED unanimously 6-0.*

8. ADJOURNMENT: Mayor Drabkin adjourned the meeting at 7:53 p.m.

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Claudia Cisneros, City Recorder

DRAFT

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

Tuesday, April 25, 2023 at 7:00 p.m.

Presiding: Remy Drabkin, Mayor (via Zoom)

Recording Secretary: Claudia Cisneros

Councilors:	<u>Present</u>	<u>Absent</u>
	Chris Chenoweth	Adam Garvin, Council President
	Kellie Menke	Zack Geary
	Jessica Payne	
	Sal Peralta (via Zoom)	

Also present were City Recorder Claudia Cisneros, City Manager Jeff Towery, Finance Director Jennifer Cuellar, Community Development Director Heather Richards (via zoom) and members of the News Media – Jerry Eichten, McMinnville Community Media and Scott Unger, *News Register* (via zoom).

1. CALL TO ORDER: Mayor Drabkin called the meeting to order at 7:03 p.m. and welcomed all in attendance.

2. PLEDGE OF ALLEGIANCE

Councilor Chris Chenoweth led the pledge of allegiance.

3. PROCLAMATION

3.a. Arbor Day Proclamation

Mayor Drabkin read the proclamation and declared Friday, April 28, 2023 as Arbor Day.

3.b. Historic Preservation Month Proclamation

Mayor Drabkin read the proclamation and declared the month of May 2023 as Historic Preservation Month.

Community Development Director Richards stated last year there were Historic Landmark posters made that drew a lot of attention and for the month of May they will be selling those posters and postcards and all profits will go back to Historic Landmark.

4. INVITATION TO CITIZENS FOR PUBLIC COMMENT: Mayor Drabkin invited the public to comment.

There were no public comments.

5. ADVICE/ INFORMATION ITEMS

- 5.a. Reports from Councilors on Committee & Board Assignments

Councilor Menke had nothing to report.

Councilor Payne said Landscape met on the April 19<sup>th</sup>, was not present but read the lengthy meeting and review for an upcoming apartment complex.

Councilor Chenoweth reported Thursday April 20<sup>th</sup> Parkway Committee met and talked about the current status of the projects and talked about funding for the different phases.

Councilor Peralta stated Historic Landmark Committee will meet this Thursday and Council of Governments has not met.

Mayor Drabkin reported she is attending the spring League of Oregon Cities conference and attending some good sessions.

- 5.b. Department Head Reports

City Manager Jeff Towery had nothing to report.

Jennifer Cuellar had nothing to report

Claudia Cisneros had nothing to report

Scott Burke had nothing to report.

Heather Richards had nothing to report.

6. CONSENT AGENDA

a. Consider the request from J. Wrigley Vineyards for Winery 2nd location, OLCC Liquor License located at 303 NE 3rd Street.

*Councilor Chenoweth MOVED to adopt the consent agenda except for Item b; SECONDED by Councilor Menke. Motion PASSED unanimously 4-0.*

7. RESOLUTION

a. Consider **Resolution No. 2023-19**: A Resolution of the Common Council of the City of McMinnville approving allocation of American Rescue Plan Act (ARPA) funds.

Jennifer Cuellar presented the agenda topic made the changes recommended at the Special Called Budget meeting with one change of leaving out the Library HVAC project off to further research and will be brought back for approval at a later meeting.

*Councilor Menke MOVED to adopt Resolution No. 2023-19; approving allocation of ARPA funds; SECONDED by Councilor Peralta. Motion PASSED unanimously 4-0.*

8. ADJOURNMENT: Mayor Drabkin adjourned the meeting at 7:21 p.m.

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Claudia Cisneros, City Recorder

## Liquor License Recommendation

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BUSINESS NAME / INDIVIDUAL: Extra Virgin LLC dba: Wellspent Market  
BUSINESS LOCATION ADDRESS: 1140 NE Alpine Ave  
LIQUOR LICENSE TYPE: Limited on-premises and Off premises

Is the business at this location currently licensed by OLCC

Yes  No

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

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

EXEMPTIONS:  
(list any exemptions)

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Tritech Records Management System Check: Yes  No

Criminal Records Check: Yes  No

Recommended Action: Approve  Disapprove



Chief of Police / Designee

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City Manager / Designee



## OREGON LIQUOR & CANNABIS COMMISSION LIQUOR LICENSE APPLICATION

### Instructions

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1. **Complete and sign** this application.
2. Prior to submitting this application to the OLCC, send the completed application to **the local government for the premises address** to obtain a recommendation.
  - If the premises street address is within a city's limits, the local government is the city.
  - If the premises street address is not within a city's limits, the local government is the county.
3. Collect the application from the local government **after** the recommendation has been provided.
4. **Email the application that contains the local government recommendation to [OLCC.LiquorLicenseApplication@Oregon.Gov](mailto:OLCC.LiquorLicenseApplication@Oregon.Gov).**
5. **Do not include any license fees with your application packet (fees will be collected at a later time).** *When it's time to pay the license fee you must pay the full yearly fee for the current license year (the license fee will not be prorated). If you pay in the last quarter of your license year you must also pay the yearly fee for the next license year.*

**License Request Options** - Please see the general definitions of the license request options below:

- **New Outlet:** The licensing of a business that does not currently hold an active liquor license.
- **Change of Ownership:** The request to completely change the licensee of record at a licensed business.
- **Greater Privilege:** The request to replace a Limited On-Premises sales license with a Full On-Premises sales license.
- **Lesser Privilege:** The request to replace a Full On-Premises sales license with a Limited On-Premises sales license.
- **Additional Privilege:** The licensee currently holds an active liquor license at the premises and that same licensee would like to request to add an **additional** different liquor license type at that same premises location.

### Additional Information

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**Applicant Identification:** Please review [OAR 845-006-0301](#) for the definitions of "applicant" and "licensee" and [OAR 845-005-0311](#) to confirm that all individuals or entities with an ownership interest (other than a waivable ownership interest, per [OAR 845-005-0311\(6\)](#)) in the business have been identified as license applicants on this document. If you have a question about whether an individual or entity needs to be listed as an applicant for the license, discuss this with the OLCC staff person assigned to your application.

**Premises Address:** This is the physical location of the business and where the liquor license will be posted.

**Applicant Signature(s):** Each individual listed in the [applicant information box](#) on page 2 (entity or individuals applying for the license) must sign the application.

If an applicant listed in the applicant information box on page 2 is an entity (such as a corporation or limited liability company), at least one individual who is authorized to sign for the entity must sign the application.

**Applicant/Licensee Representative(s):** In order to make changes to a license or application or to receive information about a license or application by someone other than the applicant/licensee you must:

- Complete the below [Authorized Representative](#) area on page 2 as the applicant/licensee and/or
- Provide a Power of Attorney document showing the permissions allowable on the behalf of the applicant/licensee with this submission

*Please note that applicants/licensees are responsible for all information provided on this form, even if an authorized representative or individual with authority signs on behalf of the applicant.*

For help with this application or any related documents or processes, email [olcc.alcohollicensing@oregon.gov](mailto:olcc.alcohollicensing@oregon.gov).

# 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:

Optional: Date Stamp

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date



**City of McMinnville**  
**Public Works Department**  
3500 NE Clearwater Drive  
McMinnville, OR 97128  
(503) 434-7313  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** April 26, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Leland Koester, Wastewater Services Manager  
**SUBJECT:** Solids Treatment Capacity Improvement Project, Project No. 2019-10

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### **Report in Brief:**

This action is consideration of a resolution to authorize Amendment No. 2 to December 10, 2021, professional services contract with Jacobs Engineering Group, Inc. (Jacobs) for Services During Construction, SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project No. 2019-10.

### **Background:**

The City awarded a professional services contract to Jacobs on April 6, 2020. This project's scope of work was developing a Project Definition report for solids handling improvements at the Water Reclamation Facility. The City entered into a second agreement with Jacobs for Schematic Design (preliminary engineering design) on December 10, 2021. This Agreement was amended by Amendment No. 1 on May 16, 2022, to provide final design and bid documents. Design services were completed, and the project was advertised for bid, on March 15, 2023.

The proposed amendment, Amendment No. 2, provides engineering services during construction and startup of these improvements. Specific services in Amendment No. 2 include resident inspection, specialty inspections, instrumentation and control support and overall construction management services.

Engineering fees for Amendment No. 2 are based on actual time and materials costs, with a not to exceed ceiling of \$2,257,962.00.

### **Attachments:**

1. **Exhibit 1**, Second Amendment to Professional Services Agreement dated December 10, 2021.
2. Resolution 2023-20

### **Fiscal Impact:**

Funds for this project are included in the FY22/23 through 24/25 Wastewater Capital Fund (77).

**Recommendation:**

Staff recommends that the City Council adopt the attached resolution approving Amendment No. 2, Services During Construction, to the Professional Services Agreement with Jacobs in the amount of \$2,257,962.00 for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS, Project No. 2019-10.

**CITY OF McMinnville**  
**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT**

**Water Reclamation Facility Solids Treatment Capacity Improvements**  
**Project No. 2019-10**

This Second Amendment to Professional Services Agreement (“Second Amendment”) is effective the \_\_\_\_\_ day of \_\_\_\_\_ 2023 (“Effective Date”), by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (“City”), and **Jacobs Engineering Group Inc.**, a Delaware corporation (“Consultant”), upon the terms and conditions set forth below.

**RECITALS**

WHEREAS, the City entered into a Professional Services Agreement (“Agreement”) with Consultant on December 10, 2021, relating to the Solids Treatment Capacity Improvements Project, Project Number 2019-10 (“Project”); and

WHEREAS, the City executed Amendment No. 1 to this Agreement on May 22, 2022, for final design services; and,

WHEREAS, the City received final design plans and specifications for the Project on March 15, 2023; and,

WHEREAS, final design services have been completed and professional services during construction and startup of the project are required; and

WHEREAS, the City has negotiated the type of services, scope of work, project team, sub-consultants, fee, and schedule with Jacobs for Services During Construction, as Amendment No. 2 to the December 10, 2021, Agreement; and

WHEREAS, Consultant represents that Consultant is qualified to perform the Additional Services described herein on the basis of familiarity with the proposed project, specialized experience and technical expertise; and

WHEREAS, Consultant is prepared and able to timely provide such Additional 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**

The Agreement is amended as follows:

**Section 1. Additional Services To Be Provided**

Consultant will perform all of the Additional Services more particularly described in **Exhibit A**, attached hereto and incorporated by this reference herein, for the Project pursuant to all original terms of the Agreement, except as modified herein.

**Section 2. Time for Completion of Additional Services**

The Additional Services provided by Consultant pursuant to this Second Amendment shall be completed by no later than January 31, 2026.

**Section 3. Compensation**

The City agrees to pay Consultant on a monthly or periodic basis for hours of time incurred and materials expended. Compensation is guaranteed by Consultant not to exceed the maximum sum of TWO MILLION TWO HUNDRED FIFTY SEVEN THOUSAND NINE HUNDRED AND SIXTY TWO DOLLARS (\$2,257,962) for performance of the Additional Services (“Additional Compensation Amount”) set forth on **Exhibit A** attached hereto. Consultant’s estimate of time and materials to be incurred for various tasks is attached hereto as **Exhibit A**, and incorporated herein by reference, but shall be subject to the maximum not to exceed Compensation amount set forth above for the scope of services described on **Exhibit A**.

**Section 4. All Other Terms**

Except as amended by Amendment No. 1 and this Second Amendment, all of the other terms and conditions of the Agreement shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Agreement shall apply to this Second Amendment.

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

**CONSULTANT:**

JACOBS ENGINEERING GROUP INC.

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

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

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

Employer I.D. No. \_\_\_\_\_

**CITY:**

CITY OF McMinnville

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

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

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

**APPROVED AS TO FORM:**

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

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**Exhibit A  
To Amendment 2  
Agreement for Professional Services for the  
City of McMinnville  
Water Reclamation Facility (WRF) Solids Treatment Capacity  
Improvements Project  
Project 2019-10**

The following is a scope of services for professional engineering services during the construction phase for the Water Reclamation Facility Solids Treatment Capacity Improvements Project.

## **BACKGROUND**

McMinnville's Water Reclamation Facilities Plan (2009, CH2M HILL/West Yost) recommended expanding the WRF in conjunction with reducing collection system infiltration and inflow (I&I) to address future wastewater treatment needs. Related to the solids treatment and headworks processes, the Facilities Plan included: construction of a 1-MG biosolids storage tank and mixer; construction of a dewatering process and dry biosolids storage; upgrade of odor control; expansion of grit removal; modification of the influent screens; and, addition of thermal drying. Since the Facilities Plan: the City has deferred some of the recommended projects; population growth, thus flows and lows, have not increased as projected; and, technologies have changed.

The Project Definition Report (2021, Jacobs) for the Biosolids Storage Tank and Grit System Expansion recommended implementation of the Solids Treatment Capacity Improvements (STCI) Project. The STCI project design was completed and advertised for bidding in March 2023. Construction Contractor notice to proceed is expected in May 2023. This document describes the scope of engineering services for the construction phase of the project.

The Work is proposed on a Time & Materials basis with a not-to-exceed budget of \$2,257,962.

## **BASIS OF ENGINEERING SERVICES DURING CONSTRUCTION (SDC) SCOPE AND FEE DEVELOPMENT**

The following key assumptions were used when determining the scope, level of effort and compensation to the Consultant. These assumptions are in addition to those included in the Scope of Services.

### **Services During the Construction Phase**

1. The duration of the construction period will not exceed 20 months and will commence by May 22, 2023.
2. The project will be constructed under one general contract for construction.

- 
3. Desk space and high-speed internet access for Consultant field staff will be provided by the Construction Contractor.

## **CITY-PROVIDED SERVICES**

1. City will provide to Consultant all information in City's possession regarding existing conditions that pertain to the Project. Consultant shall reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City.
3. City will make its facilities accessible to Consultant as required for Consultant's performance of its services.
4. City will give prompt notice to Consultant whenever City observes or becomes aware of any development that affects the scope or timing of Consultant's services, or of any defect in the work of Consultant or the Construction Contractor.
5. The City will examine information submitted by Consultant and render in writing or otherwise provide decisions in a timely manner.
6. The City will furnish required information and approvals in a timely manner.
7. The City will cause all agreements with the Construction Contractor to be consistent with Consultant's Agreement.
8. The City will participate in construction meetings.

## **SCOPE OF SERVICES**

The Consultant will provide the City with the services described herein. The Consultant's scope of services consists of the following major tasks:

Task 1: Project Management

Task 2: Conformed Documents

Task 3: Services During Construction

Task 4: Commissioning and Training

Task 5: Software Development and Testing

Task 6: Services During the Close-Out Phase and Warranty Services

Task 7: Pavement Assessment

Task 8: Professional Services Reserve

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## **Task 1: Project Management**

The purpose the Project Management task is to establish and monitor compliance with project budget and schedule.

### **Task 1.1: Progress Meetings and Updates**

The Consultant's project manager will talk or email with the City's project manager weekly to review project progress and discuss upcoming work activities. The Consultant's project manager will provide monthly email summaries of work completed, upcoming activities and unresolved issues. All in-person meetings and workshops will be held at the WRF unless noted otherwise. When possible, meetings will be conducted over video conference.

### **Task 1.2: Project Management Plan**

The Project Management Plan includes project instructions and a project health and safety plan for the Consultant's team. The plan developed in the previous design phase will be modified and used for the construction phase.

### **Task 1.3: Invoicing, Cost and Schedule Control**

The Consultant's project manager will manage, administer, coordinate, and integrate work of the Consultant's team as required to deliver the project within budget and on schedule. The Consultant's project manager will prepare and submit to the City's project manager on a monthly basis, a brief cost and schedule status report and updated summary project schedule showing actual versus projected. The report shall include a narrative description of progress to-date, actual costs for each major task, estimates of percent complete, and potential cost variances.

*Task 1 Deliverables: Monthly status reports and invoices.*

---

## **Task 2: Conformed Documents**

Consultant shall incorporate addendum items into the Contract Documents and prepare Conformed Documents (drawings, specifications, and design details).

*Task 2 Deliverables: Conformed Documents in PDF format. 5 hardcopies will be provided.*

---

### **Task 3: Services During Construction**

Consultant shall provide services to assist in coordinating the site activities, administering the contract for construction, monitoring the Construction Contractor's performance, responding to design and technical submittals, and closing out the contract for construction.

The presence or duties of Consultant's personnel at a construction site, whether as onsite representatives or otherwise, do not make Consultant or Consultant's personnel in any way responsible for those duties that belong to City and/or the Construction Contractor or other entities, and do not relieve the Construction Contractor or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work.

Consultant and Consultant's personnel have no authority to exercise any control over any Construction Contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the Construction Contractor or other entity or any other persons at the site except Consultant's own personnel.

The presence of Consultant's personnel at a construction site is for the purpose of providing to City a greater degree of confidence that the completed construction work will conform generally to the contract for construction and that the integrity of the design concept as reflected in the contract for construction has been implemented and preserved by the Construction Contractor. Consultant neither guarantees the performance of the Construction Contractor nor assumes responsibility for Construction Contractor's failure to perform work in accordance with the contract for construction.

#### **Task 3.1: Document Management System and Procedures**

Consultant shall establish a system and set of procedures for managing, tracking and storing all relevant documents between the Construction Contractor, Consultant and City produced during the Construction and Closeout phases of the project. The Consultant shall setup and maintain an electronic document management system and provide direct access to Contractor and Owner. Minimal hard copy records are anticipated. All relevant documentation shall be delivered to City at the end of the project.

Consultant shall implement procedures for the logging and tracking of all relevant correspondence and documents. Consultant shall assist the City in monitoring all outstanding decisions, approvals or responses required from the City.

---

## **Task 3.2: Site Coordination**

### **Task 3.2.1 Pre-Construction Conference**

Consultant shall coordinate and attend one pre-construction conference with the Construction Contractor to review the project communication, coordination and other procedures and discuss the Construction Contractor's general work plan and requirements for the Project. Consultant shall take minutes or otherwise record the results of this conference.

### **Task 3.2.2 Mobilize On-Site Team**

Consultant shall mobilize a team on site full-time for the duration of the construction to provide site coordination, contract administration and monitor the performance of the Construction Contractor. The Consultant will provide one Resident Project Representative (RPR) at the site. The RPR will be supported by the design team, located in the Consultant's Corvallis, Oregon office.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

### **Task 3.2.3 Communications**

Consultant shall implement and maintain regular communications with the Construction Contractor during the construction. Consultant shall receive and log all communications from the Construction Contractor and will coordinate the communications between the City and Construction Contractor.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

### **Task 3.2.4 Project Site Meetings**

Consultant shall conduct weekly on site construction coordination meetings with the Construction Contractor and prepare the minutes of these meetings.

At the start of construction, then quarterly thereafter, Consultant will facilitate and participate in partnering meetings with the City and Construction Contractor.

### **Task 3.2.5 Field Instructions and Orders**

Consultant shall issue field instructions, orders or similar documents during construction as provided in the contract for construction.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

**Task 3.2 Deliverables:** *Pre-construction conference agenda and minutes; project site meeting minutes; field instructions.*

---

### **Task 3.3: Construction Contract Administration**

#### **Task 3.3.1 Permits, Bonds and Insurance**

Consultant shall verify that the required permits, bonds and insurance have been obtained and submitted by the Construction Contractor.

#### **Effort associated with this task is accounted for within Task 3.8 Field Inspection. Task 3.3.2 Payments to Construction Contractor**

Consultant shall receive and review the Construction Contractor's requests for payment. Consultant shall determine whether the amount requested reflects the progress of the Construction Contractor's work and is in accordance with the contract for construction.

Consultant shall provide recommendations to the City as to the acceptability of the requests. Consultant shall advise the City as to the status of the total amounts requested, paid, remaining to be paid, and retainage, under the terms of the contract for construction. Recommendations by Consultant to the City for payment shall be based upon Consultant's knowledge, information and belief from its observations of the work on site and selected sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by Consultant to ascertain that the Construction Contractor has completed the work in exact accordance with the contract for construction; that Consultant has made an examination to ascertain how or for what purpose the Construction Contractor has used the moneys paid; that title to any of the work, materials or equipment has passed to the City free and clear of liens, claims, security interests, or encumbrances.

#### **Task 3.3.3 Correspondence and Communications**

Consultant shall coordinate all written communications among the Construction Contractor, Consultant and City during the construction phase. Consultant shall prepare written communications to the Construction Contractor and provide recommendations to the City for written communications between the City and Construction Contractor.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

*Task 3.3 Deliverables: Payment recommendation, written communication to Construction Contractor.*

### **Task 3.4: Changes**

#### **Task 3.4.1 Minor Variations in the Work**

Consultant may authorize minor variations in the work which do not involve an adjustment in the Construction Contractor's contract price nor time for construction and are not inconsistent with the intent of the contract documents.

#### **Effort associated with this task is accounted for within Task 3.8 Field Inspection. Task 3.4.2 Coordinate Issuance of Changes**

Consultant shall assist the City with the issuance of changes to the contract for construction. Design and engineering services to prepare drawings, specifications and other information for City-requested changes may be considered additional services and entitle Consultant to additional compensation for the services.

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Consultant shall receive and review the Construction Contractor's response to the request for change and will obtain such further information as is necessary to evaluate the basis for the Construction Contractor's proposal.

Consultant shall assist the City with negotiations of the proposal and, upon approval by the City, prepare final change order documents for execution by the City and Construction Contractor.

An allowance of 120 hours is provided for this task.

**Task 3.4.3 Review of Construction Contractor's Requested Changes**

Consultant shall review all Construction Contractor-requested changes to the contract for construction.

Consultant shall make recommendations to the City regarding the acceptability of the Construction Contractor's request and, upon approval of the City, assist the City in negotiations of the requested change. Upon agreement and approval, Consultant shall prepare final change order documents.

**An allowance of 120 hours is provided for this task. Task 3.4.4 Change Order Reports**

Consultant shall generate from the electronic document management system monthly reports to the City about the status of Change Orders. The report will include issued Change Orders, pending Change Orders, and Change Order amounts.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

*Task 3.4 Deliverables: Change Order documents and status reports*

**Task 3.5: As Built Drawings and Record Documents**

Consultant shall coordinate the Construction Contractor's submittal of as-built drawings, specifications and other as-built or record documents and will transmit these to the City.

Consultant shall meet with the Construction Contractor as necessary, but at least monthly, to review the preparation and submittal of as-built or record drawings. This task does not include on-going Consultant CAD work for as-built or record drawings. All CAD work will occur under Task 6.5 Record Drawings as part of project closeout.

**Task 3.6: Claims and Disputes**

Consultant shall receive, log, and notify the City about all letters and notices from the Construction Contractor concerning claims or disputes between the Construction Contractor and City pertaining to the acceptability of the work or the interpretation of the requirements of the contract for construction. Consultant shall review all such letters and notices and discuss them with the Construction Contractor as necessary to understand each such claim or dispute.

Consultant shall advise the City regarding the Construction Contractor's compliance with the contract requirements for such claims and disputes. Consultant shall assist the City in discussions with the Construction Contractor to resolve claims and disputes. An allowance of 16 hours is included.

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Consultant shall issue decisions on claims and disputes. Consultant shall not, except as part of Professional Services Reserve, participate in judicial procedures for the claims or disputes.

### **Task 3.7: Project Controls**

#### **Task 3.7.1 Construction Contractor's Schedule Submittal**

Consultant shall review the Construction Contractor's construction schedule and verify that it is consistent with the requirements of the contract for construction. Consultant shall advise the Construction Contractor of any areas where the schedule is not in compliance with the contract for construction. Consultant shall provide comments to the City to assist the City in approving, accepting or taking other action on the Construction Contractor's schedule, in accordance with the contract for construction.

Consultant's review and comments will not be considered as a guarantee or confirmation that the Construction Contractor will complete the work in accordance with the contract for construction.

#### **Task 3.7.2 Construction Contractor's Schedule Updates**

Consultant shall review the Construction Contractor's periodic schedule updates or other schedule submissions. Consultant shall advise the Construction Contractor if the updates or other submissions are not in accordance with the contract for construction. Consultant shall provide comments to the City regarding the updates or other submissions.

#### **Task 3.7.3 Effect of Change Orders**

Consultant shall review information submitted by the Construction Contractor regarding the effect of proposed or issued Change Orders upon the construction schedule, duration and completion date. Consultant shall advise the City as to the potential impact of proposed or issued Change Orders. Consultant shall assist the City in discussions with the Construction Contractor concerning the potential impact of proposed or issued Change Orders.

An allowance of 16 hours is provided for this task.

*Task 3.7 Deliverables: Monthly reports as to the status of the construction schedule, date of completion, contract price, retainage, pending changes to the contract price or completion date and other issues material to the cost and time for completion of the construction.*

### **Task 3.8: Field Inspection**

Consultant shall provide one full-time (40 hours per week) RPR for a period of eighteen months, from June 2023 through December 2024. An additional 2 months of part-time (20 hours per week) presence is included at the beginning and end of the construction period, 1 month at the beginning and 1 month at the end.

#### **Task 3.8.1. Field Office**

Consultant shall staff a field office on the project site for purposes of providing inspectors to observe the work of the Construction Contractor.

#### **Task 3.8.2 Independent Testing and Inspection Services**

Consultant shall retain a Special Inspection and Testing firm to perform code-required special inspections, material testing, or other services related to verifying the quality of the

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Construction Contractor's work. Consultant shall review the reports and other information prepared by the independent firm. Consultant shall assist in coordinating inspection scheduling and the transmittal of reports, findings or other information to the Construction Contractor and/or the City. Consultant shall not be responsible for the accuracy or completeness of the work and reports of the independent testing and inspection firm.

An allowance of \$75,000 has been included for this activity.

**Task 3.8.3 Review of Work**

Consultant shall conduct on-site observations of the Construction Contractor's work for the purposes of determining if the work generally conforms to the contract for construction and that the integrity of the design concept as reflected in the contract for construction has been implemented and preserved by the Construction Contractor. Observations by Consultant's RPR will occur approximately 4-5 days per week, depending on the Construction Contractor's activities.

Consultant shall arrange for monthly photographs of the work in progress by the Construction Contractor, which will be made available to the City.

Consultant's observation of the work is not an exhaustive observation or inspection of all work performed by the Construction Contractor. Consultant does not guarantee the performance of the Construction Contractor. Consultant's observations shall not relieve the Construction Contractor from responsibility for performing the work in accordance with the contract for construction, and Consultant shall not assume liability in any respect for the construction of the project. Consultant shall, with the assistance of the City, obtain written plans from the Construction Contractor for quality control of its work, and shall monitor the Construction Contractor's compliance with its plan.

**Task 3.8.4 Deficient and Non-Conforming Work**

Should Consultant discover or believe that any work by the Construction Contractor is not in accordance with the contract for construction, or is otherwise defective, or not conforming to requirements of the contract or applicable rules and regulations, Consultant shall bring this to the attention of the Construction Contractor and the City. Consultant shall thereupon monitor the Construction Contractor's corrective actions and shall advise the City as to the acceptability of the corrective actions.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

**Task 3.8.5 Design Team Visits**

Consultant shall coordinate visits to the site by the design team members to review progress and quality of the work. The visits shall observe the general quality of the work at the time of the visit and review any specific items of work that are brought to the attention of the design team members by the Construction Contractor or the City.

**Task 3.8.6 Factory and Off-Site Tests and Inspections**

Factory and off-site tests and inspections are not included.

**Task 3.8.7 Performance and Witness Testing**

Consultant shall attend, and witness field performance tests as specified in the contract for construction. This includes process, odor, and electrical equipment. Control system testing is included in Task 5.

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**Task 3.8.8 Regulatory and Third-Party Testing and Inspections**

Consultant shall monitor the Construction Contractor's coordination of inspection and testing by regulatory and third-party agencies that have jurisdiction over the project.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

**Task 3.8.9 Subsurface and Physical Conditions**

Whenever the Construction Contractor notifies Consultant or City of subsurface or physical conditions at the site which the for which the contract for construction requires notification, Consultant shall advise the City and inspect the conditions at the site. Consultant shall advise the City as to the appropriate action(s) and shall assist the City in responding to the Construction Contractor.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

**Task 3.9: Shop Drawings, Samples and Submittals**

**Task 3.9.1 Submittal Schedule**

Consultant shall obtain from the Construction Contractor a proposed shop drawing and submittal schedule, which will identify all shop drawings, samples and submittals required by the contract for construction, along with the anticipated dates for submission.

**Task 3.9.2 Review of Shop Drawings, Samples and Submittals**

Consultant shall coordinate with the design team for the reviews of the Construction Contractor's shop drawings, samples, and other submittals. Consultant shall log and track all shop drawings, samples and submittals.

Consultant's review of all shop drawings, samples and submittals will be for general conformance with the design concept and general compliance with the requirements of the contract for construction. Such review will not relieve the Construction Contractor from its responsibility for performance in accordance with the contract for construction, nor is such review a guarantee that the work covered by the shop drawings, samples and submittals is free of errors, inconsistencies or omissions.

The level of effort for this subtask includes review of up to 300 submittals at 5.5 hours per submittal, including resubmittals (up to two) allowed in the construction contract.

**Task 3.9.3 Scope of Review**

Consultant's scope is based upon the scope of work in the contract for construction and shall include a maximum of two submissions by the Construction Contractor for each shop drawing, sample or submission. Should there be additional reviews required of Consultant and design team, Consultant may be entitled to additional compensation.

**Task 3.9 Deliverables:** *Submittal log, submittal review comments.*

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### **Task 3.10: Construction Contractor Clarifications and Requests for Information**

#### ***Task 3.10.1: Requests for Information***

Consultant shall review the Construction Contractor's requests for information (RFI) or clarification of the contract for construction. Consultant shall coordinate such review with the design team and with the City. Consultant shall coordinate and issue responses to the requests. Consultant shall log and track the Construction Contractor's requests. Revised Specifications and CAD drawings are not included but will be updated as Record Drawings at the end of the project.

The level of effort includes review and response of up to 200 RFIs at 3.5 hours per RFI.

#### ***Task 3.10.2: Proposed Substitutions***

Consultant shall assist the City in reviewing and responding to the Construction Contractor's requests for substitution of materials and equipment. Consultant shall review such requests and advise the City as to the acceptability of such substitutions.

An allowance of 32 hours is provided for this task.

*Task 3.10 Deliverables: Consultant request log, responses to requests.*

### **Task 3.11: Safety**

Consultant shall manage the health, safety and environmental activities of its staff and the staff of its subcontractors to achieve compliance with applicable health and safety laws and regulations.

Consultant shall coordinate its health, safety and environmental program with the responsibilities for health, safety and environmental compliance specified in the contract for construction. Consultant shall coordinate with responsible parties to correct conditions that do not meet applicable federal, state and local occupational safety and health laws and regulations, when such conditions expose Consultant staff, or staff of Consultant subcontractors, to unsafe conditions.

Consultant shall notify affected personnel of any site conditions posing an imminent danger to them which Consultant observes.

Consultant is not responsible for health or safety precautions of construction workers. Consultant is not responsible for the Construction Contractor's compliance with the health and safety requirements in the contract for construction, or with federal, state, and local occupational safety and health laws and regulations.

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## **Task 4: Commissioning and Training**

### **Task 4.1: Startup Support**

Consultant shall furnish assistance to the City in plant startup and initial plant operation to the extent to be mutually agreed upon by both parties. This assistance includes support for the following process startups:

- Biofilter
- Thickened Sludge Pumping
- ATAD system
- Decant

### **Task 4.2: Operations and Maintenance Manual**

Consultant shall develop an Operations and Maintenance (O&M) manual describing the operation of the Project facilities and systems. This manual will explain the various primary modes of operation that may be used, including both normal operation and initial emergency operation procedures. The manual will explain the purpose and basic concept of the various processes that are incorporated into the overall plant. Where appropriate, reference will be made to the manufacturer's detailed O&M submittals. It will include instructions for process operations and test or laboratory procedures that may be required to monitor the performance of the facilities. The manual will be suitable for use as an operational tool and to facilitate operator training. The manual will be produced in an electronic format and delivered in PDF format. A draft O&M manual shall be submitted for City review prior to 50% completion of construction.

*Task 4.2 Deliverables: Electronic draft and final O&M Manuals.*

### **Task 4.3: Operation and Maintenance Training**

Consultant shall provide instruction to the City's staff in the design intent for operation of the equipment provided under this Project. This instruction will cover both the basic operational concept and actual operation and control of the systems and components under both normal and abnormal operations that are likely to occur.

Consultant shall provide one training session for each of the primary process elements: odor control; ATAD/SNDR; thickened sludge pumping; and, decant.

*Task 4.3 Deliverables: Five copies of training materials.*

### **Task 4.4: Vendor Operation and Maintenance Manuals, Training**

Consultant shall coordinate with the Construction Contractor for the submission of required manuals provided by equipment suppliers for operation and maintenance and for training of the City's staff by the Construction Contractor.

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## Task 5: Software Development and Testing

Consultant has recently provided design services for the WRF, including upgrade of the solids treatment process, including associated packaged control system, other related process upgrades, and replacement of the existing Headworks PLC with Allen-Bradley ControlLogix platform. The project includes the following specific elements:

**PLC Replacement:** Replacement of the existing main Allen-Bradley 1771 platform PLCs in the Headworks building with an Allen-Bradley 1756 ControlLogix platform PLC and remote I/O (RIO) racks. The project will remove the two existing independent PLCs associated with the gravity belt thickeners (GBTs) and provide new RIO racks and network infrastructure from each of the new RIO racks back to the new Headworks PLC. The new PLC will be connected by fiber optic to the plantwide SCADA system. The work will eliminate the existing Data Highway Plus (“blue hose”) cable. Physical PLC replacement work has been designed by Consultant and will be procured and installed by the Construction Contractor.

**Software Development:** PLC and HMI software modifications are required to support the Headworks PLC replacement and addition of new process equipment associated with the solids treatment process changes. Software will be developed by Jacobs, including the following tasks:

- Finalization of PLC I/O Lists.
- Development of loop descriptions for PLC/HMI programming.
- PLC and HMI programming. (Note – versions are to be per existing versions.)
- Startup and Testing:
  - SCADA software factory testing and field testing.
- To be completed by Construction Contractor:
  - All construction, field installation, wiring, and testing.
  - Production of red-line markups for PLC I/O wiring drawings.

### Task 5.1: Loop Description Development

Consultant will provide up to 200 hours of labor for development of:

- Loop descriptions to define the new automated monitoring and control functions associated with the new process equipment and for the replacement PLC.
- Final PLC I/O assignment including reassignment for PLC-30 and GBT 1 and 2 PLCs.
- Rockwell Automation PLC conversion planning.
- Export InTouch tag database.
- HMI/PLC coordination with ATAD equipment vendor to identify SCADA HMI monitoring, PLC minor and major alarms, control interfaces, and all PLC tags.

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- Quality control review of loop descriptions and PLC replacement approaches.

### **Task 5.2: Loop Description Review Workshops**

Consultant will provide up to 60 hours of labor to lead up to three four-hour onsite workshops to review draft loop descriptions with City staff so they can be finalized for programming. This effort includes effort to plan the detailed software conversion of the two existing GBT 1 and GBT 2 PLCs, the existing PLC-30, and the integration of the ATAD equipment vendor PLC. Tasks include:

- Review revised PLC I/O list with new tags for PLC-30, GBT 1, GBT 2.
- Detailed documentation of existing InTouch graphics to be modified.
- Up to three onsite workshops and documentation.

### **Task 5.3: SCADA PLC/HMI Software Programming and Factory Testing (Offsite)**

Consultant will provide programming and factory testing of the PLC and HMI software to provide the new automated monitoring and control functions defined in the final approved loop descriptions. The scope of work includes development of new ControlLogix PLC programs, new HMI graphics, modifications to existing HMI graphics, and alarm dialer and historian modifications. Consultant will lead up to two (2) 4-hour onsite workshops with City staff to review the final draft HMI graphics. Consultant will provide all PLC programming, all HMI configuration, and will perform software factory testing at Consultant's Corvallis, Oregon office.

- GBT 1 new program.
- GBT 2 new program.
- PLC-30 new program of all existing I/O.
- PLC-30 new program for new I/O (including interface to ATAD vendor system).
- Coordination with ATAD vendor for plant SCADA HMI including graphics, alarms, historical trending.
- Two HMI graphics and operations workshops.
- Edit of existing plant SCADA HMI graphics to link graphics to new PLC-30 tags.
- Alarm dialer configuration, testing, implementation.
- Historian configuration.
- Software factory testing and quality control review.
- Data exchange to the HachWIMS operational system.

Consultant's estimated level of effort is based on approximately 510 hours of programming, 40 hours (1 week) of factory testing, and up to 60 hours to push data to the existing HachWIMS reporting tool. (Note - all HachWIMS report configuration to be by the City). Consultant will provide up to a total of 610 hours of labor for this task.

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## Task 5.4: Field Testing

Consultant will provide onsite testing of the new SCADA PLC and HMI software functions following completion of the programming and factory testing effort. Consultant will coordinate with plant staff to plan for SCADA system downtime to accommodate the field-testing effort. Consultant will document field test completion for record.

Consultant will provide up to allowance of 100-hours of onsite labor for component and functional field-testing coordination with the Contractor, plus up to 64-hours for Consultant to provide support via remote access connection. The level of effort estimate assumes 31 days (10 hours per day) of effort in accordance with Section 01 91 14 for Software Operational Testing. All Owner operations training will be provided during the Software Operational Testing.

- Software Operational Testing durations (per Specification 01 91 14) are:
  - PLC-30 replacement – 15 days
  - GBT 1 – 5 days
  - GBT 2 – 5 days
  - Odor Fan – 4 days
  - Thickened Sludge Pumps – 2 days
- Component/Functional Test Support – allowance of 10 days
- Post startup support – allowance of 8 days

**Task 5 Deliverables:** *Consultant will provide one electronic PDF copy of each deliverable identified below via email. Native document copies will be provided with the final deliverables. No hard copies will be provided.*

- *Final PLC I/O lists*
- *Draft and final loop descriptions*
- *Loop description review meeting notes and action log*
- *Final loop description acceptance forms*
- *Final PLC programs and HMI system configurations (also via electronic PLC and HMI files)*
- *Factory test documentation*
- *Field test documentation*

### **Assumptions**

- The project will duplicate the existing SCADA software control functions by replacing the existing PLC 5 ladder logic with ControlLogix ladder logic. The scope of work assumes Consultant will reverse engineer the existing PLC software functions and document them in written loop descriptions for review by City staff prior to commencement of programming. The existing HMI graphics will remain

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the same except to replace the existing PLC 5 tags with the new ControlLogix PLC tags.

- For software planning:
  - City staff will provide review and approval of final loop descriptions in workshops prior to commencement of programming. Changes to software functions after City acceptance of loop descriptions will constitute a change warranting additional compensation. The project approach is intended to provide review and input by City staff but eliminate the potential for re-work after the programming effort has begun.
  - The City's software standards have been defined on previous work at the WRF. The scope of work does not include development of written software standards. Separate scope and fee can be negotiated if the City desires written documentation of the SCADA standards.
- For SCADA software programming and factory testing:
  - Scope is limited to programming for PLC, HMI, historian, and software alarm dialer. No other programming is included.
  - All PLC and HMI programming will be done using City's standard approaches.
  - The estimated level of effort for development of the new HMI graphics is based on reusing the plant's existing HMI graphics, new graphics for new equipment, and following similar VNC remote approach to the new ATAD package system as was done for the recent UV project. The level of effort assumes Consultant will only create graphics for new process equipment and process flow and include provisions for the new automated monitoring and control functions.
  - It is assumed that I/O for the new vendor package ATAD system is communicated to the main plant PLC over ethernet.
  - The level of effort assumes that animation for process piping will NOT be used.
  - SCADA software factory testing will be accommodated using ControlLogix PLC hardware provided within the Contract Documents.
  - All ATAD package system PLC and PanelView programming required for this project will be provided by the ATAD package vendor.
- For construction and field testing:
  - The migration of PLC systems to ControlLogix will affect plant operation, typically requiring manual control and some plant operations staff overtime for periods of time. When a system is migrated, the existing PLC will be taken offline and disconnected before the new PLC system is installed and wired. Major software testing and process startup will only begin after all of

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the new PLC rack's I/O wiring is re-terminated. Labor for a loop-by-loop migration from the existing PLC to the new ControlLogix PLC is included in accordance with the durations in Section 01 91 14.

- A remote access connection will be available for system troubleshooting and maintenance by Consultant staff.
- The scope of work assumes the plant's existing infrastructure is in good working order. Consultant has not included labor effort for troubleshooting existing systems or infrastructure.
- The following work is NOT INCLUDED:
  - Any configuration of temporary PLC programs or HMI graphics. We assume programming and field testing for each system can be done in one effort. Multiple versions of programs or temporary programming for system migration or new construction are not required.
  - Any PanelView programming.
  - Any PLC programming for package system PLCs.
  - Any work associated with automated reports configuration. The level of effort estimate does not include any labor associated with automated reports.

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## **Task 6: Services During the Closeout and Warranty Phases**

Consultant shall assist the City in closing out the contract for construction and commencement of the City's use of the completed work. Consultant's services will include the following:

### **Task 6.1: Substantial and Final Completion**

Consultant shall assist the City in issuing documents for substantial completion and acceptance of the work. Consultant shall advise the City on payment and partial release of retention.

Consultant shall assist the City in issuing documents for final completion and acceptance of the work. Consultant shall advise the City on final payment, release of retention, and release of insurance and bonds.

### **Task 6.2: Occupancy and Start-Up Permits**

Consultant shall assist the City with securing occupancy and start-up permits. Should the contract for construction require the Construction Contractor to secure such permits, Consultant shall monitor the Construction Contractor's efforts and will advise the City of the Construction Contractor's progress. Should the City be required to secure such permits, Consultant shall assist the City by coordinating final inspections, submitting documents to Yamhill County and coordinating inspections by the County.

### **Task 6.3: Warranties, Guarantees, Lien Releases**

Consultant shall coordinate with the Construction Contractor for the submission of required warranties, guarantees, lien releases and other similar documents as required by the contract for construction. Consultant shall advise the City as to the acceptability and compliance of these documents with the contract for construction.

Effort associated with this task is accounted for within Task 3.8 Field Inspection.

### **Task 6.4: Close-out File and Records**

Consultant shall provide to the City an organized set of project documents and records. This will be an electronic record from the document management system.

*Task 6.4 Deliverables: Organized set of project documents and records.*

### **Task 6.5: Record Drawings**

Consultant shall revise the original design drawings to reflect available record information provided by the Construction Contractor and equipment suppliers. One CD-based electronic copy in AutoCAD format and three hard copies will be submitted to the City.

*Task 6.5 Deliverables: Three 11 x 17 hard copies, one full size set, and one CD-based electronic copy in AutoCAD and PDF format.*

### **Task 6.6: Warranty Period Services**

Consultant shall provide the following warranty performance review services during the one-year warranty period to assist the City in coordinating corrections of deficient equipment or construction:

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- Participate in an end-of-warranty period inspection one month prior to completion of the warranty period and provide a letter identifying any deficiencies found and recommended actions.
  - Provide periodic onsite observation during correction of the deficiencies. Three (3) visits are included.

An allowance of 120 hours is provided for this task.

*Task 6.6 Deliverables: Written warranty performance review findings, site visit notes.*

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## **Task 7: Pavement Assessment**

The McMinnville WRF was constructed in 1995, and much of the asphalt pavement is original. The City has requested that Consultant conduct a pavement condition assessment and recommendations report to assist the City in developing a maintenance plan.

### **Task 7.1: Data Collection**

Consultant will review past project documentation to understand paving history at the WRF.

### **Task 7.2: Site Visit**

Two members of Consultant's staff shall visit the WRF site to review and document existing conditions. Documentation will include photos of representative areas of paving and measurements. Testing of asphalt and/or subgrade is not included.

### **Task 7.3: Report**

Consultant shall prepare a report that documents existing pavement conditions and recommends repairs. Repair method and repair priority will likely vary, depending on conditions found. The report will document an estimated timeline of recommended repairs and future maintenance.

*Task 7 Deliverables: Pavement Assessment Report.*

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## **Task 8: Professional Services Reserve**

The Level of Effort includes an allowance for additional services that are requested by the City. The Consultant shall provide the services upon written authorization of the City.

Summary  
 Estimated Level of Effort  
 McMinnville WRF Solids Treatment Capacity Improvements Project  
 Services During Construction Phase

Task No.	Task/Subtask	Jacobs Labor		Jacobs Expenses	Total Jacobs Labor and Expenses	Total Subconsultants	
		Hours Total	\$ Total				
1.0	Project Management		\$60,034	\$0	\$60,034	\$ -	
	Task Hours	300					
2.0	Conformed Documents		\$14,267	\$500	\$14,767	\$ -	
	Task Hours	76					
3.0	Services During Construction		\$1,349,467	\$25,643	\$1,375,110	\$ 79,000	
	Task Hours	7009					
4.0	Commissioning and Training		\$114,117	\$500	\$114,617	\$ -	
	Task Hours	588					
5.0	Software Development and Testing		\$349,281	\$11,000	\$360,281	\$ 26,000	
	Task Hours	1684					
6.0	Services During the Closeout and Warranty Phases		\$77,308	\$750	\$78,058	\$ -	
	Task Hours	446					
7.0	Pavement Assessment		\$9,179	\$0	\$9,179	\$ -	
	Task Hours	50					
8.0	Professional Services Reserve		\$99,983	\$0	\$99,983	\$ -	
	Task Hours	466					
	<b>TOTAL</b>	<b>10619</b>	<b>\$2,073,636</b>	<b>\$38,393</b>	<b>\$2,112,029</b>	<b>\$ 105,000</b>	
					<b>\$2,112,029</b>	<b>\$ 105,000</b>	
					2024 Jacobs Labor Escalation	<b>\$40,933</b>	<b>\$ 2,257,962</b>

Detailed  
Estimated Level of Effort  
McMinnville WRF Solids Treatment Capacity Improvements Project  
Services During Construction Phase

Task No.	Task/Subtask	J Koch PM \$ 243	L Sherwood CM \$ 190	Senior QC \$ 295	B Reistad Process (Solids) \$ 239	T Greeley Process \$ 195	L Bhaumik Geotech \$ 134	K Galardi Odor \$ 235	T Cotten Geotech \$ 300	A Firth Structural \$ 267	E Gray Arch \$ 142	S Kummer Landscape \$ 183	S Chandler Civil \$ 162	J Cutz Bldg Serv \$ 144	S Baar Mech \$ 131	A Sittel Proj Site \$ 128
1.0	Project Management	\$ 31,587	\$ 17,100	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Task Hours	130	90	0	0	0	0	0	0	0	0	0	0	0	0	0
2.0	Conformed Documents	\$ 2,916	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Task Hours	12	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3.0	Services During Construction	\$ 258,529	\$ 659,870	\$ -	\$ 20,055	\$ 45,257	\$ 12,899	\$ 43,272	\$ -	\$ 58,782	\$ 20,492	\$ 12,421	\$ 20,101	\$ 18,677	\$ 84,517	\$ 6,651
	Task Hours	1064	3473	0	84	232	96	184	0	220	144	68	124	130	646	52
4.0	Commissioning and Training	\$ 26,242	\$ 1,520	\$ 2,360	\$ 8,595	\$ 17,166	\$ -	\$ 16,932	\$ -	\$ -	\$ 1,138	\$ 731	\$ 1,297	\$ 4,597	\$ 7,327	\$ -
	Task Hours	108	8	8	36	88	0	72	0	0	8	4	8	32	56	0
5.0	Software Development and Testing	\$ 11,663	\$ -	\$ -	\$ 9,550	\$ 7,803	\$ -	\$ 7,526	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,299	\$ 3,140	\$ -
	Task Hours	48	0	0	40	40	0	32	0	0	0	0	0	16	24	0
6.0	Services During the Closeout and Warranty Phases	\$ 22,354	\$ 19,760	\$ -	\$ -	\$ 1,561	\$ -	\$ 1,881	\$ -	\$ 2,138	\$ 1,138	\$ -	\$ -	\$ 1,149	\$ 8,373	\$ -
	Task Hours	92	104	0	0	8	0	8	0	8	8	0	0	8	64	0
7.0	Pavement Assessment	\$ 972	\$ 1,140	\$ 1,180	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,511	\$ -	\$ -	\$ -
	Task Hours	4	6	4	0	0	0	0	0	0	0	0	34	0	0	0
8.0	Professional Services Reserve	\$ 52,483	\$ 47,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Task Hours	216	250	0	0	0	0	0	0	0	0	0	0	0	0	0
	<b>TOTAL</b>															
	<b>Cost</b>	\$ 406,745	\$ 746,890	\$ 3,540	\$ 38,199	\$ 71,787	\$ 12,899	\$ 69,611	\$ -	\$ 60,920	\$ 22,769	\$ 13,151	\$ 26,909	\$ 26,722	\$ 103,357	\$ 6,651
	<b>Hours</b>	1674	3931	12	160	368	96	296	0	228	160	72	166	186	790	52

Estimated Level of Effort  
 McMinnville WRF Solids Treatment Capacity Improvements Project  
 Services During Construction Phase

Task No.	Task/Subtask	L Wood	G Erb	K Brown	T Scott	M Valenzuela	K Malin	R Cowan	N Huber	B Gyaourova	H Jochimsen	J Turney	B Kiser	C McCoy	J Boss	M Schymtzik
		IC \$ 295	IC \$ 274	IC \$ 190	IC \$ 212	Electrical \$ 130	Specs \$ 168	DDL \$ 183	Mech CAD \$ 89	Civil CAD \$ 110	Struct CAD \$ 134	Arch CAD \$ 76	Odor CAD \$ 111	Elect CAD \$ 77	I&C CAD \$ 108	Editor \$ 188
1.0	Project Management	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Task Hours	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2.0	Conformed Documents	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,021	\$ 7,331	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Task Hours	0	0	0	0	0	24	40	0	0	0	0	0	0	0	0
3.0	Services During Construction	\$ 11,800	\$ 16,426	\$ 27,781	\$ -	\$ 31,940	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Task Hours	40	60	146	0	246	0	0	0	0	0	0	0	0	0	0
4.0	Commissioning and Training	\$ -	\$ 5,475	\$ 3,806	\$ -	\$ 5,193	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,514
	Task Hours	0	20	20	0	40	0	0	0	0	0	0	0	0	0	40
5.0	Software Development and Testing	\$ 21,830	\$ 20,258	\$ 146,896	\$ 114,736	\$ 2,077	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,503
	Task Hours	74	74	772	540	16	0	0	0	0	0	0	0	0	0	8
6.0	Services During the Closeout and Warranty Phases	\$ -	\$ -	\$ 1,522	\$ -	\$ 1,039	\$ -	\$ 7,331	\$ 1,789	\$ 2,208	\$ 1,339	\$ 758	\$ 1,113	\$ 774	\$ 1,082	\$ -
	Task Hours	0	0	8	0	8	0	40	20	20	10	10	10	10	10	0
7.0	Pavement Assessment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 376
	Task Hours	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
8.0	Professional Services Reserve		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Task Hours	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	<b>TOTAL</b>															
	<b>Cost</b>	\$ 33,630	\$ 42,159	\$ 180,005	\$ 114,736	\$ 40,249	\$ 4,021	\$ 14,661	\$ 1,789	\$ 2,208	\$ 1,339	\$ 758	\$ 1,113	\$ 774	\$ 1,082	\$ 9,393
	<b>Hours</b>	114	154	946	540	310	24	80	20	20	10	10	10	10	10	50

Estimated Level of Effort  
 McMinnville WRF Solids Treatment Capacity Improvements Project  
 Services During Construction Phase

Task No.	Task/Subtask	G Bates / L Hurt Project Controls	T Riddle Admin	Jacobs Labor		Jacobs Expenses	Total Jacobs Labor and Expenses	Total Subconsultants	
		\$ 142	\$ 106	Hours Total	\$ Total				
1.0	Project Management	\$ 11,347	\$ -		\$60,034	\$0	\$60,034	\$ -	
	Task Hours	80	0	300					
2.0	Conformed Documents	\$ -	\$ -		\$14,267	\$500	\$14,767	\$ -	
	Task Hours	0	0	76					
3.0	Services During Construction	\$ -	\$ -		\$1,349,467	\$25,643	\$1,375,110	\$ 79,000	
	Task Hours	0	0	7009					
4.0	Commissioning and Training	\$ -	\$ 4,223		\$114,117	\$500	\$114,617	\$ -	
	Task Hours	0	40	588					
5.0	Software Development and Testing	\$ -	\$ -		\$349,281	\$11,000	\$360,281	\$ 26,000	
	Task Hours	0	0	1684					
6.0	Services During the Closeout and Warranty Phases	\$ -	\$ -		\$77,308	\$750	\$78,058	\$ -	
	Task Hours	0	0	446					
7.0	Pavement Assessment	\$ -	\$ -		\$9,179	\$0	\$9,179	\$ -	
	Task Hours	0	0	50					
8.0	Professional Services Reserve	\$ -	\$ -		\$99,983	\$0	\$99,983	\$ -	
	Task Hours	0	0	466					
	<b>TOTAL</b>			<b>10619</b>	<b>\$2,073,636</b>	<b>\$38,393</b>	<b>\$2,112,029</b>	<b>\$ 105,000</b>	
	<b>Cost</b>	\$ 11,347	\$ 4,223						
	<b>Hours</b>	80	40						
							2024 Jacobs Labor Escalation	\$ 2,112,029	\$ 105,000
								\$40,933	\$ 2,257,962

**RESOLUTION NO. 2023 -20**

A Resolution approving Amendment No. 2 to the December 10, 2021, Professional Services Agreement with Jacobs Engineering Group, Inc. (Jacobs) for Services During Construction of the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project No. 2019-10 (Project), formerly known as Water Reclamation Facility Biosolids Storage Tank and Grit System Expansion.

**RECITALS:**

**Whereas**, in 2019, the City undertook a formal procurement process to request proposals (RFP) for the Project; and

**Whereas**, Jacobs was the successful proposer and the City executed a Professional Services Agreement on April 6, 2020, for development of a Project Definition Report; and,

**Whereas**, The City entered into a second agreement with Jacobs on December 10, 2021, for Schematic Design of the Project; and,

**Whereas**, the City executed Amendment No. 1 to this Agreement on May 22, 2022, for final design services; and,

**Whereas**, on March 15, 2023, the City received final design plans and specifications for the Project; and,

**Whereas**, final design services have been completed and professional services during construction and startup of the project are required; and

**Whereas**, the City has negotiated the type of services, scope of work, project team, sub-consultants, fee, and schedule with Jacobs for Services During Construction, as Amendment No. 2 to the December 10, 2021, Agreement; and

**Whereas**, the total fee for this scope of work is not to exceed \$2,257,962.00; and

**Whereas**, project funding is included in the adopted FY 22/23 and 24/25 Wastewater Capital Fund (77) budget for the professional services during construction of the Project.

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

1. That execution of Amendment No. 2 to the December 10, 2021, Professional Services Agreement with Jacobs Engineering Group, Inc., for Services During Construction of the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project No. 2019-10, in the amount of \$2,257,962.00 is hereby approved.
2. The City Manager is hereby authorized and directed to execute the contract with Jacobs, attached as Exhibit 1.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 9<sup>th</sup> day of May 2023 by the following votes:

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

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

Approved this 9<sup>th</sup> day of May 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

EXHIBIT:

1. Second Amendment to Professional Services Agreement

## Liquor License Recommendation

---

BUSINESS NAME / INDIVIDUAL: Patton Valley Wines  
BUSINESS LOCATION ADDRESS: 1182 NW Vista Ct  
LIQUOR LICENSE TYPE: Winery primary location

Is the business at this location currently licensed by OLCC

Yes  No

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

-----

Hours of operation: 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

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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: 5/3/2023

Optional: Date Stamp

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

Printed Name

Date

# STAFF REPORT

**DATE:** May 5, 2023  
**TO:** Mayor and City Councilors  
**FROM:** Claudia Cisneros, City Recorder  
**SUBJECT:** Request to Permit a Waiver of the Noise Ordinance from Chris McLaran, from The Oak for outdoor music on August 25<sup>th</sup> and August 26<sup>th</sup>.

---

## **Report in Brief:**

This action is the consideration of a request to permit a waiver of the Noise Ordinance..

## **Background:**

The Oak, through Chris McLaran (one of the owners), is requesting to host outdoor music on Friday, August 25, 2023 and Saturday, August 26th, 2023 from 12:00pm to 11:00pm in front of The Oak on Davis Street. There will be a beer garden with a stage and the event will be in conjunction with Cruisin McMinnville. The event will have amplified music which will likely impact the neighborhood.

The McMinnville Municipal Code, Section 8.10.260, specifies that:

A. A person in charge of a premises must not permit, allow or cause to exist any loud, disturbing or unnecessary noise that is injurious or detrimental to the health, safety or peace of other persons or property.

E. The prohibition described in this section do not apply to:

1. Activities occurring within the scope of any permit issued by the city under the provisions of the McMinnville Municipal Code.

In granting previous waivers, the City has requested that the applicant provide notice in advance to affected neighbors.

## **Attachments:**

1. McMinnville Municipal Code (MMC) section 8.10.260 Noises.

2. Email request from Chris McLaran.

**Fiscal Impact:**

There is no anticipated fiscal impact.

**Recommendation:**

Should the Council choose to vote in favor of a motion allowing this waiver, the City Manager will write a letter to Ryan Harris, letting him know that he has the Council's approval.

## 8.10.260 Noise.

- A. A person in charge of a premises must not permit, allow or cause to exist any loud, disturbing or unnecessary noise that is injurious or detrimental to the health, safety or peace of other persons or property.
- B. It is prohibited for any person on a public way to cause to exist any loud, disturbing or unnecessary noise that either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of other persons or property.
- C. For the purposes of this section, noise exceeding the following thresholds when measured 25 feet from the source if in the right-of-way or 25 feet from the property line if the source is on private property, is presumed to be a nuisance in violation of subsection [A](#) of this section:

<b>ZONE</b>	<b>7:00 a.m. to 8:00 p.m.</b>	<b>8:00 p.m. to 7:00 a.m.</b>
Residential	55 dBA	50 dBA
Commercial	60 dBA	55 dBA
Light Industrial	70 dBA	65 dBA
Industrial	80 dBA	75 dBA

- D. For the purposes of this section, “loud, disturbing or unnecessary noise” includes but is not limited to the following substances, conditions or acts:
1. *Animals and Birds.* The keeping of any bird or animal that disturbs the comfort and repose of any person in the vicinity by causing frequent or long continued noise;
  2. *Dog Barking.* The keeping of a dog that barks for more than 10 minutes during any one-hour period when such barking is audible off the premises of the dog’s owner or keeper;
  3. *Animal Bells.* The attaching of a bell to any animal or allowing a bell to remain on any animal that is disturbing to any person in the immediate vicinity;
  4. *Vehicle Noises.* The use of any vehicle or engine, either stationary or moving, in a manner that causes or creates any loud or unnecessary grating, grinding, rattling or other noise, including the discharge in the open air of the exhaust of any steam engine, internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke;
  5. *Horns and Signaling Devices.* The sounding of any horn or signaling device on any vehicle on any street, public or private place, except as a necessary warning of danger;
  6. *Nonemergency Signaling Devices.* The sounding of any amplified signal from any bell, chime, siren,

whistle or similar device, intended primarily for nonemergency purposes, from any place for more than 10 consecutive seconds in any hourly period, except that the reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors or by the city for traffic control purposes are exempt;

7. *Construction Noise.* The erection, including excavation, demolition, alteration or repair, of any building in residential districts, other than between the hours of 7:00 a.m. and 8:00 p.m., except upon special permit granted by the city manager or designee;

8. *Noise Sensitive Areas: Adjacency to Schools, Churches and Hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court of justice while the same are in use, or adjacent to any hospital or institution for the care of the sick or infirm which unreasonably interferes with the operation of such institution, or which disturbs or unduly annoys patients;

9. *Loudspeakers, Amplifiers, Public Address Systems and Similar Devices.* The use or operation of any automatic or electric piano, phonograph, radio, television, loudspeaker or any instrument for sound producing or any sound-amplifying device so loudly as to disturb persons in the vicinity thereof or in such a manner as renders the use thereof a nuisance; provided, however, that upon application to the city manager, permits may be granted to responsible persons or organizations to broadcast programs of music, news, speeches or general entertainment;

10. *Blowers and Similar Devices.* The operation of any noise-creating blower, power fan, power tools, or any internal combustion engine in a manner the operation of which causes noise due to the explosion of operating gases or fluids:

- a. In a residential district or noise sensitive areas between the hours of 8:00 p.m. and 7:00 a.m.; and
- b. In a manner that can be heard by persons on nearby residential property.

11. *Commercial Establishments Adjacent to Residential Property.* Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m., that is plainly audible to persons on any nearby residential property.

E. The prohibition described in this section do not apply to:

1. Activities occurring within the scope of any permit issued by the city under the provisions of the McMinnville Municipal Code;
2. Emergency response activities;
3. Vehicles performing repairs or upgrades in the right-of-way, including but not limited to street sweeping, sewer cleaning, construction and maintenance activities occurring between the hours of 7:00 a.m. and 8:00 p.m.

F. In addition to any corrective action ordered by the city, a person found to have violated the provisions of this section may be assessed a civil penalty. The amount of the civil penalty assessed for each day of continuing violation will not exceed the amount established for a Class 5 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).



City of McMinnville  
Public Works Department  
3500 NE Clearwater Drive  
McMinnville, OR 97128  
(503) 434-7313  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** April 27, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Leland Koester, Wastewater Services Manager  
**SUBJECT:** Solids Treatment Capacity Improvements Project, Project No. 2019-10

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### Report in Brief:

This action is consideration of a resolution to award a construction project, SOLIDS TREATMENT CAPACITY IMPROVEMENTS (STCI), Project No. 2019-10, and authorization of a five-percent contingency for construction changes.

### Background:

The City advertised an Invitation to Bid for construction of solids treatment capacity improvements at the Water Reclamation Facility on March 15, 2023. Bids for this project were publicly opened at 2:00 PM, April 25, 2023. This work includes the following items:

- Construct a new digestion facility,
- Construct a new odor control system,
- Modify existing treatment facilities,
- Construct improvements to electrical, instrumentation and control equipment.

The Engineer's Estimate for the project is \$16,180,000. Three bids were submitted.

- \$18,248,000 from J.W. Fowler,
- \$18,791,695 from Stellar J, and
- \$19,809,519 from McClure and Sons.

The lowest responsive bid was submitted by J.W. Fowler, Inc. in the amount of \$18,248,000, \$2,068,000 or 13 percent greater than the Engineer's Estimate of \$16,180,000 but within the industry-accepted range of -10% (\$14,560,000) to +15% (\$18,610,000) for this type of estimate.

The bid results reflect an ongoing exceptionally tight market for municipal construction projects. Market factors include large infusions of Federal funding for public infrastructure projects, inflation, a tight labor market, extended lead times on materials and equipment, and bidders providing more conservative bids to account for these market factors. Given the present market factors, we are satisfied that the STCI project received three competitive bids with a close spread, that the low bid

was within the expected range of the Engineer's Estimate, and the low bid is from a qualified, respected local contractor.

Bids exceeding the engineer's estimates reflect a trend seen in recent bid openings, including the Rock Creek Water Reclamation Facility (Clean Water Services) April 18, 2023, bid opening for treatment plant improvements. The Engineer's Estimate for this project was \$18,000,000. Three bids were submitted, with a low bid of \$23,899,000, or 33% greater than estimated. Both the McMinnville STCI and the Rock Creek projects had three bidders each, and two of the bidders were common to the two projects, meaning there were only a total of four bidders for the two projects. This reinforces the current tight market conditions.

Although the low bid exceeds the Engineer's Estimate, it is within the estimate range and is consistent with the current bidding environment. Staff and Jacobs Engineering agree re-advertising the project may result in higher bids and would substantially delay the project.

Staff are in the process of confirming the low bidder is responsible in accordance with ORS 279C.375. We will report our findings at the May 9, 2023, City Council meeting. We have not included the plans and specifications for the project as they are extensive, some 2,952 pages of specifications, drawings, and reference documents. The plans were prepared by Jacobs Engineering Group, advertised for bid as SOLIDS TREATMENT CAPACITY IMPROVEMENTS, Project No. 2019-10, on March 15, 2023. Plans and specifications are available on request.

Construction changes are expected as construction progresses. Staff are requesting the City Council authorize the City Manager to execute construction contract changes up to five-percent of the low bid amount or \$900,000 for contingency expenses. Upon adoption of the attached resolution, the City Manager will be authorized to execute construction contract modifications and change orders for an amount not to exceed \$900,000 for a total Purchase Order of \$19,128,000.

### **Fiscal Impact:**

Funds for this project are included in the FY22/23 through 24/25 Wastewater Capital Fund (77). The WW Capital Fund (77) was expected to drop to a low of \$18.7 million in 2025-26. With the increased cost of the solids project our low is now projected to be \$16.7 million in 2025-26.

### **Recommendation:**

Staff recommends the City Council adopt the attached resolution approving a Construction Contract with J.W. Fowler, Inc. in the amount of \$18,248,000 for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS, Project No. 2019-10, and authorizing the City Manager to execute construction contract modifications and change orders for an amount not to exceed \$900,000 for a total Purchase Order of \$19,128,000.

### **Attachments:**

1. Resolution 2023-21
2. Bid tabulation
3. Location map

**RESOLUTION NO. 2023 - 21**

A Resolution approving the award of a Construction Project to J.W. Fowler, Inc. for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10, and authorizing a construction contingency.

**RECITALS:**

**Whereas,** At 2:00 PM on April 25, 2023, 3 bids were received, opened and publicly read for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project No. 2019-10, and

**Whereas,** The bid from J.W. Fowler, Inc, in the amount of \$18,248,000, met all of the bid requirements and should be considered the lowest responsive bid, and

**Whereas,** Project funding is included in the adopted FY 22/23 through FY 24/25 Wastewater Capital Fund (77) budget for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10, and

**Whereas,** Additional costs are expected as construction progresses and budget authorization for a construction contingency is required, and

**Whereas,** A construction contingency in the amount not to exceed five-percent of the construction contract will be reserved for this contingency.

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

1. That entry into a construction contract with J.W. Fowler, Inc. for the SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10, in the amount of \$18,248,000 is hereby approved.
2. The City Manager is hereby authorized and directed to execute the contract with J. W. Fowler, attached hereto as **Exhibit A**.
3. The City Manager is authorized to execute construction contract modifications and change orders for an amount not to exceed \$900,000 for a total Purchase Order of \$19,128,000.
4. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 9<sup>th</sup> day of May 2023 by the following votes:

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

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

Approved this 9<sup>th</sup> day of May 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

**EXHIBIT:**

- a. Agreement, SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10

## Exhibit A

### Agreement, SOLIDS TREATMENT CAPACITY IMPROVEMENTS PROJECT, Project Number 2019-10

Resolution No. 2023-21

#### AGREEMENT

THIS AGREEMENT is by and between the City of McMinnville, Oregon, a municipal corporation (Owner) and J.W. Fowler, an Oregon corporation, (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. WORK
  - 1.1. Contractor shall complete the Work as specified or indicated in the Contract Documents entitled Solids Treatment Capacity Improvements, Project 2019-10.
  - 1.2. The Work under this Contract will consist of, but is not limited to: Providing all labor, materials, and equipment necessary to construct a new ATAD digestion facility, including procurement of equipment package and construction of ATAD, SNDR and support spaces; replacing the existing odor control system; replacing the thickened sludge pumping system in the Headworks basement; replacing the Headworks PLC; and associated systems, including electrical and instrumentation and control and other appurtenances necessary to complete the Work and to provide a complete and functional system constructed in accordance with the Contract Documents.
2. ENGINEER
  - 2.1. The Project has been designed by Jacobs (Engineer), who is to act as Owner's representative, assume duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.
3. CONTRACT TIMES
  - 3.1. Time of the Essence: Time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
  - 3.2. Days to Achieve Substantial Completion and Final Completion and Payment:
    - 3.2.1. The Work shall be substantially completed within 640 calendar days from the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 670 calendar days after the date when the Contract Times commence to run.

### 3.3. Liquidated Damages:

3.3.1. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph Contract Times above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$1,600 for each day that expires after the time specified herein for Substantial Completion until the Work is substantially complete.

## 4. CONTRACT PRICE

4.1. Owner will pay Contractor for completion of the Work in accordance with the Contract Documents the amount set forth in the conformed Bid Forms, which are included as an attachment to this Agreement.

## 5. PAYMENT PROCEDURES

5.1. Submittal and Processing of Payments: Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.2. Progress Payments and Retainage: Owner will make progress payments on account of the Contract Price on the basis of Contractor's Application for Payment on the date of each month as established in the preconstruction conference during performance of the Work as provided herein. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.05 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in the General Requirements.

5.2.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.01 of the General Conditions:

5.2.1.1. Ninety-five percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain

satisfactory to them, there will be no additional retainage;  
and

5.2.1.2. Ninety-five percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

5.2.2. In lieu of retainage, and at the Contractor's option, provisions may be made as provided in ORS 279C.560 for either depositing with Owner or in a bank or trust company, bonds or securities for all or any portion of the retainage in a form acceptable to Owner. Interest on such bonds or securities shall accrue to Contractor. Costs incurred by Owner as a result of this option will be deducted from Contractor's final payment.

5.2.3. Upon Substantial Completion, Owner will pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer will determine in accordance with Paragraph 15.01.C.6 of the General Conditions and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

5.3. Final Payment:

5.3.1. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner will pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 15.06.

6. INTEREST

6.1. Monies not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate of one-half percent per month.

7. RETAINAGE

7.1. Prior to Final Completion, Owner shall retain from progress payments 5 percent of the value of Work completed.

8. CONTRACTOR'S REPRESENTATIONS

8.1. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

8.1.1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

8.1.2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

- 8.1.3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 8.1.4. Contractor has carefully studied: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) if any, which have been identified in Paragraph 5.03 of the Supplementary Conditions as containing reliable “technical data”, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified in Paragraph 5.06 of the Supplementary Conditions as containing reliable “technical data.”
- 8.1.5. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on 1) the cost, progress, and performance of the Work; 2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and 3) Contractor’s safety precautions and programs.
- 8.1.6. Based on the information and observations referred to above, Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- 8.1.7. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- 8.1.8. Contractor has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- 8.1.9. The Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performance and furnishing of the Work.

## 9. CONTRACT DOCUMENTS

### 9.1. Contents:

9.1.1. The Contract Documents that are attached to this Agreement (except as expressly noted otherwise) consist of the following:

9.1.1.1. Agreement.

9.1.1.2. Addenda numbers 1 to 3 inclusive.

9.1.1.3. Invitation to Bid.

9.1.1.4. Bid Form. 9.1.1.5. Bid Bond.

9.1.1.6. First-Tier Subcontractor Disclosure Form.

9.1.1.7. Contract Specifications: Division 00 and Division 01;  
Division 02 through Division 49.

9.1.1.8. Contract Drawings (including Design Details).

9.1.1.9. Executed Performance and Payment Bonds.

9.1.1.10. Copies of Public Works Bonds from Contractor and every  
Subcontractor on the Project.

9.2. There are no Contract Documents other than those listed above in this Article.

9.3. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 11.01 of the General Conditions.

## 10. MISCELLANEOUS

10.1. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.2. Successors and Assigns: Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.3. Severability: Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.4. Assignment of Contract:

10.4.1. No assignment by a party hereto of any rights under or interests in the Contract shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may

not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.5. Contractor's Certifications:

10.5.1. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this paragraph:

10.5.1.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in Contract execution;

10.5.1.2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract Price at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;

10.5.1.3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, noncompetitive levels; and

10.5.1.4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.6. Attorney Fees: In case suit or action is instituted to enforce any of the provisions of this Agreement, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in said suit or action. If an appeal is taken from any judgment or decree of such trial court, the losing party further promises to pay such sum as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees on such appeal.

10.7. Authorization: The undersigned signing for Contractor represents, certifies, and warrants that the undersigned has the authority to sign on behalf of and bind the Contractor.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2023, (which is the Effective Date of the Agreement).

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

Attest: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Address for giving notices:

Address for giving notices:

## Attachment 2, Bid Tabulation

Project No. 2019-10, Solids Treatment Capacity Improvements

Date: 4/25/2023

Item	Description	Unit	Engineer's Estimate	J.W. Fowler	Stellar J	McClure and Sons
A list	Section 23 34 05, Odor Control Fans	LS	\$ 80,000.00	\$ 82,000.00	\$ 87,000.00	\$ 88,180.00
A list	Section 44 42 56.12, Lobe Pumps	LS	\$ 48,000.00	\$ 90,990.00	\$ 45,495.00	\$ 45,495.00
A list	Section 44 46, 30, Floating Decanter and Frame	LS	\$ 15,000.00	\$ 50,800.00	\$ 50,800.00	\$ 50,800.00
A list	Section 46 73 24, ATAD System	LS	\$ 4,317,000.00	\$ 4,317,000.00	\$ 4,317,000.00	\$ 4,317,000.00
5.1.1.4	Major Equipment Schedule Subtotal	LS	\$ 4,460,000.00	\$ 4,540,790.00	\$ 4,500,295.00	\$ 4,501,475.00
5.1.2	Lump Sum Remaining Work Subtotal	LS	\$ 11,720,000.00	\$ 13,707,210.00	\$ 14,291,400.00	\$ 15,308,044.00
<b>5.1.3.2</b>	<b>Base bid</b>	<b>LS</b>	<b>\$ 16,180,000.00</b>	<b>\$ 18,248,000.00</b>	<b>\$ 18,791,695.00</b>	<b>\$ 19,809,519.00</b>

**Apparent low bidder (J.W. Fowler)**

**\$ 18,248,000.00**

# Attachment 3, Location Map



LOCATION MAP  
NTS





## STAFF REPORT

**DATE:** May 9, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Jennifer Cuellar, Finance Director  
**SUBJECT:** Recology Franchise Agreement – FY2023-24 Rate Adjustment

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### CITY GOVERNMENT CAPACITY

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

#### Report in Brief:

Recology, Inc., the City's exclusive franchisee for the collection of Solid Waste, has requested a collection rate adjustment of 4.00%, effective July 1, 2023. The requested adjustment is allowed under the terms of the City Franchise Agreement with Recology.

#### Background:

On January 27, 2009, the City Council adopted Ordinance No. 4904, which authorized the city to enter into a franchise agreement with Recology (f/k/a Western Oregon Waste) ("Franchise Agreement"). Under Article VI(1)(g) of the Franchise Agreement, a rate adjustment equal to the percent change in the Consumer Price Index (CPI) for all Urban Consumers for West-B/C, All Items ("Index") is generally to be made each year, effective on July 1. The adjustment is to have Recology maintain an operating margin between 9% and 15%. The Rate Review report, part of Attachment A, includes a proposed 4% increase in rates, which projects an operating margin of 8.48%.

Over the years, the City has adopted rate adjustments in accordance with the Franchise Agreement. The most recent adjustments are discussed below.

On November 28, 2017, the City Council adopted Resolution No. 2017-69, which authorized Recology Inc. to make an out-of-calendar rate increase of 10%, related to the diversion of solid waste away from the Riverbend landfill in Yamhill County.

After the passage of Resolution 2017-69, on October 8, 2018, Recology submitted a request to the City for consideration of an out-of-calendar rate increase of 10.47%, to be effective January 1, 2019, which included a 5.70% adjustment related to unanticipated increased costs of handling recycling materials. Those increased costs were due to the collapse of the recycling market, particularly along the West Coast, caused by China's "National Sword" policy that banned most plastics and other materials for its recycling centers.

After reviewing the request, the Council found that a portion of the Recology proposal was reasonable and in the public interest, and so adopted Resolution No. 2018-67, approving a 5.5% rate increase, effective January 1, 2019.

In 2019, the City engaged Merina+Co to perform a rate study of Recology to determine whether a further rate adjustment was warranted based on an examination of Recology's financials. As a result of Merina+Co's findings, on June 11, 2019, the City Council adopted Resolution No. 2019-37 that authorized a 5% rate increase, effective July 1, 2019.

In August 2020, Council passed resolution 2020-53 approving a rate increase not to exceed 2.9% effective September 1, 2020.

In June 2021, Council passed resolution 2021-47 declaring a state of emergency with regard to collection, disposal and general management of solid waste due to the Riverbend Landfill closing to municipal waste starting June 19, 2021. Recology's transfer station took on the role of accepting local solid waste.

In June 2022, Council passed resolution 2022-41 instituting a 4% rate increase for FY2022-23.

### **Discussion:**

On April 1, 2023, Recology provided a letter to the City regarding a possible rate increase, as provided in the Franchise Agreement, along with its Rate Review Report. Subsequent to the April 1, 2023, letter, Recology also provided its 2022 Reviewed Financial Statement for RWO-Valley. The April 1, 2023, letter and its attachments as well as the financial statements are attached as Attachment A.

The letter described 2022 as a challenging year for both customers and the organization due to supply chain issues and staffing shortages. It also noted the negotiation of a new collective bargaining agreement with Recology drivers. The letter and the accompanying information showed their projections for next fiscal year indicate the organization will be just below the Operating Ratio range of 9% to 15% specified in the franchise agreement if it includes the 4% capped rate increase.

Recology requests that 4% this be the rate increase effective July 1, 2023.

### **Fiscal Impact:**

The City's Franchise Fee revenue would be projected to increase approximately \$18,000 in FY2023-24 with a 4% rate increase.

### Council Options:

1. Approve the resolution authorizing a 4% rate request (staff recommendation). The increase is within the capped annual increase set out in the franchise.
2. Request more information from Recology that will allow the Council to have all data needed for it to vote on the rate adjustment.
3. Reject the rate increase in whole or in part.

### Attachments:

1. Attachment A: Recology April 1, 2023, letter with Rate Review Report and Reviewed Financial Statement.
2. Resolution No. 2023-24.
  - a. Exhibit 1: Recology Inc. Rate Schedule effective July 1, 2023



Mr. Jeff Towery  
City Manager  
City of McMinnville  
230 E. 2nd St.  
McMinnville, OR 97128

April 1, 2023

Dear Jeff:

In compliance with the terms of our franchise agreement, please find enclosed the following documents that make up the Rate Review Report and Annual Financial Report:

1. Rate Review Report, which includes the following:
  - a. All the actual expenses incurred in the preceding calendar year, and all allowable expenses that we reasonably anticipate will be incurred in the upcoming rate year,
  - b. The allocation factors and percentages used to allocate shared expenses, and
  - c. The Operating Ratios for the preceding calendar year and the upcoming rate year.
2. Reviewed Financial Statement for RWO – Valley for calendar year 2022. This report is forthcoming in the next few days
3. Rate Sheets (to be provided by June 1<sup>st</sup>, 2023)

2022 was a challenging year for our company and the customers we serve. Supply chain issues affected our ability to get carts, containers, and truck parts in a timely manner. We also dealt with staff shortages due to the tight workforce competition for CDL drivers as well as negotiated a new Collective Bargaining Agreement with our drivers.

Based on our projections for the upcoming rate year (July 1, 2023 – June 30, 2024), we expect to be outside the Operating Ratio range specified in our franchise agreement. As a result, we are proposing to increase rates by 4% to get us back into the range. This increase is necessary to cover increases in our labor, fuel, disposal and other operational costs.

We will provide the new rates to the City by June 1<sup>st</sup>, 2023, with a requested effective date of July 1<sup>st</sup>, 2023.

We appreciate the opportunity to provide these essential services. We take this obligation seriously, and we are committed to keeping our operations running as expected. We look forward to attending an upcoming council meeting, either in person or via computer.

Please let us know if you have any questions or need any additional information. You can reach me at (503) 803-4984 or by email at [ccarey@recology.com](mailto:ccarey@recology.com)

Respectfully,

A handwritten signature in black ink, appearing to read 'Chris Carey', written over a white background.

Chris Carey  
General Manager

## RWO - Valley Cost of Service Report 2021-22



### REVENUE

RWO - Valley Total			City of McMinnville			
2022 Calendar Year Actual	2023-24 Projected Rate Year	Allocation Method	2022 Calendar Year Actual	Adjustments and Projected Changes	2023-24 Projected Rate Year	
			Rate Adj. % >>>	4.00%		
Collection Services - Residential	\$ 8,101,890	\$ 8,562,334	Actual	\$ 4,277,263	\$ 160,816	\$ 4,438,079
Collection Services - Commercial	\$ 4,636,396	\$ 4,995,149	Actual	\$ 3,175,292	\$ 196,872	\$ 3,372,164
Collection Services - Debris Box	\$ 2,439,919	\$ 2,562,435	Actual	\$ 913,287	\$ (23,286)	\$ 890,001
<b>COLLECTION SERVICES:</b>	<b>\$ 15,178,205</b>	<b>\$ 16,119,919</b>	<b>Actual</b>	<b>\$ 8,365,841</b>		<b>\$ 8,700,244</b>
Proposed Rate Adjustment			Actual			\$ 348,010
Revenue - DB Disposal			Actual	\$ 457,424	\$ 22,871	\$ 480,296
Revenue - Medical Waste	\$ 101,411	\$ 96,214	Actual	\$ 86,054	\$ (5,789)	\$ 80,264
Revenue - Other (fees & related)	\$ 87,477	\$ 22,013	Actual	\$ 11,345	\$ (4,421)	\$ 6,924
Non-Franchised Revenue	\$ 1,046,005	\$ 920,758	Actual	\$ -	\$ -	\$ -
<b>Total Revenue</b>	<b>\$ 16,413,098</b>	<b>\$ 17,158,904</b>		<b>\$ 8,920,664</b>	<b>\$ 695,073</b>	<b>\$ 9,615,738</b>
Franchise Fees	\$ (620,348)	\$ (659,508)	Actual	\$ (444,971)		\$ (480,787)
<b>Revenue w/o Franchise Fees</b>	<b>\$ 15,792,750</b>	<b>\$ 16,499,397</b>		<b>\$ 8,475,693</b>		<b>\$ 9,134,951</b>

### LABOR EXPENSES

Operational Personnel	\$ 1,786,353	\$ 2,013,229	Labor Hours	\$ 760,965	\$ 96,646	\$ 857,611
Payroll Taxes	\$ 165,832	\$ 186,893	Labor Hours	\$ 70,642	\$ 8,972	\$ 79,614
Medical Insurance	\$ 407,995	\$ 464,902	Labor Hours	\$ 173,801	\$ 24,242	\$ 198,043
Other Benefits	\$ 264,276	\$ 283,515	Labor Hours	\$ 112,578	\$ 8,196	\$ 120,774
<b>Total Labor Expense</b>	<b>\$ 2,624,455</b>	<b>\$ 2,948,538</b>		<b>\$ 1,117,986</b>	<b>\$ 138,056</b>	<b>\$ 1,256,042</b>

Disposal Charges	\$ 2,783,829	\$ 3,446,584	Vessel Weights	\$ 1,492,803	\$ 355,397	\$ 1,848,200
Medical Waste & Supplies	\$ 71,419	\$ 72,847	Med. Waste	\$ 60,497	\$ 1,210	\$ 61,707
<b>Total Disposal Expense</b>	<b>\$ 2,855,248</b>	<b>\$ 3,519,431</b>		<b>\$ 1,553,300</b>	<b>\$ 356,607</b>	<b>\$ 1,909,906</b>

### OPERATIONAL EXPENSES

Fuel	\$ 823,401	\$ 629,773	Franchised Labor	\$ 400,988	\$ (94,295)	\$ 306,693
Fuel - Non-Franchised (N/F)	\$ 199,030	\$ 152,227	Actual	\$ -	\$ -	\$ -
Repairs and Maintenance	\$ 1,483,969	\$ 1,706,564	Franchised Labor	\$ 722,678	\$ 108,402	\$ 831,080
Repairs and Maintenance - N/F	\$ 289,600	\$ 318,560	Actual	\$ -	\$ -	\$ -
Business Taxes and PUC	\$ 193,933	\$ 179,521	Franchised Labor	\$ 94,443	\$ (7,018)	\$ 87,425
Business Taxes and PUC - N/F	\$ 106,986	\$ 112,335	Actual	\$ -	\$ -	\$ -
Supplies & Uniforms	\$ 22,552	\$ 23,845	Labor Hours	\$ 9,607	\$ 550	\$ 10,158
Operational Supplies/Safety	\$ 72,771	\$ 76,941	Labor Hours	\$ 31,000	\$ 1,776	\$ 32,776
Contract Labor	\$ 119	\$ -	Labor Hours	\$ 51	\$ (51)	\$ -
Depreciation and Amortization	\$ 6,723	\$ 20,000	Franchised Labor	\$ 3,274	\$ 6,466	\$ 9,740
Depreciation and Amortization N/F	\$ 4,749	\$ 4,762	Actual	\$ -	\$ -	\$ -
Operational Lease and Rent	\$ 837,884	\$ 921,884	Franchised Labor	\$ 408,041	\$ 40,907	\$ 448,948
Operational Lease and Rent - N/F	\$ 136,596	\$ 136,596	Actual	\$ -	\$ -	\$ -
Insurance Expense	\$ 103,026	\$ 108,929	Labor Hours	\$ 43,888	\$ 2,515	\$ 46,402
Yard Debris/wood & Other Funding	\$ 1,284,403	\$ 1,421,304	Program	\$ 1,165,921	\$ 124,272	\$ 1,290,193
Recycling Expense	\$ 996,142	\$ 1,197,355	Recycling	\$ 616,103	\$ 124,448	\$ 740,551
Purchase Recyclables			Recycling	\$ -	\$ -	\$ -
Other Operational	\$ 35,646	\$ 37,689	Labor Hours	\$ 15,185	\$ 870	\$ 16,055
<b>Total Operations Expense</b>	<b>\$ 6,597,529</b>	<b>\$ 7,048,284</b>		<b>\$ 3,511,179</b>	<b>\$ 308,843</b>	<b>\$ 3,820,021</b>
<b>SUBTOTAL</b>	<b>\$ 3,715,519</b>	<b>\$ 2,983,143</b>		<b>\$ 2,293,229</b>	<b>\$ (144,247)</b>	<b>\$ 2,148,981</b>

### ADMINISTRATIVE EXPENSES

Management Services	\$ 487,681	\$ 517,737	Computed	\$ 267,620	\$ 20,852	\$ 288,472
Administrative Services	\$ 1,463,057	\$ 1,553,211	Computed	\$ 802,860	\$ 62,557	\$ 865,416
Non-Admin. Labor	\$ -	\$ -	Franchised Labor	\$ -	\$ -	\$ -
Office Supplies	\$ 20,615	\$ 21,796	Customers	\$ 9,886	\$ 566	\$ 10,453
Postage	\$ 30,659	\$ 32,416	Customers	\$ 14,703	\$ 842	\$ 15,545
Billing services	\$ 58,361	\$ 61,705	Customers	\$ 27,988	\$ 1,604	\$ 29,591
Dues and Subscriptions	\$ 29,411	\$ 31,096	Customers	\$ 14,104	\$ 808	\$ 14,912
Telephone	\$ 66,146	\$ 69,936	Customers	\$ 31,721	\$ 1,818	\$ 33,539
Bank Service Charges	\$ 83,140	\$ 87,903	Customers	\$ 39,871	\$ 2,285	\$ 42,155
Professional fees	\$ 36,768	\$ 38,875	Customers	\$ 17,633	\$ 1,010	\$ 18,643
Travel	\$ 3,131	\$ 3,311	Customers	\$ 1,502	\$ 86	\$ 1,588
Advertising and Promotions	\$ 3,719	\$ 3,932	Customers	\$ 1,784	\$ 102	\$ 1,886
Business Meals	\$ 8,302	\$ 8,778	Customers	\$ 3,982	\$ 228	\$ 4,210
Education & Training	\$ 5,293	\$ 5,596	Customers	\$ 2,538	\$ 145	\$ 2,684
Contributions	\$ 10,721	\$ 11,335	Customers	\$ 5,141	\$ 295	\$ 5,436
Bad Debt	\$ 69,847	\$ 71,776	Customers	\$ 33,496	\$ 925	\$ 34,421
Other Administrative	\$ 10,141	\$ 10,722	Customers	\$ 4,863	\$ 279	\$ 5,142
<b>Total Admin Expense</b>	<b>\$ 2,386,992</b>	<b>\$ 2,530,126</b>		<b>\$ 1,279,690</b>	<b>\$ 94,402</b>	<b>\$ 1,374,092</b>

<b>EARNINGS FROM OPERATIONS</b>	<b>\$ 1,328,527</b>	<b>\$ 453,017</b>		<b>\$ 1,013,538</b>	<b>\$ (238,649)</b>	<b>\$ 774,889</b>
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Interest Income	\$ (26,686)	\$ (19,558)	Not Allocated	\$ -	\$ -	\$ -
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Loss on Asset Disposal	\$ (4,125)	\$ -	Not Allocated	\$ -	\$ -	\$ -
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<b>NET INCOME BEFORE TAX</b>	<b>\$ 1,359,338</b>	<b>\$ 472,575</b>		<b>\$ 1,013,538</b>	<b>\$ (238,649)</b>	<b>\$ 774,889</b>
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Operating Margin	8.61%	2.86%		11.96%	4.00%	8.48%
Calculated Operating Ratio	91.52%	97.19%		87.98%	\$ -	91.46%

RWO - Valley Cost of Service Report 2021-22



	RWO - Valley Total			City of McMinnville						
	2022 Calendar Year Actual	2023-24 Projected Rate Year	Allocation Method	2022 Calendar Year Actual	Adjustments and Projected Changes	2023-24 Projected Rate Year				
<b>Allocation Data:</b>										
Revenue (All RWO-VAL)	\$ 16,413,098	\$ 17,158,904		\$ 8,920,664		\$ 9,615,738				
Revenue Percent	100.00%	100.00%		54.35%		56.04%				
2021 Labor Hours				42.60%		42.60%				
2022 Disposal				53.62%		53.62%				
2022 Recycling				61.85%		61.85%				
2022 Customer Count				47.96%		47.96%				
2022 Yard Debris				90.78%		90.78%				
2022 Medical Waste				84.71%		84.71%				
2021 Franchised Labor				48.70%		48.70%				
<b>Operating Ratio Calculation</b>										
<b>Calculated Operating Ratio</b>	<u>91.52%</u>	<u>97.19%</u>		<u>87.98%</u>	<table border="1"> <tr> <td>proposed adjustment</td> <td>4.00%</td> </tr> <tr> <td>\$</td> <td>-</td> </tr> </table>	proposed adjustment	4.00%	\$	-	<u>91.46%</u>
proposed adjustment	4.00%									
\$	-									

**Recology Western Oregon - Valley Inc.**  
(A Wholly Owned Subsidiary of Recology Inc.)

Financial Statements

December 31, 2022

(With Independent Accountant's Review Report)



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## INDEPENDENT ACCOUNTANT'S REVIEW REPORT

To the Board of Directors of  
Recology Western Oregon - Valley Inc.  
McMinnville, Oregon

We have reviewed the accompanying financial statements of Recology Western Oregon - Valley Inc., which comprise the balance sheet as of December 31, 2022, and the related statements of income and stockholder's investment, and cash flows for the year then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

### **Accountant's Responsibility**

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

We are required to be independent of Recology Western Oregon - Valley Inc. and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our review.

### **Change in Accounting Principle**

As discussed in Note 2 to the financial statements, the Company adopted FASB Topic 842, *Leases*. Our conclusion is not modified with respect to that matter.

### **Accountant's Conclusion**

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

## Supplementary Information

The supplementary information included on page 14 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management. We have not audited or reviewed such information and do not express an opinion, a conclusion, nor provide any assurance on such supplementary information.

*Armanino LLP*

Armanino<sup>LLP</sup>  
San Ramon, California

April 14, 2023

**RECOLOGY WESTERN OREGON - VALLEY INC.**

(A Wholly Owned Subsidiary of Recology Inc.)

Balance Sheet

December 31, 2022

ASSETS

Current assets:

Accounts receivable, net of allowance for doubtful accounts of \$30,078	\$ 1,998,040
Other receivables	2,425
Prepaid expenses	39,783
Due from parent	<u>634,154</u>
Total current assets	<u>2,674,402</u>

Fixed assets:

Machinery and equipment	1,994,189
Less accumulated depreciation	<u>(1,989,833)</u>
Property and equipment, net	<u>4,356</u>
Total assets	<u>\$ 2,678,758</u>

LIABILITIES AND STOCKHOLDER'S INVESTMENT

Current liabilities:

Accounts payable	\$ 81,292
Accrued liabilities	258,023
Deferred revenues	<u>1,432,219</u>
Total current liabilities	<u>1,771,534</u>

Stockholder's investment, net

	<u>907,224</u>
Total liabilities and stockholder's investment	<u>\$ 2,678,758</u>

See accompanying notes to financial statements and independent accountant's review report.

**RECOLOGY WESTERN OREGON - VALLEY INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)  
Statement of Income and Stockholder's Investment  
For the Year Ended December 31, 2022

Revenues, net	<u>\$ 15,792,750</u>
Cost of operations	
Intercompany refuse disposal	2,737,531
Third party refuse disposal	117,716
Labor costs	2,624,455
Operational expenses	<u>6,597,529</u>
Total cost of operations	<u>12,077,231</u>
Gross profit	3,715,519
General and administrative expenses	<u>2,386,992</u>
Income from operations	<u>1,328,527</u>
Other income	
Interest income	26,686
Gain on disposal of equipment	<u>4,125</u>
Total other income	30,811
Net income	1,359,338
Stockholder's investment, net, beginning of year	458,117
Net distributions to parent and affiliates	<u>(910,231)</u>
Stockholder's investment, net, end of year	<u>\$ 907,224</u>

See accompanying notes to financial statements and independent accountant's review report.

**RECOLOGY WESTERN OREGON - VALLEY INC.**

(A Wholly Owned Subsidiary of Recology Inc.)

Statement of Cash Flows

For the Year Ended December 31, 2022

Cash flows from operating activities:	
Net income	\$ 1,359,338
Adjustments to reconcile net income to cash provided by operating activities:	
Depreciation	11,471
Gain on disposal of equipment	(4,125)
Provision for bad debts	69,847
Changes in assets and liabilities:	
Accounts receivable	(266,709)
Other receivables	(2,425)
Prepaid expenses	10,119
Accounts payable	27,638
Accrued liabilities	(3,594)
Deferred revenues	146,333
Other liabilities	(34,129)
Net cash provided by operating activities	<u>1,313,764</u>
Cash flows provided by investing activities:	
Proceeds from disposal of equipment	<u>4,125</u>
Cash flows used in financing activities:	
Due from parent	(407,658)
Net distributions to parent and affiliates	(910,231)
Net cash provided by financing activities	<u>(1,317,889)</u>
Net change in cash	-
Cash, beginning of year	<u>-</u>
Cash, end of year	<u>\$ -</u>

See accompanying notes to financial statements and independent accountant's review report.

**RECOLOGY WESTERN OREGON – VALLEY, INC.**

(A Wholly Owned Subsidiary of Recology Inc.)

Notes to Financial Statements

December 31, 2022

(1) NATURE OF BUSINESS

Recology Oregon Waste - Valley, Inc. (the "Company"), is a wholly owned subsidiary of Recology Oregon Inc., which is a wholly owned subsidiary of Recology Inc. (the "Parent" or "Recology"), which in turn is wholly owned by the Recology Employee Stock Ownership Plan (the "Recology ESOP" or the "ESOP").

The Company collects refuse and recyclables in the City of McMinnville and surrounding municipalities in Yamhill and Polk Counties. The Company's refuse collection rates are set by these municipalities. The rate setting process may result in the disallowance of certain costs and/or delays in cost recovery, as well as differences in the timing of when revenues and expenses are recognized.

During the year ended December 31, 2022, the Company disposed of refuse collected by its operations at a facility owned and operated by an affiliate as well as a facility owned and operated by a third party. Yard debris and other recyclable commodities were primarily disposed at a facility owned and operated by an affiliate.

(2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Revenue recognition and accounts receivable

The Company recognizes revenue on an accrual basis when services are performed. Deferred revenues primarily consist of revenues billed in advance that are recorded as revenue in the period in which the related services are rendered. The majority of the Company's revenue is subject to rate regulation by the municipalities in which it operates.

The Company's receivables are recorded when billed and represent claims against third parties that will be settled in cash. The carrying value of the Company's receivables, net of the allowance for doubtful accounts, represents their estimated net realizable value. The Company estimates its allowance for doubtful accounts based on several factors, including historical collection trends, type of customer, existing economic conditions and other factors.

In accordance with the Company's adoption of the new revenue recognition standard during 2019, municipal franchise fees were presented as a reduction to revenue for the year ended December 31, 2022.

**RECOLOGY WESTERN OREGON – VALLEY, INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)

Notes to Financial Statements

December 31, 2022

(2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Property and equipment

Property and equipment, including major renewals and betterments, are stated at cost. It is the Company's policy to periodically review the estimated useful lives of its property and equipment. Depreciation is calculated on a straight-line basis over the estimated useful lives of assets as follows:

	<u>Estimated useful lives</u>
Buildings	20-40 years
Leasehold improvements	Shorter of lease or useful life
Machinery and equipment	6-8 years
Furniture and fixtures	8 years
Vehicles	9 years
Containers	10 years

Depreciation expense amounted to \$11,471 for the year ended December 31, 2022. The cost of maintenance and repairs is charged to operations as incurred; significant renewals and betterments are capitalized.

Environmental remediation liabilities

The Company accrues for environmental remediation costs when they become probable and based on its best estimate within a range. If no amount within the range appears to be a better estimate than any other, the low end of such ranges is used. Remediation costs are estimated by environmental remediation professionals based upon site remediation plans they develop and on their experience working with regulatory agencies and the Company's environmental staff and legal counsel. All estimates require assumptions about future events due to a number of uncertainties, including the nature and extent of any contamination, the appropriate remedy or remedies, the final apportionment of responsibility among the potentially responsible parties, if any are identified, the financial viability of other potentially responsible parties, and regulatory agency requirements. Thus, actual costs incurred may differ from the Company's initial estimate. These estimates do not take into account discounts for the present value of total estimated future costs, as the timing of cash payments is not reliably determinable. The Company regularly evaluates the recorded liabilities when additional information becomes available or regulatory changes occur to ascertain whether the accrued amounts are adequate. The Company does not recognize recoverable amounts from other responsible parties or insurance carriers until receipt is deemed probable. No environmental remediation liabilities were accrued at December 31, 2022.

**RECOLOGY WESTERN OREGON – VALLEY, INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)

Notes to Financial Statements

December 31, 2022

(2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Impairment of long-lived assets

The Company's policy is to review estimated undiscounted future cash flows and other measures of asset value for its operations when events or changes in circumstances indicate the carrying value of an asset may not be fully recoverable.

During the year ended December 31, 2022, there were no events or changes in circumstances that indicated the carrying value of an asset was not fully recoverable.

Leases

The Company leases certain land, buildings, vehicles, and equipment used in the Company's operations under lease agreements. The Company is responsible for all maintenance costs, taxes, and insurance on the buildings, vehicles, and equipment under lease agreements.

The Company accounts for leases in accordance with Accounting Standards Codification Topic 842, Leases. The Company determines if an arrangement is or contains a lease at contract inception. The Company recognizes a right-of use ("ROU") asset and a lease liability at the lease commencement date.

The ROU asset is initially measured at cost, which comprises the initial amount of the lease liability adjusted for lease payments made at or before the lease commencement date, plus any initial direct costs incurred less any lease incentives received.

The Company's leases have varying terms, some of which include renewal or escalation clauses, which are considered in determining minimum lease payments. The lease term for all the Company's leases includes the noncancelable period of the lease plus any additional periods covered by either a Company option to extend (or not to terminate) the lease that the Company is reasonably certain to exercise, or an option to extend (or not to terminate) the lease controlled by the lessor. The Company has cancelable agreements with an affiliate that have one-year terms, whereby it pays for use of certain operating equipment and property. The Company has elected not to include these leases with an initial term of 12 months or less in the balance sheets and payments associated with these short term-leases are recognized as an operating expense on a straight-line basis over the lease term. Leases are classified as either operating leases or finance leases at inception.

**RECOLOGY WESTERN OREGON – VALLEY, INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)

Notes to Financial Statements

December 31, 2022

(2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Income taxes

Effective October 1, 1998, the Parent elected to become an S corporation with the Company electing to be treated as a Qualified Subchapter S corporation subsidiary. Under S corporation rules, the Parent's taxable income and losses are passed through to the ESOP, the Parent's sole shareholder, which is exempt from income tax, and the Company is treated as a division of the Parent having no separate income tax obligations. The Parent has not allocated the income tax expense to the Company.

The Company recognizes income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that has a greater than 50% likelihood of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company's accounting policy for evaluating uncertain tax positions is to accrue estimated benefits or obligations relating to those positions.

The Company records interest related to unrecognized tax benefits as interest expense and penalties as administrative expenses. For the year ended December 31, 2022, there were no interest or penalties recorded because the Company has no uncertain tax positions that meet the more likely than not threshold.

Cash concentration account

The Company's bank account is linked to the Parent's concentration account. Cash balances (or deficits) at the end of each day are automatically transferred to (or from) the concentration account, so that at the end of any particular day, as well as at year-end, the Company's bank account has a zero balance, with related amounts debited or credited to the underlying intercompany account.

Allocations

The Company includes allocated charges from the Parent and affiliates in operating expenses. The charges are allocated by applying activity appropriate factors to direct and indirect costs of the Parent and affiliates or based upon established fees.

Use of estimates

Management of the Company has made a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities to prepare these financial statements in conformity with accounting principles generally accepted in the United States of America. The more significant estimates requiring the judgment of management include the valuation of the allowance for doubtful accounts, leases, allocation of shared costs and accrued franchise fees. Actual results could differ from those estimates.

Stockholder's investment, net

The Company has 100,000 shares of common stock authorized and 1,000 shares issued and outstanding with no par value as of December 31, 2022. Stockholder's investment, net is comprised of the legal capital plus cumulative contributions net of distributions.

**RECOLOGY WESTERN OREGON – VALLEY, INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)

Notes to Financial Statements

December 31, 2022

(2) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Fair value of financial instruments

The carrying amounts reported in the balance sheets of the assets and liabilities, which are considered to be financial instruments (such as receivables, accounts payable, and accrued liabilities), approximate their fair value based upon current market indicators.

Concentration of credit risk

Cash and accounts receivable are financial instruments that potentially expose the Company to credit risk. The Company's bank account is linked to the Parent's concentration account. Cash balances (or deficits) at the end of each day are automatically transferred to (or from) the concentration account. Management believes that the Company is not exposed to any significant risk on cash. As of December 31, 2022, two jurisdictions accounted for approximately 78% of accounts receivable.

New accounting standards

In February 2016, the FASB issued ASU 2016 02, *Leases (Topic 842)*. ASU 2016 02 requires lessees to recognize a right of use asset and a lease liability for virtually all of their leases (other than leases that meet the definition of a short-term lease). The liability is equal to the present value of lease payments. The asset is based on the liability, subject to adjustment, such as for initial direct costs. For income statement purposes, the FASB retained a dual model, requiring leases to be classified as either operating or finance. Operating leases result in straight line expense (similar to current operating leases) while finance leases result in a front-loaded expense pattern (similar to current capital leases). Classification is based on criteria that are largely similar to those applied in current lease accounting, but without explicit bright lines. The Company adopted the new standard as of January 1, 2022 using a modified retrospective transition and considered certain permitted practical expedients. The Company has assessed the potential impact of implementing this new accounting standard on its financial statements. The Company does not anticipate recording a right of use asset.

(3) COMMITMENTS AND CONTINGENCIES

Substantially all of the assets of the Company are pledged to secure the obligations of the Parent. The Company, along with the Parent and the Parent's wholly owned subsidiaries, has guaranteed the repayment, on a joint and several basis, of any and all obligations under the Parent's Revolving Credit Agreement. The Company could be required to honor the guarantee upon an uncured default event, as defined in the Parent's Revolving Credit Agreement. The Parent's Revolving Credit Agreement expires in December 2026. At December 31, 2022, there was an outstanding balance of \$262.0 million on the Parent's Revolving Credit Agreement and there were standby letters of credit issued for \$118.4 million. The Parent has represented to the Company that it is in compliance with all covenants of the Revolving Credit Agreement.

The Company, along with the Parent and the Parent's wholly owned subsidiaries, has guaranteed the payment of amounts owed to unrelated third parties, which provided the equipment financing to affiliates of the Company. The affiliates are obligated to the unrelated third parties with various expiration dates through June 2027. At December 31, 2022, the outstanding principal on the financed equipment recorded by the affiliates was \$20.4 million.

**RECOLOGY WESTERN OREGON – VALLEY, INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)

Notes to Financial Statements

December 31, 2022

(3) COMMITMENTS AND CONTINGENCIES (CONTINUED)

The Parent and its subsidiaries, including the Company, are subject to various laws and regulations relating to the protection of the environment. It is not possible to quantify with certainty the potential impact of actions regarding environmental matters, particularly any future remediation, and other compliance efforts. The Parent has environmental impairment liability insurance, which covers the sudden or gradual onset of environmental damage to third parties, on all owned and operated facilities. In the opinion of management, compliance with present environmental protection laws will not have a material adverse effect on the results of operations of the Company provided costs are substantially covered in the Company's rates on a timely basis.

The Company and the Parent are involved in various legal actions arising in the normal course of business. It is the Company's opinion that these matters are adequately provided for or that the resolution of such matters will not have a material adverse impact on the financial position or results of operations of the Company or the Parent.

(4) LEASES

The Company's main office facility and storage yard, located in Western Oregon Valley, is leased under a 12 month fully cancelable lease ranging from \$2,296 to \$10,311 per month. The Company also leases all equipment under 12 month fully cancelable annually renegotiated leases, ranging from \$9 to \$2,580 per month. The annual rent expense for both facilities totaled \$156,105 and all equipment \$818,375 for the year ended December 31, 2022.

Rental expense for the year ended December 31, 2022 was \$974,480 including amounts under short-term rental agreements with third parties and affiliates.

Under the terms of the equipment lease agreement with an affiliate, and in accordance with existing rate policies, the Company may continue to use certain equipment under operating leases without a related payment once the affiliate's equipment cost and related interest have been funded through operating lease payments.

**RECOLOGY WESTERN OREGON – VALLEY, INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)

Notes to Financial Statements

December 31, 2022

(5) TRANSACTIONS WITH RELATED PARTIES

During the year ended December 31, 2022, operating and other expenses of the Company included allocated charges from the Parent and affiliates. Such charges are based upon the direct and indirect costs of the Parent and affiliates, or established fees, and allocated based on specific activities. The allocated charges are as follows:

Parent:

Health Insurance	\$	10,744
Worker's Compensation		114,664
401(k) Employer Portion		2,607
General and Vehicle Insurance		103,026
		231,041

Affiliates:

Collection Revenue		(980,668)
Freight		0
Rental of Equipment		822,369
Property Rental		12,960
Disposal Costs		4,021,934
Processing Fees		996,142
General and Administration Allocation		1,463,057
Truck and Garage		1,002,167
Regional Management and Accounting Fees		487,681
		7,825,642
	<b>\$</b>	<b>8,056,683</b>

During the year ended December 31, 2022, amounts due from or payable to Parent and affiliates were accumulated by the Company and, as of the Parent's fiscal year-end, September 30, 2022, the net amount was settled by way of capital contributions or distributions. Changes in amounts due from or payable to Parent or affiliates are presented as a financing activity in the statement of cash flows, except as related to expenditures attributable to property and equipment. For the three months from October 1, 2022 to December 31, 2022, the net amount was not settled by way of capital contributions or distributions.

(6) EMPLOYEE STOCK OWNERSHIP PLAN

In 1986, the Parent established an employee stock ownership plan and trust, which purchased all of the Parent's outstanding stock. The ESOP is a noncontributory plan that covers substantially all of the employees of the Company and other Recology subsidiaries. Employees, except under certain conditions, become fully vested after a requirement of three years of service. No vesting occurs until the full service requirement is satisfied.

**RECOLOGY WESTERN OREGON – VALLEY, INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)

Notes to Financial Statements

December 31, 2022

(6) EMPLOYEE STOCK OWNERSHIP PLAN (CONTINUED)

The Parent's common stock is not traded on an established market. Presently, all shares are held by the ESOP. All distributions will be made from the ESOP in cash, which is received from Recology, or shares, subject to immediate repurchase by Recology. A participant who is vested is entitled to begin receiving a distribution from his or her ESOP account at a future date following his or her termination of employment. Distributions may be made in a lump-sum, equal annual installments over a period generally not to exceed five years, or a combination of the foregoing, generally as determined by the ESOP Administrative Committee (the Committee). The Committee also generally determines the time and manner of distributions, subject to the following limitations: (i) in the event of a participant's retirement, disability, or death, distribution must begin prior to September 30 of the plan year following the plan year in which employment terminates; and (ii) if a participant's employment terminates for any other reason, distribution must begin prior to September 30 of the sixth plan year following the plan year in which employment terminates, although the Committee may further defer distributions that are not attributable to post-1986 shares until the participant reaches the age that he or she would be required to reach in order to qualify for retirement under the ESOP. Each participant who has attained age 55 and has participated in the ESOP for at least 10 years may elect to receive cash distributions for in-service withdrawals attributable to post-1986 shares allocated to his or her account. An eligible participant is entitled to elect payment attributable to as much as 25% of his or her eligible shares during the first five years of election and up to 50% of eligible shares in the sixth year. The cash distributions are based upon the appraised value of Recology stock and other assets, if any, as of the most recent valuation of the participant's account.

The Parent makes contributions to the ESOP to make benefit payments to eligible participants under the Plan.

(7) SUBSEQUENT EVENTS

The Company has evaluated its subsequent events through April 7, 2023, which is the date the financial statements were available for issuance. As a result of the evaluation, we are not aware of any material modifications that should be made to these financial statements for them to be in conformity with generally accepted accounting principles.

SUPPLEMENTARY INFORMATION

**RECOLOGY WESTERN OREGON - VALLEY INC.**  
(A Wholly Owned Subsidiary of Recology Inc.)  
Schedule of Operational and General & Administrative Expenses  
For the Year Ended December 31, 2022

Operational expenses	
Contract labor	\$ 119
Depreciation	11,471
Fuel	1,022,431
Insurance	103,026
Supplies	95,324
Operational lease expense	974,480
Recycling processing costs	996,142
Repair and maintenance	1,773,569
Taxes and licenses	300,918
Yard debris funding	1,284,403
Other operational expenses	35,646
Total operational expenses	<u>\$ 6,597,529</u>

General and administrative expenses	
General administration allocation	\$ 1,463,057
Regional management and accounting fees	487,681
Advertising and promotion	3,719
Bad debt	69,847
Contributions	10,721
Billing services	58,361
Dues and subscriptions	29,411
Education and training	5,293
Bank service charges	83,140
Meals	8,302
Office supplies	20,615
Postage	30,659
Professional services	36,768
Telephone	66,146
Travel	3,131
Other administration	10,141
Total general and administrative expenses	<u>\$ 2,386,992</u>

See accompanying notes to financial statements and independent accountant's review report.

**RESOLUTION NO. 2023 – 24**

A Resolution of the City of McMinnville Approving a Collection Rate Increase Not to Exceed 4% for Recology Inc.

**RECITALS:**

**WHEREAS**, the City of McMinnville (“City”) entered into a franchise agreement with Recology Inc. (f/k/a Western Oregon Waste) on January 27, 2009, pursuant to Ordinance No. 4904; and

**WHEREAS**, under Article VI(1)(g) of the Franchise Agreement, a rate adjustment equal to the percent change in the Consumer Price Index (CPI) for all Urban Consumers for West-B/C, All Items (“Index”) is generally to be made each year, effective on July 1; and

**WHEREAS**, pursuant to the Franchise Agreement, Recology Inc. has requested a rate increase of 4%, which is based on the Index data published in April 2023; and

**WHEREAS**, This rate increase, if approved, will result in a projected operating margin for Recology Inc. of 8.48% and operating ratio of 91.46%.

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

1. The City of McMinnville incorporates the above-stated findings as if fully set forth herein.
2. The City of McMinnville approves an increase of Recology Inc.’s collection rates not to exceed 4%, as shown in the attached **Exhibit 1**, which rates will go into effect beginning July 1, 2023.
3. This Resolution takes effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a meeting held the 9<sup>th</sup> day of May 2023 by the following votes:

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

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

Abstain: \_\_\_\_\_

Approved this 9<sup>th</sup> day of May 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

**EXHIBIT:**

1. Recology Inc. Rate Schedule effective July 1, 2023

**RECOLOGY WESTERN OREGON  
MCM CITY OF MCMINNVILLE**

**SUMMARY RATE SHEET  
EFF. DATE: 7/1/2023**

CODE	DESCRIPTION	CURRENT RATE	INC %	INC \$\$	NEW RATE
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**CART SERVICES - CURBSIDE**

CURBSIDE: WITHIN 4 FEET OF THE CURB OR ROAD, AND AWAY FROM ALL CARS, MAIL BOXES, OR OTHER ITEMS.

**32 GALLON CART SERVICE**

**MONTHLY RATES**

32GWC	32G CART-CURB	\$ 29.11	4.00%	\$ 1.16	\$ 30.27
32GEC	32G CART EOW-CURBSIDE	\$ 18.90	4.00%	\$ 0.76	\$ 19.66
32GMC	32G CART MONTHLY-CURB	\$ 10.18	4.00%	\$ 0.41	\$ 10.59
OC3C	32 GAL CART ON CALL CURB	\$ 10.18	4.00%	\$ 0.41	\$ 10.59
	ADDITIONAL CART - SAME RATE				

**90 GALLON CART SERVICE**

**MONTHLY RATES**

90GWC	90G CART-CURB	\$ 48.54	4.00%	\$ 1.94	\$ 50.48
90GEC	90G CART EOW-CURB	\$ 31.54	4.00%	\$ 1.26	\$ 32.80
90GMC	90G CART OAM-CURB	\$ 16.99	4.00%	\$ 0.68	\$ 17.67
OC9C	90 GAL CART ON CALL CURB	\$ 16.99	4.00%	\$ 0.68	\$ 17.67
	ADDITIONAL CART - SAME RATE				

**MONTHLY CART RENT (FOR ON-CALL SERVICE)**

90GOC	90G CART WILL CALL-CURB	\$ 2.70	4.00%	\$ 0.11	\$ 2.81
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**SPECIAL PICK-UP (FOR OFF-SCHEDULE COLLECTION)**

**RATE PER EACH**

SP32C	SPEC P/U 32G CART CURBSIDE	\$ 10.18	4.00%	\$ 0.41	\$ 10.59
SP90C	SPEC P/U 90G CART CURBSIDE	\$ 16.99	4.00%	\$ 0.68	\$ 17.67

Note: Recycle carts dumped as trash due to contamination may be charged the special pick-up rate.

**CART SERVICES - NON-CURBSIDE (SIDEYARD)**

NON-CURBSIDE: VISIBLE FROM THE STREET, OUTSIDE OF GARAGES AND FENCED AREAS.

**32 GALLON CART SERVICE**

**MONTHLY RATES**

32GWS	32G CART-SIDE	\$ 45.29	4.00%	\$ 1.81	\$ 47.10
32GES	32G CART EOW-SIDEYARD	\$ 29.47	4.00%	\$ 1.18	\$ 30.65
32GMS	32G CART MONTHLY-SIDE	\$ 15.87	4.00%	\$ 0.63	\$ 16.50
OC3S	32 GAL CART ON CALL SIDE	\$ 15.87	4.00%	\$ 0.63	\$ 16.50
	ADDITIONAL CART - SAME RATE				

**90 GALLON CART SERVICE**

**MONTHLY RATES**

90GWS	90G CART-SIDE	\$ 74.45	4.00%	\$ 2.98	\$ 77.43
90GES	90G CART EOW-SIDE	\$ 48.40	4.00%	\$ 1.94	\$ 50.34
90GMS	90G CART OAM-SIDE	\$ 26.04	4.00%	\$ 1.04	\$ 27.08
OC9S	90 GAL CART ON CALL SIDE	\$ 26.04	4.00%	\$ 1.04	\$ 27.08
	ADDITIONAL CART - SAME RATE				

**MONTHLY CART RENT (FOR ON-CALL SERVICE)**

90GOS	90G CART WILL CALL-SIDE	\$ 2.70	4.00%	\$ 0.11	\$ 2.81
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**SPECIAL PICK-UP (FOR OFF-SCHEDULE COLLECTION)**

**RATE PER EACH**

SP32S	SPEC P/U 32G CART NON CURBSIDE	\$ 15.87	4.00%	\$ 0.63	\$ 16.50
SP90S	SPEC P/U 90G CART NON CURBSIDE	\$ 26.04	4.00%	\$ 1.04	\$ 27.08

Note: Recycle carts dumped as trash due to contamination may be charged the special pick-up rate.

CODE	DESCRIPTION	CURRENT RATE	INC %	INC \$\$	NEW RATE
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**OTHER SERVICES & FEES**

**EXTRAS - PER UNIT CHARGES (APPROX. 32 GALLONS PER UNIT)**

**RATE PER EACH**

XBAG	EXTRA BAG(S)	\$ 7.68	4.00%	\$ 0.31	\$ 7.99
XBOX	EXTRA BOX	\$ 7.68	4.00%	\$ 0.31	\$ 7.99
XCAN	EXTRA CAN(S)	\$ 7.68	4.00%	\$ 0.31	\$ 7.99
XMISC	EXTRA MISC	\$ 7.68	4.00%	\$ 0.31	\$ 7.99
X32	EXTRA 32G CART(S)	\$ 7.68	4.00%	\$ 0.31	\$ 7.99
X90	EXTRA 90G CART(S)	\$ 12.16	4.00%	\$ 0.49	\$ 12.65

**BULKY ITEM COLLECTION (SVC CHARGE + CHARGE PER ITEM)**

RATES LISTED ARE FOR COLLECTION AT CURB. ADDITIONAL CHARGES MAY APPLY FOR RETRIEVAL.

**RATE PER EACH**

APF	REFRIGERATOR/FREEZER	\$ 29.29	4.00%	\$ 1.17	\$ 30.46
APL	APPLIANCE	\$ 11.72	4.00%	\$ 0.47	\$ 12.19
FURN	FURNITURE CHARGE	\$ 17.57	4.00%	\$ 0.70	\$ 18.27
TREE	EXTRA CHRISTMAS TREE	\$ 15.34	4.00%	\$ 0.61	\$ 15.95
IRSC	IN ROUTE SERVICE CHARGE	\$ 27.73	4.00%	\$ 1.11	\$ 28.84
SC	SERVICE CHARGE (OUT-OF-ROUTE)	\$ 27.73	4.00%	\$ 1.11	\$ 28.84

**RELATED FEES**

**RATE PER EACH**

CRIR	CART REDELIVERY IN ROUTE	\$ 10.00	4.00%	\$ 0.40	\$ 10.40
CROR	CART REDELIVER OUT OF ROUTE	\$ 20.00	4.00%	\$ 0.80	\$ 20.80
CORDF	CONTAINER RE-DELIVERY FEE	\$ 40.80	4.00%	\$ 1.63	\$ 42.43

Note: Re-Delivery fees apply for resume service after suspend.

**RATE PER EACH**

CCF	CART CLEANING FEE	\$ 10.00	4.00%	\$ 0.40	\$ 10.40
CRF	CART REPLACEMENT FEE	\$ 65.00	4.00%	\$ 2.60	\$ 67.60

Note: Replacement fee is used for loss/damage beyond normal wear and tear.

**RATE PER EACH**

WLI	WIND LATCH INSTALLATION	\$ 15.00	0.00%	\$ -	\$ 15.00
RF	REINSTATEMENT FEE	\$ 15.00	0.00%	\$ -	\$ 15.00
NSFCF	RETURNED CHECK FEE	\$ 25.00	0.00%	\$ -	\$ 25.00

**FRONT-LOAD CONTAINER SERVICE**

**1 YARD CONTAINERS**

**MONTHLY RATES**

1GW	1YD TRASH	\$ 210.57	4.00%	\$ 8.42	\$ 218.99
1GE	1YD TRASH EOW	\$ 124.17	4.00%	\$ 4.97	\$ 129.14
1GM	1YD TRASH MONTHLY	\$ 77.72	4.00%	\$ 3.11	\$ 80.83
1OC	ON CALL-1YD TRASH	\$ 43.89	4.00%	\$ 1.76	\$ 45.65
1XP	EXTRA PICK UP-1YD TRASH	\$ 43.89	4.00%	\$ 1.76	\$ 45.65

**1.5 YARD CONTAINERS**

**MONTHLY RATES**

1HGW	1.5YD TRASH	\$ 259.50	4.00%	\$ 10.38	\$ 269.88
1HGE	1.5YD TRASH EOW	\$ 148.64	4.00%	\$ 5.95	\$ 154.59
1HGM	1.5YD TRASH MONTHLY	\$ 89.00	4.00%	\$ 3.56	\$ 92.56
1HOC	ON CALL-1.5YD TRASH	\$ 56.35	4.00%	\$ 2.25	\$ 58.60
1HXP	EXTRA PICK UP-1.5YD TRASH	\$ 56.35	4.00%	\$ 2.25	\$ 58.60

CODE	DESCRIPTION	CURRENT RATE	INC %	INC \$\$	NEW RATE
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**2 YARD CONTAINERS**

**MONTHLY RATES**

2GW	2YD TRASH	\$ 308.40	4.00%	\$ 12.34	\$ 320.74
2GE	2YD TRASH EOW	\$ 173.12	4.00%	\$ 6.92	\$ 180.04
2GM	2YD TRASH MONTHLY	\$ 100.28	4.00%	\$ 4.01	\$ 104.29
2OC	ON CALL-2YD TRASH	\$ 68.75	4.00%	\$ 2.75	\$ 71.50
2XP	EXTRA PICK UP-2YD TRASH	\$ 68.75	4.00%	\$ 2.75	\$ 71.50

**3 YARD CONTAINERS**

**MONTHLY RATES**

3GW	3YD TRASH	\$ 406.30	4.00%	\$ 16.25	\$ 422.55
3GE	3YD TRASH EOW	\$ 222.04	4.00%	\$ 8.88	\$ 230.92
3GM	3YD TRASH MONTHLY	\$ 122.89	4.00%	\$ 4.92	\$ 127.81
3OC	ON CALL-3YD TRASH	\$ 93.61	4.00%	\$ 3.74	\$ 97.35
3XP	EXTRA PICK UP-3YD TRASH	\$ 93.61	4.00%	\$ 3.74	\$ 97.35

**4 YARD CONTAINERS**

**MONTHLY RATES**

4GW	4YD TRASH	\$ 504.15	4.00%	\$ 20.17	\$ 524.32
4GE	4YD TRASH EOW	\$ 270.97	4.00%	\$ 10.84	\$ 281.81
4GM	4YD TRASH MONTHLY	\$ 145.52	4.00%	\$ 5.82	\$ 151.34
4OC	ON CALL-4YD TRASH	\$ 118.50	4.00%	\$ 4.74	\$ 123.24
4XP	EXTRA PICK UP-4YD TRASH	\$ 118.50	4.00%	\$ 4.74	\$ 123.24

**5 YARD CONTAINERS**

**MONTHLY RATES**

5GW	5YD TRASH	\$ 602.07	4.00%	\$ 24.08	\$ 626.15
5GE	5YD TRASH EOW	\$ 319.91	4.00%	\$ 12.80	\$ 332.71
5GM	5YD TRASH MONTHLY	\$ 168.13	4.00%	\$ 6.73	\$ 174.86
5OC	ON CALL-5YD TRASH	\$ 143.33	4.00%	\$ 5.73	\$ 149.06
5XP	EXTRA PICK UP-5YD TRASH	\$ 143.33	4.00%	\$ 5.73	\$ 149.06

**6 YARD CONTAINERS**

**MONTHLY RATES**

6GW	6YD TRASH	\$ 699.90	4.00%	\$ 28.00	\$ 727.90
6GE	6YD TRASH EOW	\$ 368.85	4.00%	\$ 14.75	\$ 383.60
6GM	6YD TRASH MONTHLY	\$ 190.70	4.00%	\$ 7.63	\$ 198.33
6OC	ON CALL-6YD TRASH	\$ 168.20	4.00%	\$ 6.73	\$ 174.93
6XP	EXTRA PICK UP-6YD TRASH	\$ 168.20	4.00%	\$ 6.73	\$ 174.93

**8 YARD CONTAINERS (NO NEW CUSTOMERS AT THIS SIZE DUE TO SAFETY ISSUES)**

**MONTHLY RATES**

8GW	8YD TRASH	\$ 820.76	4.00%	\$ 32.83	\$ 853.59
8GE	8YD TRASH EOW	\$ 429.28	4.00%	\$ 17.17	\$ 446.45
8GM	8YD TRASH MONTHLY	\$ 218.58	4.00%	\$ 8.74	\$ 227.32
8OC	ON CALL-8YD TRASH	\$ 198.89	4.00%	\$ 7.96	\$ 206.85
8XP	EXTRA PICK UP-8YD TRASH	\$ 198.89	4.00%	\$ 7.96	\$ 206.85

**CONTAINER MONTHLY RENT (CHARGED TO WILL-CALL CUSTOMERS, SAME FOR ALL SIZES)**

RNT1	1YD RENT - TRASH	\$ 20.00	4.00%	\$ 0.80	\$ 20.80
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**FRONT-LOAD COMPACTORS** - Additional charges apply for compacted waste.

CODE	DESCRIPTION	CURRENT RATE	INC %	INC \$\$	NEW RATE
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**DEBRIS BOX SERVICES**

**SET HAUL FEES (BASED ON AVERAGE TRUCK TIMES)**

**RATE PER HAUL**

DEL	DELIVERY CHARGE	\$ 54.98	4.00%	\$ 2.20	\$ 57.18
10HG	TRASH BOX HAUL FEE (ALL SIZES)	\$ 208.22	4.00%	\$ 8.33	\$ 216.55
40CG	COMPACTOR HAUL FEE (ALL SIZES)	\$ 248.62	4.00%	\$ 9.94	\$ 258.56

**DEBRIS BOX DISPOSAL FEES**

**RATE PER UNIT**

DFDM	DISPOSAL FEE - DEMOLITION (\$\$/TON)	\$ 75.58	4.00%	\$ 3.02	\$ 78.60
DFG	DISPOSAL FEE - GARBAGE (\$\$/TON)	\$ 75.58	4.00%	\$ 3.02	\$ 78.60
DFWD	DISPOSAL FEE - CLEAN WOOD (\$\$/TON)	\$ 43.69	4.00%	\$ 1.75	\$ 45.44
DFYD	DISPOSAL FEE - YARD DEBRIS (\$\$/YD <sup>3</sup> )	\$ -	0.00%	\$ -	\$ -

Note: Recycling ton fees will be equal to or less than trash fees, based on current market pricing.

**TEMPORARY DEBRIS BOXES - COD RATES (INCLUDES HAUL & AVERAGE DISPOSAL FOR BOX SIZE)**

10DG	10 YARD BOX W/DISPOSAL	\$ 391.40	4.00%	\$ 15.66	\$ 407.06
20DG	20 YARD BOX W/DISPOSAL	\$ 549.35	4.00%	\$ 21.97	\$ 571.32
30DG	30 YARD BOX W/DISPOSAL	\$ 707.37	4.00%	\$ 28.29	\$ 735.66

**RELATED FEES**

**RATE PER DAY**

RENTD	DAILY RENTAL FEE	\$ 13.21	4.00%	\$ 0.53	\$ 13.74
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Note: Daily Rent applies after 48 hours, excluding evenings and weekends.

**RATE PER MONTH**

RENTM	MONTHLY RENTAL FEE	\$ 186.45	4.00%	\$ 7.46	\$ 193.91
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Note: Monthly rent applies for customers who keep a box for a year or longer.

**RATE PER HOUR**

TIME	TRUCK TIME FEE	\$ 151.44	4.00%	\$ 6.06	\$ 157.50
1T1E	1 TRUCK - 1 EMPLOYEE	\$ 163.19	4.00%	\$ 6.53	\$ 169.72
1T2E	1 TRUCK - 2 EMPLOYEES	\$ 244.75	4.00%	\$ 9.79	\$ 254.54

Note: Hourly Truck Time is used for hauls to destinations outside our normal operating areas.

**TEMPORARY RENTAL CONTAINERS**

**RATE PER EACH**

3YRGD	DELV 3 YD RENTAL FOR TRASH	\$ 36.80	4.00%	\$ 1.47	\$ 38.27
3YRGP	SERVICE 3 YD RENTAL FOR TRASH	\$ 121.66	4.00%	\$ 4.87	\$ 126.53
3YRXD	ADDL DAY - 3YD RENT CONTAINER	\$ 2.00	0.00%	\$ -	\$ 2.00

Note: Temporary = not longer than 30 days, with 45 days between projects. Rent included for first 7 days.

**BULKY ITEMS - DEBRIS BOX**

STANDARD FEES APPLY FOR THESE ITEMS IF DECLARED & SEPARATED ACCORDING TO INSTRUCTIONS.

ADDITIONAL FEES MAY APPLY FOR ITEMS FOUND IN LOADS.

**RATE PER EACH**

TOFFR	TIRE CHARGE NO RIM	\$ 4.69	4.00%	\$ 0.19	\$ 4.88
TONR	TIRE CHARGE ON RIM	\$ 9.37	4.00%	\$ 0.37	\$ 9.74
APPL	APPLIANCE	\$ 11.72	4.00%	\$ 0.47	\$ 12.19
APF	REFRIGERATOR/FREEZER	\$ 29.29	4.00%	\$ 1.17	\$ 30.46

**MEDICAL WASTE COLLECTION SERVICES**

**RATE PER EACH**

M4HSC	4.7 QT SHARPS CONTAINER	\$ 22.33	4.00%	\$ 0.89	\$ 23.22
M10SC	10 QT SHARPS CONTAINER	\$ 25.84	4.00%	\$ 1.03	\$ 26.87
M23SC	23 QT SHARPS CONTAINER	\$ 49.00	4.00%	\$ 1.96	\$ 50.96
9CDBC	9GAL CONFIDENTIAL DOCUMENT BOX	\$ 36.28	4.00%	\$ 1.45	\$ 37.73
MW17G	MEDICAL WASTE 17 GAL	\$ 22.50	4.00%	\$ 0.90	\$ 23.40
MW31G	MEDICAL WASTE 31 GAL	\$ 29.00	4.00%	\$ 1.16	\$ 30.16
MW43G	MEDICAL WASTE 43 GAL	\$ 35.00	4.00%	\$ 1.40	\$ 36.40
MLGPB	MEDICAL WASTE TRACE CHEMO BOX	\$ 51.00	4.00%	\$ 2.04	\$ 53.04
MWTCB	PATHOLOGY BOX	\$ 51.00	4.00%	\$ 2.04	\$ 53.04

Note: Additional fees may apply for overweight tubs. Improperly prepared materials cannot be collected.

Finance Charges (0.75% monthly, 9% annually) will be assessed on any past due amount (excluding amounts in dispute over billing or service issues).  
 Billing Terms: Commercial Accounts are billed on a monthly basis.  
 Residential accounts are billed once every three months, in advance.



# STAFF REPORT

**DATE:** May 9, 2023  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Community Development Director  
**SUBJECT:** Resolution No. 2023-22, Subgrantee Agreement with YCAP for the McMinnville Navigation Center

## STRATEGIC PRIORITY & GOAL:



### HOUSING OPPORTUNITIES (ACROSS THE INCOME SPECTRUM)

Create diverse housing opportunities that support great neighborhoods.

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

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## Report in Brief:

This action is the consideration of Resolution No. 2023-22 approving a subgrantee agreement between Yamhill Community Action Partnership (YCAP) and the City of McMinnville in the amount not to exceed of \$500,000 for applicable reimbursements for some Pre-Construction and Construction activities incurred between July 07, 2021, through June 30, 2023, for the AnyDoor Place, a McMinnville Navigation Center. The reimbursements will be made from a YCAP/Oregon Housing and Community Services (OHCS) grant with a June 30, 2023, closing date.

## Background:

The City of McMinnville has entered into an agreement with the Yamhill Community Action Partnership to manage the construction phase of the AnyDoor Place, McMinnville's Navigation Center. The City received \$1.5M from the Oregon Legislature in 2021 session for the project. The City has contracted with Fackler Construction Company for Construction Managers/General Contractor (CM/GC) services to rehabilitate two existing structures, (approximately 2,677 and 2,251 square feet respectively) and build a new addition (approximately 2,420 square feet) joining the two structures as an emergency low barrier shelter and supportive services facility. The Fackler Construction Company was selected will be providing services during the design and construction phases of the project. The construction will start on approximately June 1, 2023, and the facility is expected to open in May 2024. The City Council approved the CM/GC contract by Resolution 2022-74.

Additional funding for the project has been secured including \$500,000 for pre-construction and construction costs from a \$1.4M YCAP/Oregon Housing and Community Grant #7301 and \$609,500 from the Yamhill Community Care Organization (YCCO).

**Discussion:**

As the GM/GC process moves to the Construction Phase, the City is structuring it into two phases for the construction contracts with Fackler Construction Company – Phase 1 will be pre-construction actions that can be completed by June 30, 2023, and Phase 2 will be Permitted Construction.

The Phase 1 Construction Contract will be funded by up to \$500,000 from the YCAP/Oregon Housing and Community Services Grant #7301. This subgrantee agreement will allow YCAP to reimburse the City for applicable pre-construction expenses incurred between July 07, 2021, through June 30, 2023. The applicable reimbursements are defined as approved architecture, design, and pre-construction costs such as site preparation, approved utility work, product procurement, etc.

**Attachments:**

Resolution No. 2023-22

- Exhibit A for Resolution No. 2023-22: Subgrantee Agreement for Reimbursement to the City from Yamhill Community Action Partnership for Pre-Construction and Construction Expenses between July 07, 2021, through June 30, 2023.

OHCS\_7301\_Grant\_SIOP\_Final 1.4M

**Fiscal Impact:**

This subgrantee agreement is for an amount not to exceed \$500,000.

**City Council Options:**

- 1) Approve Resolution No. 2023-22 authorizing the City Manager to sign the subgrantee agreement between YCAP and the City.
- 2) Request more information.
- 3) Do not approve Resolution No. 2023-22.

**Recommendation:**

Staff recommends that the City Council approve Resolution No. 2023-22.

**RESOLUTION NO. 2023-22**

A Resolution authorizing the City Manager to enter into a subgrantee agreement with Yamhill Community Action Partnership for pre-construction and construction reimbursement for applicable expenses incurred between July 07, 2021, through June 30, 2023 for the ANYDOOR Place, a McMinnville Navigation Center.

**RECITALS:**

**Whereas**, the AnyDoor Place, a McMinnville Navigation Center, addresses the need for an emergency low barrier shelter and supportive services facility in McMinnville; and

**Whereas**, Yamhill Community Action Partnership will reimburse the City for applicable pre-construction and construction expenses for the ANYDOOR Place, a McMinnville Navigation Center; and

**Whereas**, Funding for this project is included in the adopted FY22 Affordable Housing Fund.

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

1. That entry into a subgrantee agreement contract with Yamhill Community Action Partnership for applicable pre-construction and construction reimbursements for the ANYDOOR Place, a McMinnville Navigation Center is hereby approved.
2. The City Manager is hereby authorized and directed to execute the Subgrantee Agreement 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 9th day of May 2023 by the following votes:

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

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

Approved this 9th day of May 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

**EXHIBIT:**

- A. Subgrantee Agreement for Reimbursement

Sub-Recipient Contract Agreement  
Part 1. Signatures

The Agreement is between Yamhill Community Action Partnership, here in after referred to as “YCAP” and, City of McMinnville, hereinafter referred to as “SUBRECIPIENT”.

Term of Contract 07/01/2021 through 6/30/2023.

This Agreement consists of the following documents:

- Part 1. Signatures
- Part 2. Assurances, Terms and Conditions and Compliance Requirements

Subject to the terms of this agreement, funding availability, and any grant amount adjustments, YCAP will provide Oregon Housing and Community Services Department (OHCS) grant #7301 Grant Shelter Infrastructure and Operations Program – Navigation Centers funds up to \$500,000 to SUBRECIPIENT for architecture, design, pre-construction and construction costs. These funds are to be used by Subrecipient for pre-approved costs at the buildings located at 327 and 329 Adams St, McMinnville, OR 97128 hereinafter referred to as “Facility”, and to work in collaboration with YCAP’s housing stabilization program in a manner satisfactory to OHCS and in compliance with all program requirements. The provided funds are the maximum amount which the Subrecipient may use for the listed purposes. The capital expenditure related to this Agreement will be owned by YCAP per the terms of the Navigation Center Construction and Operations Agreement dated May 25, 2022.

Subrecipient shall perform in a satisfactory manner all activities in accordance with the approved specifications, budgets, and other terms and conditions of this Agreement. In addition, Subrecipient agrees to comply with applicable portions of Grant Agreement #7301 between YCAP and OHCS.

Subrecipient, by signature below of the authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Yamhill Community Action Partnership

City of McMinnville

\_\_\_\_\_  
Alexandra Hendgen, Executive Director

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Part 2: Assurances, Terms, Conditions and Compliance Requirements

This Agreement contains all the terms and conditions agreed upon by both parties. Services provided hereunder, and the performance of this agreement are made a part of this document as though fully set forth. Services must be delivered efficiently, effectively and within various program plan timelines.

1.) Funds will be distributed as follows:

Subrecipient will submit requests for reimbursement of approved architecture, design, pre-construction and construction costs through a mutually agreeable process and format. All fund distributions must be supported by documentation satisfactory to YCAP, including properly executed invoices, contracts, vouchers, orders, checks, and other accounting documents. Approved reimbursement requests will be paid within thirty (30) calendar days upon receipt of reimbursement request and all back up documentation. If Subrecipient does not use funds for the purposes described hereunder, Subrecipient shall pay back all of the grant funds to YCAP. Any funds disbursed to Subrecipient, but not used for the approved purposes must be returned.

2.) In the event that both parties agree that YCAP will incur any of these expenses directly, that portion of the compensation will be no longer be available for the Subrecipient. Any surplus and/or unused funds will be administered by YCAP in its sole discretion and as required under the grant. Grant expenses are only applicable to those incurred during the term of the contract. YCAP will have no further liability to disburse grant funds, pay for services directly, or reimburse expenses incurred after June 30, 2023.

3.) YCAP or OHCS, including its authorized representatives and authorized third parties may monitor the activities and records of Subrecipient. Subrecipient shall provide access to such records and provide additional reports as needed and requested by YCAP. Subrecipient will retain all records of this program for six (6) years.

4.) Subrecipient will inform YCAP of any changes to schedule or provision of services in advance. Any and all changes to schedule or provision of services funded through this agreement shall be agreed to by the parties. Information updates should be sent to YCAP's Executive Director ([AlexandraH@yamhillcap.org](mailto:AlexandraH@yamhillcap.org)) and Jenn Sharp ([sledshedconsulting@outlook.com](mailto:sledshedconsulting@outlook.com)). All costs must be preapproved by YCAP's Executive Director ([AlexandraH@yamhillcap.org](mailto:AlexandraH@yamhillcap.org)).

5.) YCAP will not be obligated or liable for payment under this contract to any party other than Subrecipient unless agreed to by YCAP in writing. This contract will automatically terminate on the last day of the contract period. No payments will be made under this contract for good/services purchased outside the contract period. No reimbursements will be made for ineligible payments. Ineligible payments include those outside of the

items listed, at amounts listed, in attached budget or costs lacking backup documentation. Reimbursement submissions should be submitted in one submission to YCAP on or before the 10<sup>th</sup> of every month for reimbursement for the prior month's expenses.

- 6.) YCAP and Subrecipient may, without cause, by written notice, suspend activities or terminate this contract under any of the following conditions:
- A. By mutual consent of the parties, or by either party upon (30) calendar days written notice and delivered by certified mail or in person;
  - B. Notwithstanding the foregoing, YCAP may terminate this contract effective immediately upon delivery of written notice to Subrecipient or at such later date as may be established by YCAP, under the following conditions:
    - a. If YCAP funding from federal, state, or other sources is not obtained or not continued at levels sufficient to allow for purchase of the indicated quality and quantity of services. When possible, and if agreed upon by the parties, this contract may be modified to accommodate a reduction in funds.
    - b. If federal or state regulations or guidelines are modified or changed in such a way that the services are no longer allowable or appropriate for purchase under this contract.
    - c. If any time, including during the course of a program review, monitoring or review, it is determined that services or financial records have been falsified.
    - d. If Subrecipient fails within ten (10) calendar days of receiving written notice to meet any terms of this contract.
    - e. If Subrecipient fails to pursue the services to be performed under this contract so as to endanger performance of this contract in accordance with its terms and after receipt of written notice from YCAP or fails to correct such performance within ten (10) calendar days or such longer period as YCAP may authorize.
    - f. If Subrecipient fails within ten (10) calendar days or receiving written notice, to cooperate and participate in monitoring by YCAP or the Oregon Housing and Community Services (OHCS).
    - g. If Subrecipient fails within ten (10) calendar days or such other time agreed to by Subrecipient and YCAP, of receiving written notice, to affect any corrective actions required by YCAP arising from audit or monitoring funds or failure to meet performance.
  - C. The rights and remedies of YCAP provided in the above clause related to defaults (including breach of contract) by Subrecipient shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- 7.) Subrecipient shall use and maintain accounting policies, practices and procedures, which are consistent with generally accepted accounting principles, and in accordance with all applicable state and federal requirements. Subrecipient shall ensure that YCAP or their

designated agent, with reasonable notice, has access to all records related to operation of the facility that are necessary for audit, monitoring or other investigations.

- 8.) Subrecipient, if subject under the Oregon Worker's Compensation Law, will comply with ORS 656.017, which requires them to provide Worker's Compensation coverage that satisfies Oregon Law for all their subject workers.
- 9.) Subrecipient shall work as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- 10.) Subrecipient shall defend, save, hold harmless, and indemnify YCAP, the State of Oregon and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney's fees (collectively, "claims"), resulting from, arising out of, or relating to the activities of Subrecipient or its officers, employees, subcontractors, agents, or subrecipients under this agreement, limited as required under Oregon law, if applicable, including the Oregon Tort Claims Act and the Oregon Constitution. Neither Subrecipient nor any attorney engaged by recipient may defend any claim in the name of YCAP or the State of Oregon (including any agency of the State of Oregon), nor purport to act as legal representation for the State of Oregon, without first receiving from the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may subrecipient settle any claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. If the State of Oregon assumes its own defense, subrecipient will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charges by The Oregon Department of Justice. Subrecipient may not use any grant funds to reimburse itself for the defense of or settlement of any claim.
- 11.) Subrecipient agrees at Subrecipient's own expense to maintain during the term of this Contract general liability insurance in a company authorize to do business in Oregon satisfactory to YCAP (which approval will not be unreasonably withheld) with combined single limit of not less than One Million Dollars (\$1,000,000) for personal injury or death, and One Million Dollars (\$1,000,000) for property damage, and that YCAP will be one of the parties insured thereunder. The policy shall contain a written endorsement which shall name YCAP as an additional insured under the policy. Such insurance shall cover all risks arising directly or indirectly out of the Subrecipient's activities at the facility, whether or not related to an occurrence caused by YCAP. Subrecipient shall provide certificates evidencing such insurance and bearing additional insured endorsement and endorsements requiring ten (10) days written notice to YCAP and any mortgagee prior to Subrecipient's occupancy of the property, to evidence renewals of the insurance. The amount of the limits of insurance set forth above shall be periodically increased by Subrecipient to reflect commercially reasonable rates for such insurance amounts.

- 12.) Subrecipient will not discriminate against, nor deny employment or services to any person on the grounds of race, color, religion, gender, familial status, marital status, sexual orientation, gender identity, source of income, sex, national origin, age, disability, citizenship, or political affiliation or belief. Subrecipient shall comply with all state and federal statutes relation to nondiscrimination.
- 13.) Subrecipient acknowledges that personally identifiable information is protected by federal laws. If Subrecipient collects any personally identifiable information of clients and/or applicants, it shall provide a privacy notification in writing to such client and/or applicant, and it shall follow state and federal laws for the collection, use, and sharing of such applicant/client information. In addition, Subrecipient shall protect the confidentiality of all information as required by law concerning applicants for and recipients of services funded by this agreement and shall not release or disclose any information except as directly connected with the administration of the particular program(s) or as authorized in writing by the applicant or recipient. All records and files shall be appropriately secured to prevent access by unauthorized persons, including but not limited to: (1) keeping computer terminals in a secure location and limiting access to those persons who have a legitimate interest in and are responsible for client records; (2) clearing monitors immediately after accessing client records; (3) locking or turning off terminals when they are unattended; and (4) ensuring that personally identifiable data only be given to authorized personnel as necessary for performing the work hereunder. Subrecipient shall ensure that all officers, employees and agents are aware of and comply with this confidentiality requirement.
- 14.) Subrecipient is solely liable for any failure or costs from Subrecipient's failure to meet any of the requirements of this contract.
- 15.) Subrecipient ensures that no activity under this contract will promote political or religious activities. No employees under this contract will be selected or promoted based on political or religious beliefs or affiliation.
- 16.) YCAP assumes no liability with respect to bodily injury, illness or any other damage or losses or with respect to any claims arising out of any activity under this contract unless otherwise specified. YCAP assumes no liability to third parties for any of Subrecipient's acts or omissions.
- 17.) YCAP and Subrecipient 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. The State of Oregon is hereby expressly identified as an intended beneficiary.

- 18.) YCAP and Subrecipient 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.
- 19.) 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.
- 20.) 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 County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- 21.) 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.
- 22.) 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 party of that or any other provision.
- 23.) 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.
- 24.) Subrecipient may not assign or transfer its interest in this agreement without the prior written consent of YCAP and any attempt by Subrecipient to assign or transfer its interest in this agreement without such consent will be void and of no force or effect. YCAP's consent to Subrecipient's assignment or transfer of its interest in this agreement will not relieve Subrecipient 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.

- 25.) Time is of the essence in Subrecipient's performance of the activities under this agreement.
- 26.) Each party agrees to protect the confidential and sensitive information it receives from any other signatory in accordance with applicable law, rule, and policy, and hold all information not verified or received as public information with the presumption that it is confidential or otherwise sensitive.
- 27.) If an action is instituted to enforce or interpret any term of this agreement, the prevailing party will recover from the losing party reasonable attorney fees and court costs incurred in the action as set by the trial court or arbitrators, as the case may be, and, in the event of appeal, as set by the appellate courts.
- 28.) Subrecipient certifies and represents that the individual(s) signing this agreement has been authorized to enter into and execute this agreement on behalf of Subrecipient, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Subrecipient and shall provide proof of such authority upon request.

**STATE OF OREGON  
OREGON HOUSING AND COMMUNITY SERVICES**

**GRANT AGREEMENT #7301**

***Shelter Infrastructure and Operations Program- Navigation Centers (SIOP-NAV)***

This Grant Agreement (this "Agreement") is entered into by and between the State of Oregon, acting by and through its **Housing and Community Services Department**, together with its successors and assigns hereinafter referred to collectively as "OHCS" or "Agency," and **Yamhill Community Action Partnership**, an Oregon nonprofit public benefit corporation, hereinafter referred to as "Grantee".

**Recitals**

- A. In the 2022 regular session of the Oregon Legislative Assembly, Agency received an allocation of \$80 Million of state general funds (Or Laws 2022, Chapter 110, Section 357 (House Bill 5202 (2022))) for homeless response and prevention efforts.
- B. The Oregon Housing Stability Council approved the obligation of Grant Funds on September 2, 2022.
- C. Grantee is willing to execute this Agreement obligating itself to comply with the terms and conditions hereof, including but not limited to satisfaction of its obligations arising hereunder in exchange for receipt of the funds described herein.
- D. Agency is deploying these funds through a variety of networks to support Oregonians with housing stability services, including sheltering needs and supports.

**Agreement**

NOW THEREFORE, for good and sufficient consideration, including the terms and conditions herein, it is agreed by and between the parties hereto as follows:

**1. Incorporation; Definitions.**

- 1.1. Incorporation.** The foregoing Recitals, the Notice or Notices of Allocation ("NOAs"), and the Exhibits hereto are incorporated into this Agreement by reference, except that the Recitals, the NOAs, and the Exhibits do not modify this Agreement's express provisions.
- 1.2. Definitions.** The words and phrases used in this Agreement have the meanings given herein or as used in the Program Requirements.

**2. Authority.**

Pursuant to Oregon Revised Statutes (“ORS”) 456.625(17), Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Agreement.

### **3. Term of Agreement.**

When all parties have executed this Agreement, and all necessary approvals have been obtained (the “Executed Date”), this Agreement is effective and has a funding start date as of July 1, 2022 (the “Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on **August 15, 2023** (the “Termination Date”). The performance and expenditure period for Grant Funds is July 1, 2021 through June 30, 2023.

### **4. Grant Managers and Program Coordinators.**

#### **4.1.** Agency’s Grant Manager is:

Mike Savara  
725 Summer Street NE, Suite B  
Salem, OR 97301  
(503) 931-5944  
[Mike.Savara@hcs.oregon.gov](mailto:Mike.Savara@hcs.oregon.gov)

#### **4.2.** Agency’s Program Coordinator is:

Colt Sray  
725 Summer Street NE, Suite B  
Salem, OR 97301  
(503) 881-0998  
[colt.sray@hcs.oregon.gov](mailto:colt.sray@hcs.oregon.gov)

#### **4.3.** Grantee’s Grant Manager is:

Laverne Pitts  
P.O Box 621  
McMinnville, OR 97128  
(503) 687-1488  
[lavernep@yamhillcap.org](mailto:lavernep@yamhillcap.org)

#### **4.4.** A party may designate a new Grant Manager by written notice to the other party.

### **5. Project Activities; Program Requirements.**

**5.1 Project Activities.** Grantee must perform the project activities set forth in Exhibit A, (Shelter Infrastructure and Operations Program-Navigation Centers), Exhibit B, (Grant Activity), and Exhibit C, (Operations Manual) (collectively, the “Work”), attached hereto and incorporated into this Agreement by this reference, for the period beginning on the Effective Date and ending on the Termination Date (the “Performance Period”).

**5.2 Program Requirements.** Grantee agrees to timely satisfy, to the satisfaction of Agency, all requirements of this Agreement, including all applicable Agency administrative rules, all applicable Agency program guidance (including but not limited to handbooks, manuals, and frequently asked questions), all related Agency

directives and other orders (including, but not limited to corrective action notices), the Shelter Infrastructure and Operations Program –Navigation Centers attached as Exhibit A hereto, Grant Activity attached as Exhibit B hereto, Operations Manual attached as Exhibit C hereto, Insurance Requirements attached as Exhibit D hereto, Recipient’s Contractor Construction Insurance Requirements attached as Exhibit E hereto, and all other applicable federal, state, and local statutes, rules, regulations, ordinances, and orders (all of the foregoing, as amended from time to time, collectively, the “Program Requirements”).

## **6. Grant Funds.**

In accordance with the terms and conditions of this Agreement, Agency will provide Grantee up to **\$1,489,472.00** (the “Grant Funds”) for the Work. Agency will pay the Grant Funds from monies allocated from the Oregon Legislature for this Program (the “Funding Source”).

## **7. Disbursement of Grant Funds; Allowable Costs.**

### **7.1. Disbursement.**

- 7.1.1. **Funding Availability.** Subject to the availability of sufficient monies in and from the Funding Source based on Agency’s reasonable projections of monies accruing to the Funding Source, Agency will disburse Grant Funds to Grantee for the Work that is undertaken during the Performance Period.
- 7.1.2. **Grant Activity Report.** Agency’s disbursement of Grant Funds to Grantee are contingent upon Grantee’s prior submission to Agency and Agency’s review and acceptance of Grantee’s plan to execute the Work in accordance with the Program Requirements (the “Grant Activity Report”).
- 7.1.3. **Notices of Allocation (NOAs).** Upon its acceptance of Grantee’s Grant Activity Report, Agency will issue by email or mail one or more Notices of Allocation (NOAs) to Grantee to indicate approval of the Grant Activity. Grantee is subject to, and will comply with, all such NOA terms and conditions, including this Agreement and the Program Requirements. Any NOA issued as described herein is immediately effective, is incorporated into and constitutes a part of this Agreement. Grantee accepts a NOA, including modifications thereto, upon undertaking performance of the Work funded by a NOA. Agency reserves the right in its sole discretion to modify, correct, adjust, or terminate any NOAs. Agency’s modification or termination of a NOA does not terminate Agency’s remedies with respect to Grantee’s performance or non-performance of obligations due under this Agreement.
- 7.1.4. **Backup Documentation; Substantiation.**
- 7.1.4.1. Grantee must provide to Agency any information or detail regarding the expenditure of Grant Funds required under Exhibits A-C prior to disbursement or as Agency may request.
- 7.1.4.2. Grantee’s requests for Grant Funds must be supported by documentation satisfactory to Agency, including but not limited to: properly executed payroll and time records, invoices, contracts, vouchers, orders, canceled checks and/or any other accounting documents pertaining in whole or in part to the Agreement (or in the case of subrecipients, under their respective contracts

with Grantee) in accordance with generally accepted accounting principles and applicable state and federal requirements, including as specified herein. Agency may require such other information or clarification as it deems necessary or appropriate in its sole discretion.

- 7.1.5. **Approval by Agency.** Agency will only disburse Grant Funds to Grantee for activities completed or materials produced, that, if required by Exhibits A-C are approved by Agency. If Agency determines any completed Work is not acceptable and any deficiencies are the responsibility of Grantee, Agency will prepare a detailed written description of the deficiencies within fifteen (15) days of receipt of the materials or performance of the activity and will deliver such notice to Grantee. Grantee must correct any deficiencies at no additional cost to Agency within fifteen (15) days. Grantee may resubmit a request for disbursement that includes evidence satisfactory to Agency demonstrating deficiencies were corrected.
- 7.2. **Conditions Precedent to Disbursement.** Agency's obligation to disburse Grant Funds to Grantee under this Agreement is subject to satisfaction of each of the following conditions precedent:
- 7.2.1. Agency has received sufficient funding, appropriations, expenditure limitation, allotments, or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;
- 7.2.2. No default as described in Section 17 has occurred; and
- 7.2.3. Grantee's representations and warranties set forth in Section 12 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.
- 7.3. **Advances and Reimbursement of Grant Funds.**
- 7.3.1. **Generally.** Grantee must request Grant Funds in such form and manner as is satisfactory to or required by Agency. Further, in accordance with U.S. Treasury Regulations, 31 CFR Part 205, implementing the Cash Management Improvement Act, Grantee must limit any request for Grant Funds to the minimum amount needed to accomplish its described purposes and to time the request in accordance with the actual, immediate cash requirements of the Grantee in performing the Work. Submission of proper account records showing revenue and expenditures for the reporting period must be submitted as documentation to support the amounts being requested. The foregoing requirements apply to all Grant Funds requested under this Agreement.
- 7.3.2. **Advance of Funds (Projected).** Grantee may request and be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to the Grantee must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Grantee in carrying out the purposes of the grant as described in this Agreement. The timing and amount of advance payments must be as close as is administrative feasible to

the actual disbursements by the Grantee for allowable grant direct costs and the proportionate share of any allowable indirect costs. Grantee must make timely payment to contractors in accordance with the contract provisions. Advance grant fund payments are at Agency's sole discretion and will be made only as close as is administratively feasible to the actual use by the Grantee for applicable direct or indirect Work costs and only up to the proportionate share of such allowable costs as is permitted under the Agreement, including applicable Program Requirements.

- 7.3.3. **Reimbursement of Funds.** When the Grantee requests payment by reimbursement, reimbursement is the preferred method when the requirements in Section 7.3.2. above cannot be met. Agency will make payment within thirty (30) calendar days upon receipt of the reimbursement request and all adequate backup documentation (to the Agency's satisfaction, in its sole discretion), unless Agency reasonably believes the request to be improper.
- 7.4. Disallowance of Costs.**
- 7.4.1. Agency is not responsible nor shall it pay for any costs disallowed either upon a request for funds or as a result of any audit, review, site visit, or other disallowance action by Agency, except for costs incurred by Grantee solely due to the willful misconduct or gross negligence of Agency, its employees, officers, or agents. If a cost is disallowed by Agency after reimbursement has occurred, Grantee shall repay all disallowed costs to Agency upon written notice within the time frame specified by Agency, which in no event shall exceed thirty (30) days.
- 7.4.2. If Grantee is a county, such disallowed costs may be recovered by Agency only through repayment, withholding, or by other means authorized by this Agreement or as allowed at law not inconsistent with the Oregon Constitution, and particularly Article XI, Section 10 and consistent with the Program.
- 7.4.3. If Grantee is other than a county, Agency may recover such disallowed costs through repayment, withholding, offset, or other means permitted under this Agreement, by law or otherwise but consistent with the Program.
- 7.4.4. Grantee will, and will cause its subrecipients to, cooperate with Agency and all appropriate investigative agencies and will assist in recovering invalid payments.
- 7.5. Unallowable Costs and Lobbying Activities.** Grantee will review and comply with the Program Requirements and adhere to provisions on allowable costs and expenditures. Grantee will, among other obligations, comply with the provisions prohibiting the expenditure of funds for lobbying and related activities, whether in 2 CFR Part 230, 2 CFR Part 225, or otherwise, as such provisions may be modified from time to time. If Grantee makes expenditures or incurs costs for purposes or amounts inconsistent with the allowable costs of the Grant Funds as described in Exhibits A -C, or elsewhere in this Agreement, such funds are subject to recapture and Agency may exercise any and all remedies under this Agreement or otherwise available at law.
- 7.6. No Duplicate Payments.** Grantee may use other funds in addition to the Grant Funds to complete the Work; provided, however, the Grantee may not credit or pay any Grant Funds for Work costs that are paid for with other funds and would result in duplicate funding. Grantee is provided thirty (30) days to return the duplicative payments. After thirty (30) days, if a duplicate payment has not been returned or

applied to a debt not already covered by Program funding, reimbursement of the duplicate payment must be made to Agency and shall include the entire amount of duplicate payment funds received regardless of Agency reimbursement amounts.

- 7.7. Suspension of Funding and Project.** Agency may by written notice to Grantee, temporarily cease funding and require Grantee to stop all, or any part, of the Work for a period of up to 180 days after the date of the notice if Agency has or reasonably projects that it will have insufficient funds from the Funding Source to disburse the full amount of the Grant Funds. Upon receipt of the notice, Grantee must immediately cease all Work, or if that is impossible, must take all necessary steps to minimize the Work.

If Agency subsequently projects that it will have sufficient funds, Agency will notify Grantee that it may resume activities. If sufficient funds do not become available, Grantee and Agency will work together to amend this Agreement and any applicable NOAs to revise the amount of Grant Funds and Work to reflect the available funds. If sufficient funding does not become available or an amendment is not agreed to within a period of 180 days after issuance of the notice, Agency will either (i) cancel or modify its cessation order by a supplemental written notice, or (ii) terminate this Agreement as permitted by either the termination at Agency's discretion or for cause provisions of this Agreement.

## **8. Nonexclusive Remedies Related to Funding.**

### **8.1. Withholding, Retention, and Redistribution of Grant Funds.**

- 8.1.1. Withholding.** Agency may withhold any and all undisbursed Grant Funds from Grantee if Agency determines, in its sole discretion, that Grantee has failed to timely satisfy any material obligation arising under this Agreement, including but not limited to compliance with the Program Requirements, providing complete, accurate, and timely reports in a form satisfactory to Agency, or if Agency determines that the rate or scale of requests for Grant Funds in any expenditure category materially deviates from an applicable NOA or is unsubstantiated by related documentation.

### **8.1.2. Redistribution or Retention of Grant Funds.**

- 8.1.2.1. Due to Non-Timely Use.** If Grant Funds are not obligated for reimbursement by Grantee in a timely manner, as determined by Agency at its sole discretion, Agency may, in its sole discretion, reduce Grantee's Grant Funds and redistribute Grant Funds to other Grantees or retain such funds for other Agency use, within applicable state and federal law. Agency may implement adjustments pursuant to this subsection by modifying the applicable NOA(s). This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.
- 8.1.2.2. Due to Substantial Difference.** If the rate of request for any expenditure or cost category is substantially different (as determined by OHCS in its sole discretion) than in Agency-approved budget submissions, including applicable NOAs, Agency has sole discretion to reduce and redistribute or retain any and all Grant Funds otherwise available to Grantee under this Agreement. Agency

may implement adjustments pursuant to this subsection by modifying the applicable NOA. This remedy is in addition to any other remedies available to Agency under this Agreement.

**8.1.3. Repayment of Excess Disbursed Funds.**

**8.1.3.1. Due to Modified NOA.** If Grant Funds previously disbursed by Agency to Grantee exceed a relevant modified NOA amount and remain unexpended by Grantee, Grantee shall not expend any such excess Grant Funds. Grantee, instead, shall return any remaining unexpended Grant Funds in excess of the modified NOA to Agency within 30 calendar days of the modified NOA unless another use of such funds is authorized in writing by Agency. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

**8.1.3.2. Due to Overpayment.** If Agency makes an overpayment of Grant Funds to Grantee in response to one or more funds requests, whether or not the underlying request(s) were inaccurate, Grantee shall repay such overpayment within thirty (30) calendar days of its discovery by Grantee or upon notice by Agency, unless Agency in writing designates an earlier time for repayment or authorizes another use by Grantee of such overpayment. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

**8.1.4. Return of Unexpended Funds.** Within thirty (30) days following the end of the Performance Period or termination of this Agreement, Grantee must return to Agency all unexpended Grant Funds, unless required earlier in accordance with the Program Requirements.

**9. Online Systems.**

**9.1.** Grantee and its subrecipients must enter all appropriate and necessary data into OPUS (a web-based application developed by Agency), Allita HSM, Homeless Management Information System (HMIS) or other Agency-approved system (the “Sites”) at the time of client intake for this Program. Exceptions are only allowed with prior written approval by Agency.

**9.2. Sites’ Terms and Conditions.** As a condition of use of the Sites, Grantee and its subrecipients (“User”) agree to all Agency terms and conditions contained in this Agreement, notices on the Sites, or as otherwise directed by Agency. User agrees to not use the Sites for any unlawful purpose. Agency reserves the right, at its discretion, to update or revise the Sites’ terms of use. Continued use of the Sites constitutes acceptance of the Sites’ terms and conditions.

**9.3. Local Data Collection.** Use of the Sites for additional reported local program data is at the entity’s own risk. Agency will not modify or otherwise create any screen, report, or tool in the Sites to meet needs related to this local data.

**9.4. Data Rights.** Grantee hereby grants and will require and cause any subrecipient to grant Agency the right to reproduce, use, display, adapt, modify, distribute, and promote the content in any form and disclose, as allowed by law, any or all of the information or data furnished to or received by Agency directly or indirectly resulting for this Agreement. Grantee also shall use and shall require and cause its

subrecipients to use Client Release forms and Privacy Policy forms (samples provided by Agency) in connection with obtaining and transmitting client data.

- 9.5. Disclaimer of Warranties.** Grantee understands and agrees, and shall require its subrecipients to agree, that all materials, information, software, products, and services included in or available through the Sites (the “**Content**”) are provided “as is” and “as available” for use. The Content is provided without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Agency does not warrant that: (1) the content is accurate, reliable, or correct; (2) the Sites will be available at any particular time or location; (3) any defects or errors will be corrected; or (4) the content is free of viruses or other harmful components. Use of the Sites is solely at the User’s risk. User hereby accepts the risk of its use of the Sites, and of the use of the Sites by its subrecipients, and expressly waives any claims and causes of action against the State and Agency.
- 9.6. Limitation of Liability.** Grantee agrees that under no circumstances will Agency be liable for any direct, indirect, punitive, incidental, special, or consequential damages that result from the use of, or inability to use the Sites. This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Agency has been informed of the possibility of such damage.
- 9.7. Indemnification.** Subject to applicable law, Grantee agrees, and shall require its subrecipients to agree, to defend, indemnify (consistent with ORS Chapter 180), and hold harmless Agency and its employees, contractors, officers, and directors from all liabilities, claims, and expenses, including but not limited to attorney fees, that arise from use or misuse of the Sites. Agency reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Grantee, in which event Grantee will cooperate with Agency in asserting any available defenses.
- 10. Fixed Assets.** If applicable, Grantee shall, and shall cause its subrecipients to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Code of Federal Regulations, 2 CFR Subtitle B with guidance at 2 CFR Part 200, and specific requirements of the source of funds. These regulations shall apply to all equipment purchased with Agency funding, regardless of source of funds. The following practices are in addition to those otherwise required:
- 10.1. High Risk Items.** Fixed assets with a value greater than \$5,000 will include all computer equipment, electronic equipment, photography equipment, hand tools and other items.
- 10.2. Equipment.** The title to all equipment as defined in 2 CFR Part 200, purchased in whole or in part with funds provided under this Agreement, shall rest with the Grantee. Property and equipment purchased with Agency grant funds shall not be used for collateral or to secure financing.
- 10.3. Insurance.** Grantee shall, at a minimum, provide the insurance coverage required by Oregon Revised Statute for automobiles and or equipment registration through Oregon Department of Transportation, Department of Motor Vehicles, that has been acquired in whole or in part with funds provided under this Agreement owned by Grantee with Agency named as an additional insured party in all such motor vehicles

and or equipment. In its agreements with its subrecipients, Grantee shall require and cause its subrecipients to comply with the requirements of this Section.

- 10.4. Loaned Equipment / Property Disposition.** All fixed assets owned by Agency and loaned to Grantee under a standard agreement will remain the property of Agency, regardless of their value. The disposition of all loaned equipment shall be readily available.
- 10.5. Disposal Requiring Prior Approval.** When Grantee, or its subrecipients, wishes to dispose of equipment having an original cost of more than \$5,000, and which has a current per-unit, fair-market value of more than \$5,000, Grantee shall submit a written notification to the appropriate Agency's Program coordinator with a copy to the Agency's Financial Compliance Monitor. If Agency consents, Agency will provide instructions regarding the method of disposition. Agency reserves the right to refuse to consent to such disposal and the right to object to the timing of each disposition. Such disposition, if permitted, shall be done in a manner consistent with the property management standards for equipment of the Agency from which the original funding was received. In the case of mixed funding sources, the most restrictive standards shall apply.
- 10.5.1. Items of equipment with a current per-unit, fair-market value of \$5,000 or less may be retained, sold, or otherwise disposed of upon written notification to the appropriate Agency's Program coordinator with a copy to Agency's Financial Compliance Monitor with no further obligation. The Agency's Program coordinator shall be notified of all title transfers, sales, and other methods of disposition. Agency may review disposition records upon notification of Grantee.

## **11. Compliance and Monitoring.**

### **11.1. Compliance.**

- 11.1.1. Grantee will comply and will require and cause (including by contract) all subrecipients, vendors, contractors, agents, and assigns to comply with this Agreement, including applicable Program Requirements.
- 11.1.2. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. Grantee shall, to the maximum extent economically feasible in performance of this Agreement, use recycled paper (as

defined in ORS 279A.010(gg)), recycled PETE products (as defined in ORS 279A.010(hh)), and other recycled products (as “recycled product” is defined in ORS 279A.010(ii)).

**11.2. Agency to Monitor Grantee.**

- 11.2.1. Agency, including its authorized representatives and authorized third parties, may monitor the activities and records of each Grantee and Grantee’s subrecipients and vendors as it deems necessary or appropriate for, among other things, to ensure: (1) Grantee and its subrecipients comply with the terms of this Agreement, including but not limited to the Program Requirements, and that Grant Funds are used properly for authorized purposes hereunder; and (2) that performance goals are achieved as specified in this Agreement, including without limitation in the Grant Activity Report, NOAs, and the Program Requirements, and that performance is to the satisfaction of Agency.
- 11.2.2. Agency’s monitoring activities may include any action deemed necessary or appropriate by Agency including, but not limited to the following: (1) the review (including copying) from time to time of any and all Grantee, subrecipient, and vendor files, records, and other information of every type arising from or related to performance under this Agreement; (2) arranging for, performing, and evaluating general and limited scope audits; (3) conducting or arranging for on-site and field visits and inspections; (4) review of Grantee fiscal and program reports, and requiring appropriate Request for Funds documentation as well as such other information and clarification as it deems appropriate, prior to providing a Request for Funding approval, whether in whole, in part, or otherwise; and (5) evaluating, training, providing technical assistance and enforcing compliance of Grantee, subrecipients, vendors, and their officers, employees, agents, contractors and other staff.
- 11.2.3. Agency monitoring and enforcement activities may be conducted in-person, by telephone, and by other means deemed appropriate by Agency. Monitoring may be done through contractors, agents, or other authorized representatives.
- 11.2.4. Agency may, in its sole and absolute discretion, request assistance in monitoring from outside parties, including but not limited to the Oregon Secretary of State, the Oregon Attorney General, the federal government, and law enforcement agencies.
- 11.2.5. Agency (or the State or its agents) may require Grantee to perform some level of random audit of Program applications and Grantee will perform to the best of its ability.

**11.3. Grantee To Fully Cooperate.** Grantee agrees to fully and timely cooperate with Agency in the performance of any and all monitoring and enforcement activities, including causing its subrecipients, vendors, and contractors to so cooperate by agreement. Failure by Grantee or any of its subrecipients or vendors to comply with this requirement is sufficient cause for Agency to require special conditions, take such other action (including the exercise of available remedies) as it deems appropriate, and may be deemed by Agency as a material failure by the Grantee to perform its obligations under this Agreement.

**11.4. Agency Findings and Reports.**

- 11.4.1. **Monitoring Visits; Reports.** During the term of this Agreement, Agency may conduct monitoring visits, including review of Grantee and subrecipient files, records, and other information related to performance under this Agreement. Agency generally will advise the Grantee as to its observations and findings generated by any monitoring visit, usually through an exit interview. Within sixty (60) days after an inspection, Agency may provide Grantee with a written report of its findings from the inspection and may prescribe corrective action, which Grantee must timely satisfy.
- 11.4.2. **Ongoing Monitoring.** Agency may continue to track and follow-up its monitoring findings and corrective actions with Grantee or its subrecipients through a tracking record. The tracking record may include, without limitation: findings, corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolution. Grantees must resolve findings and other required corrective actions within reasonable timeframes provided by Agency.

## 12. Representations and Warranties.

### 12.1. Organization/Authority.

Grantee represents and warrants to Agency that:

- 12.1.1. Grantee is duly organized and validly existing in the State of Oregon;
- 12.1.2. Grantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Agreement, (ii) incur and perform its obligations under this Agreement, and (iii) receive financing, including the Grant Funds, for the Work;
- 12.1.3. This Agreement has been duly executed by Grantee and when executed by Agency, constitutes a legal, valid, and binding obligation of Grantee enforceable in accordance with its terms;
- 12.1.4. If applicable and necessary, the execution and delivery of this Agreement by Grantee has been authorized by an ordinance, order, or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and
- 12.1.5. There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially adversely affect the Work or the ability of Grantee to carry out the Work.

### 12.2. False Claims Act.

Grantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) made by (or caused by) Grantee that pertains to this Agreement or to the Work. Grantee certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Grantee further acknowledges in addition to the remedies available to Agency under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Grantee.

### 12.3. No Limitation.

The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

### 13. Confidential Information.

- 13.1. Confidential Information Definition.** Grantee acknowledges it and its employees and agents may, in the course of performing its responsibilities, be exposed to or acquire information that is: (i) confidential to Agency or Project participants or (ii) the disclosure of which is restricted under federal or state law, including without limitation: (a) personal information, as that term is used in ORS 646A.602(12), (b) social security numbers, and (c) information related to domestic violence: (1) as described in Section 501(g)(4)(A)(iii) of the ERA, (2) as described in the Violence Against Women Act, 34 USC Subtitle I, Chapter 121, Subchapter III, Part I “Privacy Protections for Victims of Domestic Violence, Dating Violence, Sexual Violence and Stalking”, and (3) is afforded state law protection from public disclosure under ORS 192.355(38), (items (i) and (ii) hereof separately and collectively “Confidential Information”).
- 13.2. Nondisclosure.** Grantee agrees to hold Confidential Information as required by any applicable law and in all cases in strict confidence, using at least the same degree of care Grantee uses in maintaining the confidentiality of its own confidential information. Grantee may not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information except as is allowed by law and for the Project activities and Grantee must advise each of its employees and agents of these restrictions. Grantee must assist Agency in identifying and preventing any unauthorized use or disclosure of Confidential Information. Grantee must advise Agency immediately if Grantee learns or has reason to believe any Confidential Information has been, or may be, used or disclosed in violation of the restrictions in this Section. Grantee must, at its expense, cooperate with Agency in seeking injunctive or other equitable relief, in the name of Agency or Grantee, to stop or prevent any use or disclosure of Confidential Information. At Agency’s request, Grantee must submit, return, or destroy any Confidential Information in the manner requested by Agency, including but not limited to upon satisfaction of the business purposes of such Confidential Information as used in the Allita HSM system. If Agency requests Grantee to destroy any Confidential Information, Grantee must provide Agency with written assurance indicating how, when and what information was destroyed.
- 13.3. Identity Protection Law.** Grantee must have and maintain a formal written information security program that provides safeguards to protect Confidential Information from loss, theft, and disclosure to authorized persons, as required by Oregon Consumer Information Protection Act, ORS 646A.600-628. If Grantee or its agents discover or are notified of a potential or actual “Breach of Security”, as defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600-628, (collectively, “Breach”) with respect to Confidential Information, Grantee must promptly but in any event within one (1) calendar day (i) notify the Agency’s Grant Manager of such Breach and (ii) if the applicable Confidential Information was in the possession of Grantee or its agents at the time of such Breach, Grantee must (a) investigate and remedy the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach

and the specific steps Grantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, if Agency determines notice is required of any such Breach to any individual(s) or entity(ies), agency will have sole control over the timing, content, and method of such notice, subject to Grantee's obligations under applicable law.

**13.4. Subgrants/Contracts.** Grantee must require any subrecipients, contractors, or subcontractors under this Agreement who are exposed to or acquire Confidential Information to treat and maintain such information in the same manner as is required of Grantee under subsections 13.1 and 13.2 of this Section.

**13.5. Background Check.** If requested by Agency, Grantee's employees, agents, contractors, subcontractors, and volunteers that perform Project activities must agree to submit to a criminal background check prior to performance of any Project activities or receipt of Confidential Information. Background checks will be performed at Grantee's expense. Based on the results of the background check, Grantee or Agency may refuse or limit (i) the participation of any Grantee employee, agent, contractor, subrecipient, or volunteer, in Project activities or (ii) access to Agency Personal Information or Grantee premises.

**14. Insurance Requirements.** Grantee shall provide all necessary insurance as described in Exhibit D. Grantee shall require and ensure that each of its subrecipients and subcontractors complies with these requirements. Grantee shall require and ensure that each of its construction contractors and subcontractors comply with the requirements described in Exhibit E.

**15. Grantee Status and Certifications.**

**15.1.** Grantee shall perform all work under this Agreement as an independent contractor. Grantee is not an officer, employee or agent of the Agency or State, as those entities are respectively defined in ORS chapter 456 and in ORS 30.265, with respect to work performed under this Agreement.

**15.2.** Grantee agrees that insurance coverage, whether purchased or by self-insurance, for Grantee's agents, employees, officers and/or subcontractors is the sole responsibility of Grantee.

**15.3.** Grantee certifies that it is not employed by or contracting with the federal government for the work covered by this Agreement.

**15.4.** Grantee certifies that it has established or before starting the Work will establish a formal statement of nondiscrimination in its employment policy and that it enforces such policy.

**15.5.** Grantee certifies to the best of its knowledge and belief that neither the Grantee nor any of its principals, officers, directors, or employees:

15.5.1. Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;

15.5.2. Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public

(federal, State, or local) transaction or contract related to a public transaction, violation of federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- 15.5.3. Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Subsection 15.5.2. above;
- 15.5.4. Has within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default; and
- 15.5.5. Is included on the list titled “**Specially Designated Nationals and Blocked Persons**” maintained by the Office of Foreign Assets Control for the U.S. Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

### **16. Governing Law; Jurisdiction.**

This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between Agency or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.

### **17. Default.**

**17.1. Grantee.** Grantee will be in default under this Agreement upon the occurrence of any of the following events:

- 17.1.1. Grantee fails to use the Grant Funds for the intended purpose described in Exhibits A-C or otherwise fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement;
- 17.1.2. Grantee fails to comply timely with any material obligation under this Agreement, including but not limited to any Agency directive or term of a corrective action plan;
- 17.1.3. Any representation, warranty, or statement made by Grantee in this Agreement or in any documents or reports relied upon by Agency to measure the Work, the expenditure of Grant Funds, or the performance by Grantee is untrue in any material respect when made; or
- 17.1.4. A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership, or other law relating to reorganization, liquidation, dissolution, winding-up, or adjustment of debts; in the

case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within twenty (20) calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.

- 17.2. Agency.** Agency will be in default under this Agreement if, after fifteen (15) days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the funding source.

## **18. Remedies.**

### **18.1. Agency Remedies.**

- 18.1.1. In the event Grantee is in default under Section 17.1, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement under Section 19.2; (ii) modifying any NOA under this Agreement; (iii) reducing or withholding payment for the Work that is deficient or that Grantee has failed to complete by any scheduled deadlines, including disallowing costs; (iv) suspending or recouping payments, or both; (v) requiring Grantee to complete, at Grantee's expense, corrective action or additional activities necessary to satisfy its obligations or meet performance standards under this Agreement, in Agency's sole discretion; (vi) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; (vii) exercise of its right of recovery of overpayments under this Agreement; (viii) declaring Grantee ineligible for the receipt of future awards from Agency; (ix) criminal action for misstatements or fraud, misfeasance, or other culpable behavior; and (x) investigation, audit, and/or sanction by other governmental bodies.
- 18.1.2. Grantee acknowledges and agrees that any such remedies are subject to Article XI, Section 7 of the Oregon Constitution, the Oregon Tort Claims Act, and the terms and conditions of any other applicable provision of this Agreement.
- 18.1.3. **No Waiver.** No failure or delay by Agency to enforce any provision of this Agreement shall constitute a waiver by Agency of that or any other provision, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
- 18.1.4. **Survival.** Remedies provided under this Agreement or otherwise shall survive termination of this Agreement.
- 18.2. Grantee Remedies.** In the event Agency is in default under Section 17.2 and whether or not Grantee elects to terminate this Agreement, Grantee's sole monetary remedy will be, within any limits set forth in this Agreement, reimbursement of Work completed and accepted by Agency and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Agreement or for anticipated profits.

## 19. Termination.

- 19.1. Mutual.** This Agreement may be terminated at any time by mutual written consent of the parties.
- 19.2. By Agency.** Agency may terminate this Agreement as follows:
- 19.2.1. At Agency's discretion, upon thirty (30) days advance written notice to Grantee;
  - 19.2.2. Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;
  - 19.2.3. Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from funding the Agreement from the funding source; or
  - 19.2.4. Immediately upon written notice to Grantee, if Grantee is in default under this Agreement and such default remains uncured fifteen (15) days after written notice thereof to Grantee.
- 19.3. By Grantee.** Grantee may terminate this Agreement as follows:
- 19.3.1. If Grantee is a governmental entity, immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Agreement.
  - 19.3.2. If Grantee is a governmental entity, immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted in such a way that the Work is prohibited by law or Agreement is prohibited from paying for the Work from the Grant Funds or other planned funding; or
  - 19.3.3. Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured fifteen (15) days after written notice thereof to Agency.
- 19.4. Cease Activities.** Upon receiving a notice of termination of this Agreement, Grantee must immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee must deliver to Agency all materials or other property that are or would be required to be provided to Agency under this Agreement or that are needed to complete the Work that would have been performed by Grantee.

## 20. Miscellaneous.

### 20.1. Conflict of Interest.

- 20.1.1. **Generally.** By signature to this Agreement, Grantee declares and certifies the award of this Agreement and the Work, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer, or employee of Grantee.
- 20.1.2. **Conflict of Interest Policy and Reporting.** A conflict of interest exists if, among other things, a decision or recommendation could affect the finances of the public official or the finances of a relative. If a conflict of interest exists, the public official

must always give notice of the conflict, and in some situations the public official is restricted in their ability to participate in the matter that presents the conflict of interest. Grantee will timely report to Agency any perceived or actual conflict of interest. Grantee certifies it has established a conflict of interest policy that outlines the process for disclosing in writing any potential conflict of interest and such policy must be provided to Agency upon Agency's request, or as otherwise requested during a Grantee audit.

- 20.2. Nonappropriation.** Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.
- 20.3. Amendments.**
- 20.3.1. Agency reserves the right to add or amend Grant Activity Reports and NOAs. Otherwise, the parties may not waive, supplement, or amend the terms of the Agreement, in any manner whatsoever, except by written amendment signed by the parties and for which all necessary Agency approvals have been obtained.
- 20.3.2. Grantee's proposed changes to or additions of a Grant Activity Report must be submitted to Agency in writing and require the prior written approval of Agency before Grantee may commence a change.
- 20.4. Notices.** Except as otherwise expressly provided in this Agreement, any notices to be given under this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a party's Grant Manager at the physical address or email address set forth in this Agreement, or to such other addresses as either party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- 20.5. Required Notifications to Agency.** In addition to the requirements provided elsewhere in this Agreement, Grantee shall immediately report changes in Key Personnel including Fiscal, Program, and Executive Level Leadership.
- 20.6. Survival.** All rights and obligations of the parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9.6, 9.7, 16, 18, 20.6, 20.7, and 20.10 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, termination of this Agreement will not prejudice any rights or obligations accrued to the parties under this Agreement prior to termination.
- 20.7. Headings.** The headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.
- 20.8. Severability.** The parties agree if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights

and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

- 20.9. Execution in Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.
- 20.10. Indemnity.** Subject to applicable law, Grantee shall and shall require by contract that its subrecipients shall, defend, save, hold harmless, and indemnify (consistent with ORS Chapter 180) the State of Oregon and Agency and their officers, employees and agents from and against all claims, suites, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or, relating to the activities of Grantee or its officers, employees, subrecipients, subcontractors, or agents under this Agreement.
- 20.11. Attorney Fees.** In the event a lawsuit of any kind is instituted on behalf of Agency or the Grantee with respect to this Agreement, or any right or claim related thereto, including but not limited to the collection of any payment due under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party is, to the extent permitted by law, entitled to its reasonable attorney fees incurred before and during trial, on appeal, in arbitration, in bankruptcy, and in such other forum or proceeding appropriate thereto, together with such additional terms as the court or hearing officer may adjudge for reasonable costs and disbursements incurred therein. Reasonable fees shall not exceed the rate charged to Agency by its attorneys. Agency's liability for attorney fees under this Agreement shall be subject to the limitations of Article XI, Section 7 of the Oregon Constitution.
- 20.12. Compliance with Law.** In connection with their activities under this Agreement, the parties must comply with all applicable federal, state, and local laws. While the Agency will make reasonable efforts to update its Program guidance and notify the Grantee thereof, the Grantee is ultimately responsible for maintaining awareness of and compliance with updates to federal law governing the Program.
- 20.13. No Third-Party Beneficiaries.** Agency and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.
- 20.14. Assignment and Successors.** Grantee may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Agreement will not relieve Grantee 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.
- 20.15. Contracts and Subgrants.** Grantee may not, without Agency's prior written consent, enter into any contracts or subgrants for any of the Work. Agency's consent to any

contract or subgrant will not relieve Grantee of any of its duties or obligations under this Agreement.

**20.16. Time of the Essence.** Time is of the essence in the performance of this Agreement.

**20.17. No Limitations on Actions of Agency in Exercise of Its Governmental Powers.**

Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of Agency in the exercise of its governmental powers. It is the express intention of the parties that Agency shall retain the full right and ability to exercise its governmental powers with respect to the Grantee, the Grant Funds, and the transactions contemplated by this Agreement to the same extent as if it were a party to this Agreement, and in no event shall Agency have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.

**20.18. Records Maintenance and Access.** Grantee must, and must require and cause its subrecipients to, maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee must, and must require and cause its subrecipients to, maintain any other records, whether in paper, electronic or other form, pertinent to this Agreement in such a manner as to clearly document Grantee's and subrecipients' performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records". Grantee acknowledges and agrees Agency and the Oregon Secretary of State's Office 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. Grantee 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. In its agreements with subrecipients, Grantee shall require and cause its subrecipients to comply with the requirements of this Section and to grant right of access to and ownership by Agency of the subrecipients' books and records related to this Agreement.

**20.19. Audits.**

**20.19.1. Agency-Required Audits.** As required by Agency, Grantee will, and will cause its subrecipients to, submit to Agency financial and compliance audits satisfactory to Agency for such periods and programs covered by this Agreement.

**20.20. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

**20.21. Agreement Documents.** This Agreement consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:

- This Agreement less all Exhibits
- Exhibit C (Operations Manual)
- Exhibit D (Insurance Requirements)
- Exhibit E (Recipient's Contractor Construction Insurance Requirements)
- Exhibit A (Shelter Infrastructure and Operations Program – Navigation Centers)
- Exhibit B (Grant Activity)

**20.22. Merger.** This Agreement, all Exhibits, and all incorporated documents, 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.

**20.23. Waiver.** No waiver or consent under this Agreement binds either Party unless in writing and signed by both parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

**20.24. Diversity, Equity, and Inclusion.** Agency and Grantee commit to an intentional, data driven approach to reduce disparities in housing and social service provisions. Agency commits to creating a system to analyze Agency-funded programs and remove identified barriers to accessing opportunities within those programs.

***[The rest of this page left intentionally blank]***

## 21. CERTIFICATIONS AND SIGNATURE OF GRANTEE'S AUTHORIZED REPRESENTATIVE

THIS AGREEMENT MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF GRANTEE.

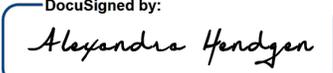
The undersigned certifies under penalty of perjury both individually and on behalf of Grantee that:

- A. The undersigned is a duly authorized representative of Grantee, has been authorized by Grantee to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Grantee;
- B. By signature on this Agreement for Grantee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Grantee and that Grantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.
- C. To the best of the undersigned's knowledge, Grantee has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.
- D. Grantee and Subrecipients' employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the U.S. Treasury and currently found at \*\*\*\*\*[.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf](https://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf);
- E. Grantee has sufficient staffing and operation capacity to expend the Grant Funds;
- F. Grantee acknowledges that Agency reserves the right to reduce Grantee funding as it determines to be appropriate (in its sole discretion) and redistribute such funds to other eligible providers with the goal of minimizing service disruption and ensuring funds are utilized;
- G. Grantee is bound by and will comply, and require its subrecipients to comply, with all federal, state and local laws, regulations, requirements, terms and conditions contained in and as applicable to this Agreement; and
- H. Grantee further certifies to having a formal statement of nondiscrimination in its employment policy and that it enforces such policy.

***[Signature Pages Follow]***

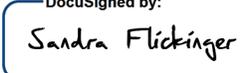
**SIGNATURE PAGE**

**GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE LEGAL AUTHORITY TO BIND, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

Authorized Signature:  Alexandra Hendgen  
Name: Alexandra Hendgen  
Date: 1/18/2023  
Phone Number: 503-883-4172 Email alexandrah@yamhillcap.org  
Address: 1317 NE Dustin Ct McMinnville OR 97128

**22. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE**

State of Oregon acting by and through its  
Housing and Community Services Department  
725 Summer Street NE Suite B, Salem, OR 97301

Authorized Signature:  Sandra Flickinger 1/18/2023  
OHCS Designated Procurement Officer or designee Date

Reviewed and Approved: Mike Savara approved via email 11/14/2022  
Mike Savara, OHCS Grant Administrator Date

DEPARTMENT OF JUSTICE

Approved for legal sufficiency by: David Berryman approved via email 11/09/2022  
David Berryman, Assistant Attorney General Date

**EXHIBIT A**  
**Shelter Infrastructure and Operations Program – Navigation Centers**

**1. Description.**

The Shelter Infrastructure and Operations Program—Navigation Centers (SIOP-NAV) is a State general funded program from the 2022 Session of the Oregon Legislature from House Bill 5202, Or Laws 2022, Chapter 110, Section 357, designed to assist people experiencing homelessness or at risk of homelessness. Agency has elected to use this investment to support the sheltering and homeless services needs of Oregonians by providing infrastructure, operation, and service support for emergency shelters and transitional housing as well as the supportive services for responding to homelessness. SIOP-PTK grant funds are available for use under the program service components as described in this Agreement and all Exhibits.

**2. Scope of Work.**

- A. Grantee shall and shall cause and require by written agreement that its subrecipients comply and perform all Work to the satisfaction of Agency, and in accordance with the terms of this Agreement and all Exhibits. The remaining provisions of this Section 2 are supplemental to and do not limit the obligations of Grantee or its subrecipients arising under this Subsection A or otherwise under this Agreement.
- B. Grantee shall and shall cause and require its subrecipients by written agreement to administer the program in a manner satisfactory to Agency and in compliance with the program requirements including but not limited to the following conditions:
- (1) Expend no more than the amount of funds allocated through the NOA, including allowable administrative costs shared with subrecipients, for allowable administrative costs in order to provide the services outlined in this Agreement.
  - (2) Conduct an initial evaluation of client to determine eligibility for receipt of program services in alignment with existing Continuum of Care (CoC) developed coordinated entry requirements, if applicable to services being provided, and Program Requirements.
  - (3) May utilize program funds to address the specific needs of various homeless subpopulations. Specific targeting of funds shall be outlined and approved by Agency in Grant Activity (Exhibit B).

**3. Program Specific Reporting.**

- A. Grantee shall and shall cause and require its subrecipients by written agreement to submit to the satisfaction of Agency all reports as required in this Agreement, including in referenced Operations Manual. Grantee shall and shall require its

subrecipients to assure that data collection and reporting, be conducted through the use of Agency-approved systems. Grantee may request a reporting deadline extension when necessary. An extension request shall be approved, in writing, by Agency.

B. Reports shall be submitted by the following:

- (1) Quarterly Provider Reports are due 20 days following the end of each fiscal quarter.
- (2) Requests for funds must be submitted for all fiscal year expenses by July 30 of each fiscal year end.
- (3) Grantee shall provide additional reports as needed and requested by Agency.

### **Performance Measures**

Grantee shall and shall cause and require its subrecipients by written agreement to administer the program in a manner consistent with program requirements designed to increase housing stability as measured by percentage of homeless households who exit to a positive destination.

## EXHIBIT B GRANT ACTIVITY

### Summary of Project

Grantee must construct, rehabilitate, renovate, operationalize, and provide essential services at two navigation center sites, one in McMinnville, Oregon and one in Newberg, Oregon. Grantee will provide shelter staffing, street outreach, homeless prevention, case management support, and program leadership for a temporary emergency shelter in McMinnville during the time the permanent navigation center is under construction. All shelter services provided at the temporary navigation center will then transition to the new permanent navigation center once completed. Grantee will also provide shelter staffing, street outreach, homeless prevention, case management support, and program leadership for the Newberg navigation center location.

Grantee must rehabilitate the existing shelter structures located next to each other near the center of McMinnville, as identified in application. In addition to the rehabilitation of these two shelters, a third new 2,420 square foot two (2) story structure must be built between the two facilities, linking all three buildings. The lower level will contain three (3) offices and the street level will be primarily comprised of the common area day room, free laundry, two ADA restrooms and showers, a community kitchen, a coffee and water station, and an open office and welcome area. These construction and rehabilitation projects will provide the space necessary for low-barrier shelter, a daytime common area, and on-site wrap-around services. The second Navigation Center site, located in Newberg, Oregon, will be concurrently renovated to increase shelter capacity and improve accessibility features.

In total, both projects will result in sixty (60) beds of overnight emergency shelter, two permanent navigation center sites, ADA compliant transportation to help coordinate the shelter beds between the cities, project coordination support, and additional staffing support for the Newberg and McMinnville shelters sites

The Navigation Center sites will be operated through a partnership of Grantee, City of McMinnville, City of Newberg, and onsite service providers, offering three (3) components of services to Yamhill County. The components **INCLUDE BUT ARE NOT LIMITED TO:**

1. Over-night low barrier shelter services with sixty (60) beds. Grantee will operate the shelters seven (7) days a week. Grantee will provide shelter participants an evening meal and breakfast. Showers and laundry services will be available for those staying in the shelter. Support services will be offered to individuals and families as they check into the facility to stay the night.
2. A common area, which is an open area where individuals and families can stop in during the day, seven (7) days a week. Grantee will provide the following minimum services in the common area: light refreshments (coffee, water, snacks), information on the services provided by outreach workers, wellness checks (medical and mental), showers, laundry facilities, public restrooms, phone charging stations, computer and internet access, hygiene supplies, etc.

3. Grantee will provide wrap around services provided by trauma informed and culturally responsive case managers who will provide assistance with various housing and supportive programs. Households will have an assessment completed by an onsite service provider for their needs, and connections will be made to appropriate programs. Classes will be provided by onsite service provider on renting, life skills, job search, etc. Wellness checks for mental health and medical checkups will be offered by onsite service provider both in this service component and in the common area. This component will operate Monday through Friday. As the program grows, more services will be included in this component.

Emergency Shelter Operations and Essential Services includes the purchase of furnishings such as bunk beds, computers, couches, chairs, desks, kitchen and laundry appliances, bedding, cleaning supplies, food service supplies, phones, hygiene supplies, etc. In addition, two vans will be purchased to facilitate transportation of individuals between shelters in Yamhill County and to partner service providers. One of the vans will be an ADA compliant and wheelchair accessible van to ensure Grantee can provide services to individuals with disabilities. An additional full-time employee at each location will assist with shelter and navigation center operations. All full-time outreach and case management staff will have HMIS licenses, appropriate training, and be responsible for data collection.

The Newberg navigation center site and the temporary McMinnville navigation center site must be operational by June 30, 2023.

### **Use of Grant Funds**

Grant Funds must be used as stated in Exhibit C (“Operations Manual”) for the rehabilitation and construction, and operations of the navigation centers. Grant Funds must be used to rehabilitate two existing shelters located next to each other near the center of McMinnville as identified in application, and to construct a new third building between the two facilities to provide space as described in the Summary of Project section. Grant Funds must also be utilized to support emergency shelter operations and provide essential services such as Homelessness Prevention, Rapid Re-housing, and Street Outreach at the navigation center site in McMinnville. Grants Funds must also be used to renovate a second navigation center site in Newberg.

**Approved Budget**

<b>SERVICE CATEGORY</b>	<b>AMOUNT</b>
Program Funds	\$619,472.00
Rehabilitation/Conversion/Acquisition	\$690,000.00
Administration	\$ 180,000.00
<b>TOTAL APPROVED BUDGET</b>	<b>\$1, 489,472.00</b>

**EXHIBIT C**  
**OPERATIONS MANUAL**

**Shelter Infrastructure Operations Program**  
**Navigation Centers (SIOP-NAV)**



**SIOP-NAV**  
**Operations Manual**

**Contacts**

**Oregon Housing and Community Services**

**Homeless Services Section**

**(503) 986-2000**

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## Change Log

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## Program Summary

Oregon Housing and Community Services, through the 2021 Legislative assembly, made available additional funds for investment in homeless services across the state for unsheltered individuals and families. In addition to providing facilities for emergency shelter and beds, funding will be used to assist people in need of behavioral health, medical care, public benefits, case management, hygiene services and wrap around services.

A navigation center is a low barrier outcome-based site for individuals experiencing and/or at risk of homelessness to access services. Different than a traditional one-night-stay shelter, a navigation center is a limited stay program designed to alleviate the pressures of living on the street to support an intense focus of looking for work and/or housing. In addition to dormitories, navigation centers come complete with onsite administration, intake, offices and meeting rooms for operators and residents, dining and community space, bathrooms, showers, and storage.

A navigation center may have additional components such as drop-in day, culturally responsive, or behavioral health services.

Behavioral health services are a voluntary service provided to individuals experiencing homelessness with behavioral health needs. These services include but are not limited to accessing medications, one on one or group therapy and substance abuse treatment.

## Navigation Center Requirements

### (A) Low Barrier Shelters

Low and no barrier policies allow homeless individuals and households to access shelter, housing, and services without preconditions such as sobriety, compliance with treatment plan, no pets, or agreement to participate in specific programs, activities, or classes. These policies allow the most in need to have access to shelter and housing.

Low Barrier Shelter best practices include, but are not limited to:

- a) Your shelter has minimal expectations or requirements of people seeking shelter
- b) Your shelter focuses on addressing disruptive or dangerous behaviors rather than compliance to rules or case plans;
- c) Your shelter welcomes self-defined family and kinship groups to seek shelter together;
- d) Your shelter can identify financial resources that can support the adoption of low barrier policies and practices and supports extended or flexible hours and adapted service-delivery models;
- e) Your shelter accommodates pets and belongings;
- f) Your shelter's intake process and housing navigation services coordinate closely with community-based outreach services and coordinated entry;
- g) Your shelter creates flexible and predictable access for people seeking shelter.

More information can be found at [https://www.usich.gov/resources/uploads/asset\\_library/emergency-shelter-keyconsiderations.pdf](https://www.usich.gov/resources/uploads/asset_library/emergency-shelter-keyconsiderations.pdf).

## (B) Training

Grantee and subrecipient staff that provide direct services and supervise staff who provide direct services and manage homeless grants must receive training and demonstrate competency. Training is an eligible expense of case management and must minimally include:

- a) Trauma Informed Services
- b) Mental Health First Aid
- c) Harm Reduction
- d) Supporting Victims of Domestic Violence
- e) Local Coordinated Entry Policies and Procedures
- f) Fair Housing

## (C) Coordinated Entry

Coordinated entry is a process developed to ensure that all people experiencing a housing crisis have a single or coordinated point of entry and equal access to the homeless delivery system. This type of entry allows homeless persons and those at-risk of homelessness to be quickly identified, assessed, referred and connected to the appropriate shelter or housing, and assistance. It also facilitates the assessing agency's ability to prioritize the most vulnerable individuals and households for immediate assistance.

Coordinated Entry best practices include, but are not limited to:

- a) **Prioritization.** HUD has determined that an effective coordinated entry process ensures that people with the greatest needs receive priority for any type of housing and homeless assistance available in the CoC, including PSH, Rapid Rehousing (RRH), and other interventions.
- b) **Low Barrier.** The coordinated entry process does not screen people out for assistance because of perceived barriers to housing or services, including, but not limited to, lack of employment or income, drug or alcohol use, or having a criminal record. In addition, housing and homelessness programs lower their screening barriers in partnership with the coordinated entry process.
- c) **Housing First orientation.** The coordinated entry process is Housing First oriented, such that people are housed quickly without preconditions or service participation requirements.
- d) **Person-Centered.** The coordinated entry process incorporates participant choice, which may be facilitated by questions in the assessment tool or through other methods. Choice can include location and type of housing, level of services, and other options about which households can participate in decisions.
- e) **Fair and Equal Access.** All people in the CoC's geographic area have fair and equal access to the coordinated entry process, regardless of where or how they present for services. Fair and equal access means that people can easily access the coordinated entry process, whether in person, by phone, or some other method, and that the process for accessing help is well known.
- f) **Emergency services.** The coordinated entry process does not delay access to emergency services such as shelter. The process includes a manner for people to access emergency services at all hours independent of the operating hours of the coordinated entry intake and assessment processes. For example, people who need emergency shelter at night are able to access shelter, to the extent that shelter is available, and then receive an assessment in the days that follow, even if the shelter is the access point to the coordinated entry process.

- g) Standardized Access and Assessment. All coordinated entry locations and methods (phone, in-person, online, etc.) offer the same assessment approach and referrals using uniform decision-making processes. A person presenting at a particular coordinated entry location is not steered towards any particular program or provider simply because they presented at that location.
- h) Inclusive. A coordinated entry process includes all subpopulations, including people experiencing chronic homelessness, Veterans, families, youth, and survivors of domestic violence. However, CoCs may have different processes for accessing coordinated entry, including different access points and assessment tools for the following different populations: (1) adults without children, (2) adults accompanied by children, (3) unaccompanied youth, or (4) households fleeing domestic violence. These are the only groups for which different access points are used. For example, there is not a separate coordinated entry process for people with mental illness or addictions, although the systems addressing those disabilities may serve as referral sources into the process. The CoC continuously evaluates and improves the process ensuring that all subpopulations are well served.
- i) Referral to projects. The coordinated entry process makes referrals to all projects receiving Emergency Solutions Grants (ESG) and CoC Program funds, including emergency shelter, RRH, PSH, and transitional housing (TH), as well as other housing and homelessness projects. Projects in the community that are dedicated to serving people experiencing homelessness fill all vacancies through referrals, while other housing and services projects determine the extent to which they rely on referrals from the coordinated entry process.
- j) Referral protocols. Programs that participate in the CoC's coordinated entry process accept all eligible referrals unless the CoC has a documented protocol for rejecting referrals that ensures that such rejections are justified and rare and that participants are able to identify and access another suitable project.
- k) Outreach. The coordinated entry process is linked to street outreach efforts so that people sleeping on the streets are prioritized for assistance in the same manner as any other person assessed through the coordinated entry process.
- l) Ongoing planning and stakeholder consultation. The CoC engages in ongoing planning with all stakeholders participating in the coordinated entry process. This planning includes evaluating and updating the coordinated entry process at least annually. Feedback from individuals and families experiencing homelessness or recently connected to housing through the coordinated entry process is regularly gathered through surveys, focus groups, and other means and is used to improve the process.
- m) Informing local planning. Information gathered through the coordinated entry process is used to guide homeless assistance planning and system change efforts in the community.
- n) Leverage local attributes and capacity. The physical and political geography, including the capacity of partners in a community, and the opportunities unique to the community's context, inform local coordinated entry implementation.
- o) Safety planning. The coordinated entry process has protocols in place to ensure the safety of the individuals seeking assistance. These protocols ensure that people fleeing domestic violence have safe and confidential access to the coordinated entry process and domestic violence services, and that any data collection adheres to the Violence Against Women Act (VAWA).
- p) Using HMIS and other systems for coordinated entry. The CoC may use HMIS to collect and manage data associated with assessments and referrals or they may use another data system or process, particularly in instances where there is an existing system in place into which the coordinated entry process can be easily incorporated.

- q) Full coverage. A coordinated entry process covers the CoC's entire geographic area. In CoCs covering large geographic areas (including statewide, Balance of State, or large regional CoCs) the CoC might use several separate coordinated entry processes that each cover a portion of the CoC but in total cover the entire CoC. This might be helpful in CoCs where it is impractical for a person who is assessed in one part of the CoC to access assistance in other parts of the CoC.

More information can be found at: <https://www.hudexchange.info/resources/documents/Coordinated-Entry-Policy-Brief.pdf>.

## (D) Wrap Around Services

Navigation Centers are required to provide the following services at no cost to houseless individuals or families.

- a) Case management,
- b) Toilets and shower areas,
- c) Dining facilities and meals,
- d) Laundry facilities,
- e) Hygiene facilities,
- f) Storage facilities for personal property,
- g) Recreation areas for children and pets,
- h) Rapid rehousing services and supports

## Administrative Best Practices

Administrative Best Practices are specific identified criteria used to set a foundation of administrative, fiscal and service delivery expectations for providers. The purpose of the best practices are to ensure that no matter where individuals and families enter the homeless system, Oregonians will be provided the same access to quality services.

### (A) Trauma Informed Care

Trauma Informed Care is an approach that considers the prevalence of adverse childhood experiences (ACEs) among all people. A trauma-informed approach to healthcare aims to provide an environment where a person who has experienced trauma feels safe and can develop trust. The Five Guiding Principles of trauma informed care are **safety, choice, collaboration, trustworthiness, and empowerment**. Ensuring that the physical and emotional safety of an individual is addressed is the first important step to providing Trauma-Informed Care.

[\\*\\*\\*\\*\\*.samhsa.gov/sites/default/files/programs\\_campaigns/childrens\\_mental\\_health/atc-whitepaper-040616.pdf](https://www.samhsa.gov/sites/default/files/programs_campaigns/childrens_mental_health/atc-whitepaper-040616.pdf)

### (B) Harm Reduction

Harm reduction is a set of practical strategies and ideas designed to reduce negative consequences associated with drug use. Harm Reduction is also a move towards social justice built on the belief in, and respect for, the rights of people who use drugs.

Harm reduction incorporates a spectrum of strategies that include safer use, managed use, abstinence, meeting people who use drugs “where they’re at,” and addressing conditions of long use with the use itself. Because harm reduction includes interventions and policies designed to serve people who use drugs which reflect on specific individual and community needs, there is no universal definition of or formula for implementing harm reduction.

[\\*\\*\\*\\*\\*harmreduction.org/about-us/principles-of-harm-reduction/](http://*****harmreduction.org/about-us/principles-of-harm-reduction/)

The Housing First Model encourages clients to create and implement their own goals while immediately housing or sheltering clients with no preconditions (except complying with a shelter code of conduct or standard lease agreement). Housing First best practices include, but are not limited to:

- a) Access to programs is not contingent on sobriety, minimum income requirements, lack of a criminal record, completion of treatment, participation in services or other unnecessary conditions.
- b) Programs or projects do everything possible not to reject an individual or family on the basis of poor credit or financial history, poor or lack of rental history, minor criminal convictions or behaviors that are interpreted as indicating a lack of “housing readiness”.
- c) People with disabilities are offered clear opportunities to request reasonable accommodations within application and screening processes and during tenancy; and building and apartment units include special physical features that accommodate disabilities.
- d) Programs or projects that cannot serve someone work through the coordinated entry process to ensure that those individuals or families have access to housing and services elsewhere.
- e) Housing and service goals and plans are highly tenant driven.
- f) Supportive services emphasize engagement and problem-solving over therapeutic goals.
- g) Participation in services or compliance with service plans are not conditions of tenancy but are reviewed with tenants and regularly offered as a resource to tenants.
- h) Services are informed by a harm-reduction philosophy that recognizes that drug and alcohol use and addiction are a part of some tenants’ lives. Tenants are engaged in nonjudgmental communication regarding drug and alcohol use and are offered education regarding how to avoid risky behaviors and engage in safer practices.
- i) Substance use in and of itself, without other lease violations, is not considered a reason for eviction.
- j) Tenants in supportive housing are given reasonable flexibility in paying their share of rent on time and offered special payment arrangements for rent arrears and/or assistance with financial management, including representative payee arrangements.
- k) Every effort is made to provide a tenant the opportunity to transfer from one housing situation, program or project to another if a tenancy is in jeopardy. Whenever possible, eviction back into homelessness is avoided.

## (D) Lived Experience

Incorporating the lived experience (LE) of homelessness into program design and implementation is a commitment and framework to include everyone, especially people with lived experience, in planning, implementation and evaluation.

Lived Experience best practices included, but are not limited to:

- a) Bring the perspective of LE to the forefront by ensuring that no one is left out or misrepresented; ensuring that your organization’s communications, fundraising, research and programs do not reinforce the misconceptions that homelessness is caused by individual problems or can be solved by charity; using professional influence to help advance the goals identified by first voice people; and dedicating time and resourced to advocacy and supporting grassroots social change efforts.
- b) Include people with LE at all levels of the organization by hiring those with LE in positions at all levels within the organization; inviting those with LE to join the organization’s Board and committees; including LE as a dimension in your organization’s equity and diversity policies; creating liaisons within municipal governments to include city councils and police boards; and working towards sustainability and advancement for peer positions so that those hired on as peer counselors or peer researchers can advance to permanent positions.
- c) Value the time of those with LE and provide appropriate supports by anticipating the compensation required, and including that cost within your budget, of properly including people with LE; creating a welcoming environment in which it is safe to express emotions; provide training and capacity building to all members of the organization; and ensuring timeframes for LE initiatives do things at a reasonable pace.
- d) Challenge stigma, confront oppression and promote dignity by providing training that addresses these issues to the whole organization; confronting oppression; educate around the intersectionality of racism, sexism, classism and ableism and how they work together and reinforce each other; and reviewing organizational policies and practices to ensure they promote equity, dignity and the rights of people facing homelessness.
- e) Recognize LE expertise and engage those with LE in decision making by mandating that people with LE are included in decision making roles in the organization and including those with LE in influential roles allowing them to speak when they can, use social media and other platforms and methods as they are available.
- f) Work together toward equitable representation by including equitable representation in the organization’s strategic planning process; setting concrete objectives and specific timeframes; working with other organizations that have successfully implemented equitable representation and evaluate your progress, seeking input from people with LE in the process.
- g) Build authentic relationships between with and without LE by cultivating an environment of caring, acceptance and openness where differences are celebrated, and everyone’s contribution is acknowledged; ensuring that all members of the organization are included in social activities and that those activities are accessible to all; and breaking down rigid roles such as “service provider” and “service user”.

More information can be found at: <https://www.usich.gov/>. Search for “Lived Experience”.

## (E) Equity and Racial Justice

OHCS is committed to advancing equity and racial justice in alignment with the Statewide Housing Plan and informed by national promising practices and lived experience of communities of color. OHCS is committed to an intentional, data-driven approach to reduce disparities in housing and social service provisions. Grantees are encouraged to further equity and racial justice practices by partnering with

organizations that offer Culturally Responsive Services (CRS), as defined in [ORS 456.005\(2\)](#) to mean services that:

- (a) Are adapted to maximize the respect of and relevance to the beliefs, practices, culture and linguistic needs of the diverse client populations and communities being served, including clients and communities of color.
  
- (b) Have the capacity to respond to the issues of diverse communities.
  
- (c) Assure competent language access and incorporates diverse cultural approaches, strengths, perspectives, experiences, frames of reference, values, norms and performance styles of clients and communities to make services and programs more welcoming, accessible, appropriate, and effective for all eligible and intended recipients.

Grantees are encouraged to have a stand-alone policy that addresses how they will deliver OHCS-funded programs that include Culturally Responsive Services.

## General Requirements

### (A) Release of information

Personally identifiable information is protected by federal laws (Privacy Act of 1974, as amended) and will be collected for the purpose of determining program eligibility, providing assistance/service, data collection, reporting and monitoring. Personally identifiable information will be shared with Oregon Housing and Community Services as is necessary to carry out the intent of an assistance or service program for the benefit of the person applying for such assistance or service and may be disclosed to Oregon Housing and Community Services without written authorization. Clients may also be asked to sign a Release of Information; however, refusal to sign such authorization cannot be the basis for denying program services to otherwise eligible clients. Client refusal to sign a Release of Information does not negate the inclusion of personally identifiable in secure reporting to Oregon Housing and Community Services. Oregon Housing and Community Services will deidentify client demographic data for the purposes of reporting. Grantees and their subrecipients must document in the client file that this privacy notification was provided to the client either verbally or in writing. For all other purposes of collecting personally identifiable information, Grantees and their subrecipients must follow state and federal laws for the collection, use and sharing of client information.

### (B) Confidentiality

Grantees and subrecipients must have policies and procedures that ensure all client information and records are secure and confidentially maintained. Subgrantee and subrecipient officers, employees and agents must be aware of and comply with the Grantees' and subrecipients' confidentiality policies and procedures.

Confidential records include all applications, records, files, and communications relating to applicants for, and clients of, Navigation Center funded services.

Electronic collection of client information requires procedures for ensuring confidentiality including:

- a. Computer terminals must be located in a secure location, limiting access to only those persons who have a legitimate interest in and are responsible for client records;
- b. Computer monitors must be cleared (or a screen saver activated) immediately after accessing a client record;
- c. Computer terminals must be on a "locked" mode or turned off if the terminal is unattended; and
- d. Access to personally identifiable HMIS data shall be given to only authorized personnel as necessary for performing the work required for the Navigation Center programs.

### (C) Service Termination or Denial of Assistance

Grantees and subrecipients must have written termination, denial, and grievance policies and procedures. The policies and procedures should be readily available to program participants either at intake or by posting the policy in a public place. It is important to effectively communicate these policies and procedures to applicants/clients and ensure they are fully understood.

Grantees and subrecipients are required to provide written notice to applicants/clients when denied program assistance or assistance is terminated. The notice must include the specific reason(s) for the denial/termination and identify the steps to appeal the subgrantee's and subrecipient's decision.

### (D) Grievance and Appeals Process

Grantees and subrecipient are required to have an established, written process for addressing client grievances for decisions, including termination or reduction of benefit, denial of benefit or other grievance. At a minimum, the process must include the following components:

- a) Informs the participant/applicant of the policy and policy must be posted in general locations in which a client/applicant is expected to be;
- b) Informs the participant/applicant that they may contest any subgrantee's or subrecipient's decision that denies (for any reason) or limits eligibility of participant/applicant and/or terminates or modifies any benefits and identifies the steps to follow to contest the decision;
- c) Allows any aggrieved person a minimum of thirty days to request an administrative review;
- d) Informs the applicant/participant of their right to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the decision;
- e) Informs OHCS of the request for administrative review within 10 days of receiving the request; and
- f) Informs the applicant/participant and OHCS in writing of the final determination and basis for the decision within ten days of the determination.

Any person or persons designated by subgrantee and subrecipient can complete the administrative review, other than the person who made or approved the decision under review or a subordinate of this person.

Grantees and subrecipients must make accommodations for clients who have language or disability barriers that would prevent them from participating in the appeals process.

OHCS retains the right to require modification of any review or appeals process that in its determination does not meet basic principles for notification, instruction, time allowance, impartiality, access and other necessary components.

### (E) Nondiscrimination

Grantees and subrecipient are required to have an established, written process for addressing client grievances for decisions, including termination or reduction of benefit, denial of benefit or other grievance. At a minimum, the process must include the following components:

- a) Informs the participant/applicant of the policy and policy must be posted in general locations in which a client/applicant is expected to be;
- b) Informs the participant/applicant that they may contest any subgrantee's or subrecipient's decision that denies (for any reason) or limits eligibility of participant/applicant and/or terminates or modifies any benefits and identifies the steps to follow to contest the decision;
- c) Allows any aggrieved person a minimum of thirty days to request an administrative review;
- d) Informs the applicant/participant of their right to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the decision;
- e) Informs OHCS of the request for administrative review within 10 days of receiving the request; and
- f) Informs the applicant/participant and OHCS in writing of the final determination and basis for the decision within ten days of the determination.

Any person or persons designated by subgrantee and subrecipient can complete the administrative review, other than the person who made or approved the decision under review or a subordinate of this person.

Grantees and subrecipients must make accommodations for clients who have language or disability barriers that would prevent them from participating in the appeals process.

OHCS retains the right to require modification of any review or appeals process that in its determination does not meet basic principles for notification, instruction, time allowance, impartiality, access and other necessary components.

For more information, see [Guide to Fair Housing for Nonprofit Housing and Shelter Providers](#) produced by the Fair Housing Council of Oregon, or contact them directly at [www.fhco.org](http://www.fhco.org).

## (F) Limited English Proficiency

The Federal government has issued a series of policy documents, guides and regulations describing how subgrantee and subrecipient should address the needs of citizens who have limited English proficiency (LEP). The abbreviated definition of persons with limited English proficiency is those who: have difficulty reading, writing, speaking, or understanding English, and do not use English as their primary language.

Subgrantee and subrecipients must have a LEP policy document that describes the actions subgrantee and subrecipient took to identify LEP populations in their service area and define actions they will take to provide language assistance and address language barriers. The policy must also state how and how often staff will receive training about assisting LEP persons, how the level of success of the policy will be identified and how changes will be made if needed.

Links to more information about Limited English Proficiency requirements are provided in the appendices "Applicable Rules and Regulations".

Grantees and subrecipient should create a written Language Access Plan (LAP) to provide a framework to document how the agency's programs will be accessible to all populations in their service area. Grantees and subrecipient who serve few persons needing LEP assistance may choose not to establish a LAP; however, the absence of a written LAP does not release subgrantee's and subrecipient's obligation to ensure LEP persons have access to programs or activities.

## (G) Conflict of Interest

Subgrantee and subrecipient must keep records to show compliance with program conflict of interest requirements.

### (1) Organizational

The provision of any type or amount of assistance may not be conditioned on an individual's or household's acceptance or occupancy of emergency shelter or housing owned by subgrantee, subrecipient or an affiliated organization. Conflict of interest waivers regarding rent assistance and rental agreement requirements can only be approved by OHCS. If a subgrantee or subrecipient wishes to apply for a waiver, they should contact the OHCS homeless program analyst or manager for guidance in submission of a waiver request, which must be approved by OHCS.

A grantee and subrecipient may conduct a participant's intake assessment to determine program eligibility if the participant resides in housing where the subgrantee or subrecipient has ownership interest for the expediency of housing placement services and to create seamless service delivery while keeping the client engaged in services. A waiver of the conflict-of-interest policy for this purpose is not required.

Grantees and subrecipients cannot steer potential renters to units owned or operated by the subgrantee or subrecipient, if the renters will be using a rent subsidy paid with any OHCS funds. Rent-subsidized tenants are free to enter into a rental contract with another landlord within the subgrantee or subrecipient's jurisdiction or they may choose to rent a unit owned or operated by the subgrantee or subrecipient. A waiver request is not required for this situation; however, Grantees and subrecipients must comply with this provision of the conflict-of-interest policy.

## (2) Individual

For the procurement of goods and services, subgrantee and subrecipient must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) or 24 CFR 84.42 (for private nonprofit organizations).

Persons for whom the conflict-of-interest requirements apply include any person who is an employee, agent, consultant, officer or elected or appointed official of the subgrantee or subrecipient agency. No person who exercises or has exercised any functions or responsibilities with respect to activities assisted under the programs, or who is in a position to participate in decision-making processes or gain inside information with regard to activities assisted under the programs, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has a family or business tie, during his or her tenure or during the one-year period following his or her tenure.

## (H) Monitoring

OHCS will conduct a program monitoring of Grantees once per biennium or more frequently at OHCS' discretion. Fiscal monitoring will be conducted annually unless circumstances require sooner. Grantees will be notified thirty (30) days in advance of the monitoring visit and informed of what documents and records will be reviewed and any required staff or Board interviews. OHCS will provide Grantees with a written monitoring report inclusive of any findings, concerns, or comments. Grantees are required to submit timely corrective action to findings and failure to do so may result in the withholding and/or return of funds to OHCS.

Grantees must notify and receive approval from OHCS when adding subrecipients and/or renewing subrecipients. Notification and approval normally occur during the grant funding application process. However, if changes are made outside of the funding application, grantees must submit a grant activity amendment request form.

## (I) Subrecipient Monitoring

Grantees must monitor their subrecipient organizations annually or the term of the Grant Agreement, as determined by OHCS. Subrecipient organization monitoring procedures must be in place and adequately ensure compliance with Navigation Center program requirements. Monitoring reports will be retained by the subgrantee and available for review by OHCS or other authorized entity.

All subrecipients must comply with all program rules and regulations as noted in this manual, the Grant Agreement.

## Applicant Eligibility

Applicant Eligibility	Homeless	Homelessness Prevention
Homeless Status	<ul style="list-style-type: none"> <li>• Literally homeless</li> <li>• Imminent risk of homelessness</li> <li>• Homeless Under Other Federal Statutes</li> <li>• Fleeing DV</li> </ul>	<ul style="list-style-type: none"> <li>• Imminent Risk of Homelessness</li> <li>• Homeless Under Other Federal Statutes</li> <li>• Unstably Housed</li> </ul>
Income Requirement	no income requirements	80% at or below area median income

### (A) Household Composition

“Household” means an individual living alone, family with or without children, or a group of individuals who are living together as one economic unit.

### (B) Housing Status

Homeless households and unstably housed households are eligible to receive Navigation Center funded services. Eligible applicants for program services must meet one of the following categorical definitions of homeless or unstably housed and at risk of homelessness:

Category 1: Literally Homeless—Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

- Living in a primary nighttime residence that is a public or private place not designed for human habitation (including, but not exclusive to, a car, park, abandoned building, bus or train station, airport or camping ground);
- Living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional shelter, and hotels or motels paid for by charitable organizations or by federal, state or local government programs); OR

- Exiting an institution where he or she has resided for 90 days or less AND who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

Category 2: Imminent Risk of Homelessness—Individual or family who will imminently lose their primary nighttime residence provided that:

- The primary nighttime residence will be lost within 21 days of the date of application for homeless assistance;
- No subsequent residence has been identified; AND
- The individual or family lacks the resources or support networks (e.g., family, friends, faith-based or other social networks) needed to obtain other permanent housing.

Category 3: Homeless Under Other Federal Statutes—Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, (literally homeless, imminent risk of homelessness or fleeing/attempting to flee domestic violence) but who: ☐ Are defined as homeless under other listed federal statutes;

- Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the program assistance application;
- Have experienced persistent instability as measured by two moves or more during the preceding 60 days; AND
- Can be expected to continue in such status for an extended period of time due to special needs or barriers.

Category 4: Fleeing/Attempting to Flee Domestic Violence—Individual or family who:

- Is fleeing, or is attempting to flee, domestic violence;
- Has no other safe residence; AND
- Lacks the resources or support networks to obtain other permanent housing.

Category 5: Unstably Housed—Individual or family who:

- Is at risk of losing their housing, and does not otherwise qualify as homeless under the above listed (1-4) categories, provided that:
- They have been notified to vacate current residence or otherwise demonstrate high risk of losing current housing; AND

Lack the resources or support networks to obtain other permanent housing.

## Income

Clients qualifying as homeless and seeking emergency shelter stay and/or services do not need to meet an income requirement for eligibility.

Homeless prevention services require clients to be low income 80% of AMI or less.

Income includes the current gross income of all adult household members. Income earned by household members who are minors or full-time students and are not considered heads of household is excluded. While household assets should be identified to determine that a program applicant lacks the resources to obtain or retain permanent housing, they are generally not counted as income. Subgrantee's process for determining income eligibility and the documentation required should be consistent with other OHCS-funded program, to the extent possible.

Grantees' policies and procedures must identify what method they will use to determine income eligibility and exceptions to the policy, if any. Documentation methods may include:

- Previous 12 months of income;
- "Snapshot" of current income (at time of assessment);
- Previous 30 days of income.

*Convert periodic wages to annual income by multiplying:*

1. *Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);*
2. *Weekly wages by 52;*
3. *Bi-weekly wages (paid every other week) by 26;*
4. *Semi-monthly wages (paid twice each month) by 24; and*
5. *Monthly wages by 12.*

*To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.*

## Citizenship and Residency

There is no client citizenship or residency requirement for eligibility.

## Eligibility Documentation

(1) Documentation of all client/applicant eligibility information must be available in client/applicant files or if kept electronically, available upon request in the format requested. Documentation of all efforts to obtain higher preference of verification (3rd party and Intake Worker Observation) when lower forms of preference are used, must be in writing and kept in the client/applicant file. Third party documentation is a requirement for payment of mortgage assistance.

(2) Remote Application and Documentation

The standard preference is for applicants to apply for assistance in person or to have in-person contact with the subgrantee or subrecipient throughout the application and service delivery process. A remote application and documentation process may be used when necessitated.

Applicants who apply for assistance and provide eligibility documentation remotely may do so via electronic and other communication; e.g., phone, email, text, electronic messaging, mail and other electronic or remote means. The documentation must be kept in the client file.

Grantees and subrecipients are required to develop and maintain policies and procedures for the use of a remote application and eligibility documentation process and available for review by OHCS, upon request. Such policies and procedures must be applied equally across services that use or are supported by Navigation Center funding. These policies and procedures must address the following elements:

- In what circumstances a remote application and documentation process will be used;
- Verification of the identity of the applicant;
- Verification and documentation of qualification for assistance in relation to program eligibility criteria;
- Verification and documentation as appropriate for ongoing demonstration of eligibility;
- Notification and documentation to client in relation to release of information, service denial or termination and grievance and appeal requirements.

### (3) Order of Preference

OHCS requires program staff to comply with the following general documentation standards listed in order of preference:

- Third-party documentation, where it is available, is the preferable form of documentation. Third party documentation includes verification from an employer, landlord, public benefit worker, agency service provider, etc. Written verification sent directly to program staff or via the applicant is preferred.
- Intake Worker Observation may include oral statements made by a social worker, case manager, or other appropriate official at an institution, shelter, or other facility and documented by the Intake Worker. When the Intake Worker is unable to obtain a written or oral statement from a shelter, institution or facility staff, the Intake Worker must document, in writing, their efforts to obtain eligibility documentation and must place their documentation in the client's file.
- Applicant Self-Certification requires a written and signed document by the individual or head of household seeking assistance attesting to the facts for which they are certifying. A third-party may be designated by an applicant to sign documents on their behalf when they are unable to do so. It is the responsibility of the subgrantee and subrecipient to provide access to language interpretation services and assistive devices necessary for applicants to understand the documents they are certifying.

## Allowable Program Components

Seven service components are eligible for payment with Navigation Center funds:

- Street Outreach
  
- Emergency Shelter Operations and Essential Services
  
- Homelessness Prevention
  
- Rapid Re-Housing
  
- HMIS / Data collection and reporting
  
- Shelter or Transitional Housing Facilities Acquisition, Rehabilitation/Conversion
  
- Shelter Resident Financial Assistance

### (A) Street Outreach

Street outreach is designed to reach unsheltered houseless people; connecting them with emergency shelter, housing, or critical services; and providing urgent, non-facility-based care. OHCS encourages the use of multi-disciplinary approaches and partnerships with culturally responsive, healthcare-focused, or other specialty outreach services.

Individuals defined as unsheltered must meet the criteria for:

- Category 1, literally homeless; or
- Category 4, fleeing/attempting to flee domestic violence (where the individual or household also meet the criteria for category 1) and are:
  - Living on the streets (or other places not meant for human habitation); and
  - Unwilling or unable to access services in emergency shelter.

Eligible outreach services costs include, but are not exclusive to:

- (a) Conducting an initial assessment of applicant basic needs and eligibility;
  
- (b) Providing crisis counseling;

(c) Addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries;

(d) Actively assessing, connecting, and providing information and referrals to needed services, including emergency health and mental health services;

(e) Cost of outreach including, but not limited to, marketing and outreach materials, translation and interpretation services and cell phone costs of outreach workers, etc.;

(f) Case management activities;

(g) Emergency health services to the extent that other appropriate services and treatment are unavailable or inaccessible within the community;

(h) Behavioral health services to the extent that other appropriate services and treatment are unavailable or inaccessible within the community; and

(i) Travel expenses incurred by outreach workers, social workers, medical professionals, or other service agency employees during the provision of allowable street outreach services.

## (B) Emergency and Transitional Shelter

Navigation Center funds can be used to provide shelter; non-congregate shelter; essential services; and renovation of shelter facilities.

### Shelter: Operations

Shelter operations are costs to operate and maintain emergency and or transitional shelters and provide other emergency lodging when appropriate. Eligible costs include but are not exclusive to:

- Minor or routine repair and maintenance;
- Rent or lease payments for the shelter facility;
- Janitorial supplies and service to operate shelter facility;
- Security equipment or service to operate shelter facility;

Facility Management;

- Insurance;
  
- Utilities (water, sewer, garbage, gas, electricity, internet, phone) for shelter facility;
  
- Food;
  
- Furnishings;
  
- Supplies necessary for the operation of the emergency shelters;
  
- Hotel/Motel vouchers for families and individuals when no emergency shelter is available;
  
- Hotels/Motels as Non-Congregate Shelter;
  
- Purchase of PPE and supplies for vaccine events held for shelter residents
  
- Renovation

Emergency shelters must meet minimum habitability standards. Shelters renovated with NAVIGATION CENTER funds are also required to meet state or local government safety and sanitation standards, as applicable.

### Shelter Support Services

Navigation Center funds can pay to meet the essential needs of shelter residents to facilitate transition out of shelter into more stable housing. Support services must be made available to households that receive hotel or motel vouchers to ensure quick and successful transition to more stable housing.

Navigation Center participants cannot be required to sign leases or occupancy agreements, receive treatment, or perform any other prerequisite activities as a condition for staying in any shelter or receiving services

Eligible support service costs include, but are not exclusive to, at the discretion of the subgrantee or subrecipient case manager:

- (a) Intake and case management including pre-eligibility determination for housing and other needed services;

- (b) Housing relocation (e.g., first and last month's rent payments and arrearages, manufactured home rental space "lot rent", application fee, security deposit, utility deposit);
- (c) Purchase of identification and driver's license;
- (d) Purchase of birth certificates;
- (e) Credit repair assistance (not debt payment);
- (f) Tenant readiness education;
- (g) Food and clothing;
- (h) Crisis intervention/counseling;
- (i) Transportation;
- (j) Costs to board and care for shelter residents' animals, such as boarding costs, kennels, leashes, veterinary services, food, toys, etc. Grantees must have an animal policy in place to ensure the safety and welfare of all residents and provide it to OHCS upon request; and
- (k) Client direct services.

### Essential Services Comparison between Outreach and Shelter

Services through the street outreach component are not the same as services provided through emergency shelter systems. The chart below compares appropriate services for each component.

<b>Comparison Table of Essential Services</b>	
<b>Street Outreach (Unsheltered Houseless Persons)</b>	<b>Emergency Shelter Services (Sheltered Houseless Persons)</b>
Engagement	----
Case Management	Case Management
----	Childcare
----	Education Services
----	Employment Assistance/Training
Emergency Health Care	Outpatient Health Services
----	Legal Services
----	Life Skills Training
Emergency Mental Health Care	Mental Health Services
Services for Special Populations	Services for Special Populations
----	Substance Abuse Treatment
Transportation	Transportation

## (C) Hotels/Motels as Non-Congregate Shelter

NAVIGATION CENTER funds may be used for hotel/motel costs for individuals or families in shelters, receiving rapid-rehousing or homelessness prevention rent assistance.

Eligible costs include:

- Cost of the room,
- Charges and costs for enhanced cleaning, and
- Repairs for damage caused above normal wear and tear.

To be eligible for a hotel or motel placement, a household must be:

- Experiencing homelessness as per the HUD definition of homelessness; or
- Receiving Rapid Re-Housing assistance through NAVIGATION CENTERS, or
- Receiving Homelessness Prevention assistance through NAVIGATION CENTERS.

## D) Homelessness Prevention and Rapid Re-Housing:

Navigation Center funds can pay for **Homelessness Prevention** services to allow households at imminent risk of homelessness or unstably housed to regain stability in their current housing or other permanent housing.

Navigation Center funds can also pay for **Rapid Re-housing** services to support households who are literally houseless to transition directly to permanent housing.

Eligible **Homelessness Prevention and Rapid Re-housing** services include, but are not exclusive to:

### Navigation Center funds; Homelessness Prevention and Rapid Re-Housing

- Housing costs such as mortgage/manufactured home payments and arrearages (arrears limited to 3 months);
- Housing costs such as rent payments, late fees and rent arrearages;
- Manufactured home rental space “lot rent” or RV space lot for primary housing;
- Utility payments and arrearages (other utility assistance programs must be deferred to first, utility assistance is only eligible when other utility assistance cannot be obtained and payment of utility assistance is in the context of, and documented in, an action plan or goal designed to increase housing stability) (utilities include water, sewer, garbage, gas, electricity, phone, internet),
- Moving costs, security, pet and utility deposits and application fees;
- Landlord engagement (such as incentives, communication, newsletters, etc.);
- Client direct services;
- Self-sufficiency activities including education and training in such areas as personal finance and budgeting, job search, and access to job training and literacy.
- Case management and housing relocation assistance.

### (E) HMIS / Eligible Data Collection Costs

NAVIGATION CENTER funds can be used to capture and deliver data to the designated HMIS provider for the area.

Eligible costs include but are not limited to:

- Purchasing or leasing equipment, including telephones, fax machines, and furniture;
- Purchasing hardware or software licenses and equipment;
- Obtaining technical support;
- Leasing office space;
- Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;
- Paying salaries for operating HMIS, including:

- Completing data entry;
- Monitoring and reviewing data quality;
- Completing data analysis;
- Reporting to the HMIS Lead;
- Training staff on using the HMIS or comparable database; and
- Implementing and complying with HMIS requirements;
- Paying staff travel costs to conduct intake;
- Paying participation fees charged by the HMIS Lead, and

#### **(F) Shelter or Transitional Housing Facilities Acquisition, Rehabilitation/Conversion**

Navigation center funding can be used for the acquisition, rehabilitation or conversion of emergency shelter and transitional housing for households who are homeless or unstably housed and at risk of homelessness. Use of funding for acquisition, rehabilitation or conversion must follow the guidance indicated in this section. If you have any additional questions, please contact your OHCS Program Analyst.

#### **Distinguishing Between Maintenance and Renovation (Rehabilitation/Conversion)**

Where allowable, OHCS state-funded programs can be used for the category of Shelter Operations, which refers to “Repairs to facility”. This is meant to define minor or routine repairs.

Distinguishing between maintenance activities and more extensive repair and rehabilitation activities requires careful consideration. This information provided will assist in determining whether an activity is maintenance and therefore exempt from further environmental review, or, if it is rehabilitation and therefore requires further environmental review.

In general, maintenance activities slow or halt deterioration of a building and do not materially add to its value or adapt it to new uses. Sometimes, maintenance of a building feature or system requires periodic replacement of individual component parts that are subject to normal wear and tear. While maintenance is often budgeted as an operating expense, and repairs and rehabilitation are treated as capital expenses, it is the nature of the activity itself, not its budget category that determines whether it qualifies as maintenance. Simultaneous maintenance work in multiple units or buildings is still considered maintenance.

For environmental review purposes, deferred maintenance that has resulted in a need for extensive repairs and rehabilitation does not qualify as maintenance. If items that would otherwise be considered maintenance are done as part of an extensive remodeling or renovation of a building that amounts to

rehabilitation, the entire job is considered rehabilitation. Depending on the extent of damage, activities performed after a disaster event will typically not be considered maintenance.

### **Shelter Operations: Maintenance**

In general, maintenance activities include: cleaning; minor or routine repairs of furnishing, equipment, and fixtures not permanently affixed to the building; protective or preventative measures to keep a building, its systems, and its grounds in working order; periodic replacement of a limited number of component parts of a building feature or system that are subject to normal wear and tear; and replacement of a damaged or malfunctioning component part of a building feature or system. Replacement of all or most parts or an entire system is not maintenance. Maintenance activities:

- Do not materially add to the value of the building/property;
- Do not appreciably prolong the useful life of the building/property; and
- Do not adapt the building/property to new uses.

See the Table in the Appendix of the program’s operational manual for specific examples of maintenance activities.

The minimum period of use for maintenance activities is the same as for other shelter operations and essential services activities—that is, the recipient/subrecipient must provide services or shelter to homeless individuals and families at least for the period during which OHCS funds are provided (for example, the contract period specified in a subgrantee contract/agreement). Again, maintenance activities are not subject to environmental review.

### **Renovation and Conversion**

In general, an activity that **does** materially add to the value of the building, appreciably prolong its useful life, or adapt it to new uses would be considered renovation or conversion.

See the Table in the Appendix of the program’s operational manual for specific examples of maintenance activities.

When the activity is renovation, rehabilitation or conversion, the scope of the environmental review may be limited if the work is minor and does not involve ground disturbance. Consult Regional Environmental Officers, Field Environmental Officers, and Program Environmental Clearance Officers for information and examples of Environmental Review Record documentation for limited reviews. The scope of an environmental review relates to the nature and extent of the rehabilitation activities. Some activities, especially those limited to interior spaces, may not have the potential to affect the natural environment, and therefore not require analysis under some of the related laws and authorities like those addressing Wild and Scenic Rivers, Endangered Species, Farmland Protection, or Protection of Wetlands. A reviewer can quickly document such instances in the Environmental Review Record, and focus effort and further analysis on those environmental areas that may be impacted by a project. In residential rehabilitation, those typically include Floodplain Management, Historic Preservation, Noise Abatement, Toxic Chemicals and Radioactive Materials. Historic Preservation review (Section 106) may be expedited through Programmatic Agreements and other program alternatives.

It is also possible to group multiple years of expected activities into one environmental review. For instance, rehabilitation activities could be outlined in a 5-year environmental review for a property and

be reviewed once, without requiring individual reviews each time a single activity occurs during the time period.

Depending on the cost of the renovation and value of the building, it might be considered minor rehabilitation or major rehabilitation (see below).

Renovation costs can include architect's fees, engineering costs, permits, and other costs of a renovation or conversion project when they are reasonable and appropriate, and directly related to the renovation or conversion project. Renovation includes four separate activities. The chart below shows each activity, the definition, the minimum period of use requirement, and the level of environmental review for each. Note that for renovation and conversion activities, the minimum period of use starts on the date the building is first occupied by homeless individuals or families after the renovation or, if the building is occupied during the renovation, the period of use starts on the date the renovation is completed.

<b>Type of Renovation Activities</b>	<b>Definition</b>	<b>Minimum Period of Use</b>	<b>Level of Environmental Review Required</b>
Minor Rehabilitation	The cost of the rehabilitation of an existing emergency shelter is 75% or less of the value of the building before rehabilitation*	3 Years	Generally Categorically Excluded
Major Rehabilitation	The cost of the rehabilitation of an existing emergency shelter exceeds 75% of the value of the building before rehabilitation*	10 Years	Environmental Assessment (can require an Environmental Impact Statement (EIS))
Minor Conversion	The cost of the conversion of a building to an emergency shelter is 75% or less of the value of the building after conversion*	3 Years	Environmental Assessment (can require an Environmental Impact Statement (EIS))
Major Conversion	The cost of the conversion of a building to an emergency shelter exceeds 75% of the value of the building after conversion*	10 Years	Environmental Assessment (can require an Environmental Impact Statement (EIS))

\* The value of the building is the reasonable monetary value assigned to the building, e.g., by an independent real estate appraiser.

## **Shelter or Transitional Housing Facilities Acquisition, Rehabilitation/Conversion**

*[Refer to your Subgrantee Contract/Agreement for Procurement requirements]*

Where allowable, under OHCS state-funded programs can be used for the categories of acquisition and rehabilitation/conversion (encompasses rehabilitation, renovation, and conversion), of emergency shelter and transitional housing for households who are homeless. Projects using targeted funds must ensure that funds exclusively serve the target population. Where the program requires, client eligibility applies. For OHCS-funded programs, acquisition of land must also include a building structure to be used. Acquisition of bare land is not an eligible use of funds.

### **Free Standing Temporary Shelter**

Free-Standing Temporary Shelter (FSTS), also known as tiny homes and pallet shelters, are a type of alternative shelters allowed under the definition of Shelter Acquisition as an equipment purchase. This includes “new construction” of shelter. Prior OHCS approval of the purchase of FSTS is not the same as the OHCS Acquisition/Rehabilitation/Renovation process. The process to receive approval for the purpose of Free- Standing Temporary Shelters is to complete a FSTS pre-approval application, located on the HSS Dashboard, which is targeted for different types of subgrantee contract/agreement. The application includes completing information on your purchase process, site location, amenities on site which is inclusive of utilities, waste management, food service, and public safety strategy, as well as your shelter operation plan. Funds used for the purchase of FSTS must be allocated to the acquisition category of your OHCS grant; however, ongoing operation of FSTS already placed in service may be allocated to the shelter operations category of your OHCS grant, if an allowable expense.

For information and instruction and a How To Guide on Building a Shelter Community, visit [\\*\\*\\*.palletshelter.com](http://palletshelter.com).

### **Acquisition, Rehabilitation, Renovation or Conversion Instructions**

A project description with allowable costs, and following subgrantee contract/agreement rules, must be provided to OHCS in the form and format requested, if needed, and activities for this purpose carry additional requirements as identified below:

#### **Restrictive Use Period**

The Restrictive Use Period for the OHCS-funded acquisition, rehabilitation, conversion and/or renovation is dependent on use of funds and is 10 years for all acquisition. The Restrictive Use Period runs from December 31 of the year the first building in the Project is placed in service or until December 31, [Year of PIS + # of years appropriate for use], whichever is later. The project owner must agree to annually certify compliance with this requirement and submit that certification to OHCS at [hss.acq.rehab@hcs.oregon.gov](mailto:hss.acq.rehab@hcs.oregon.gov).

<b>Rehabilitation and Renovation Minimum Period of Use</b>		
	<b>Use Requirement</b>	<b>Determining Criteria</b>
Major Rehabilitation	10 years	Rehabilitation costs exceed 75% of the value of the building before rehabilitation.
Conversion	10 years	Conversion costs exceed 75% of the value of the building after conversion.
Renovation, including rehabilitation and conversion costs that do not meet 10 Year criteria.	3 years	Renovation costs are 75% or less of the value of the building before renovation.

### **Contractor Oversight**

**Architectural:** All rehabilitation, conversion or renovation concepts must be reviewed and approved by an architect of subgrantee's choosing. For any rehabilitation, conversion or renovation activity costing more than \$30,000, or if any internal or external doors, windows or walls will be added, removed, or moved, the project must hire an architect of record to develop the construction documents.

**General Contractor:** For any construction costing more than \$50,000 or involving three or more trade specialties, the project must hire a general contractor.

### **Period of Fund Availability**

All project costs to be paid with OHCS funds must be incurred on or before the last day of the biennium in which the allocation was made.

### **Use of HMIS**

Except for Domestic Violence victims, project owner will be required to enter data into an approved HMIS system for all persons assisted in an OHCS-funded shelter or transitional housing unit. Domestic Violence providers must collect client data in a database comparable but separate from the subgrantee's HMIS database and must report client-blind data to the subgrantee. Subgrantee must participate in OHCS's required data reporting process, complying with all information requests and reporting deadlines.

### **Procurement Requirements**

Subgrantees must follow procurement requirements as outlined in the subgrantee contract/agreement.

### **OHCS Anti-Displacement and Relocation Assistance Policy**

OHCS-funded acquisition should not cause the involuntary displacement of tenants. OHCS encourages subgrantees to pursue projects that will not permanently displace tenants. If applicable, Subgrantee will provide OHCS, submitted at [hss.acq.rehab@hcs.oregon.gov](mailto:hss.acq.rehab@hcs.oregon.gov), with a description of the relocation plan and whether existing residents will have opportunity to return to the facility, as well as any permanent

relocation. Subgrantee's description shall include the kind of advance notice that will be given to affected tenants; and what funding the subgrantee will provide to assist persons being relocated. Subgrantee must comply with any laws addressing tenant protections and evictions.

### **OHCS Fiscal Monitoring**

OHCS fiscal monitoring requirements for acquisition and/or rehabilitation/construction projects are the same as fiscal monitoring of other costs incurred. Subgrantee must maintain a project file available for review during the monitor's visit or at the monitor's direct request.

### **Monthly Progress Report**

A standardized Monthly Progress Report form must be submitted by the 10th day of the month following the month being reported. Reporting must begin for the month following the date of the first expense of OHCS funds is incurred and must continue monthly until the project can be reported "in use" (shelter) or "occupied" (housing). During all months when the subgrantee will be requesting funds from OHCS, the Monthly Progress Report must include detail of the project work completed during that month and the percentage of completion achieved to date until the project is complete and placed into service. The Monthly Progress Report form is available on the OHCS HSS Dashboard at: [\\*\\*\\*\\*\\*app.smartsheet.com/b/publish?EQBCT=8a215621578a4f76ae98113d719d5e64](*****app.smartsheet.com/b/publish?EQBCT=8a215621578a4f76ae98113d719d5e64).

### **First Year Report**

At the end of the first calendar year the project was placed in service, subgrantee will be asked to provide OHCS with a year-end narrative report describing the project and how it is being used in the community. The First Year Report form is available on the OHCS HSS Dashboard at: [\\*\\*\\*\\*\\*app.smartsheet.com/b/publish?EQBCT=8a215621578a4f76ae98113d719d5e64](*****app.smartsheet.com/b/publish?EQBCT=8a215621578a4f76ae98113d719d5e64).

### **Annual Certificate of Continuing Program Compliance**

A Certificate of Continuing Program Compliance will be required from the subgrantee for the previous year. Subgrantee will use the Certificate to confirm the operation of the project is in compliance with the restrictive use requirements. The Certificate form is available on the OHCS HSS Dashboard at: [\\*\\*\\*\\*\\*app.smartsheet.com/b/publish?EQBCT=8a215621578a4f76ae98113d719d5e64](*****app.smartsheet.com/b/publish?EQBCT=8a215621578a4f76ae98113d719d5e64).

### **Environmental Review**

Subgrantee must complete the appropriate Environmental Assessment or Environmental Impact Statement. Such environmental review must be performed by the responsible entity. The responsible entity must be the unit of general local government within which the project is located that exercises land use responsibility. Such review must be submitted to OHCS at: [hss.acq.rehab@hcs.oregon.gov](mailto:hss.acq.rehab@hcs.oregon.gov).

### **Certificate of Occupancy**

Subgrantee must submit a Certificate of Occupancy signed by their local jurisdiction upon completion of the project. The Certificate of Occupancy must be submitted to OHCS at: [hss.acq.rehab@hcs.oregon.gov](mailto:hss.acq.rehab@hcs.oregon.gov).

### **Subgrantee's Responsibilities for Subrecipients**

OHCS will only fund the acquisition of property if that property will be owned by the subgrantee. OHCS will fund rehabilitation of a property owned by a subgrantee or a subrecipient of the subgrantee. OHCS will always allocate the OHCS funds to the subgrantee, not the subrecipient. All requirements of the grant agreements, program guidelines apply and the subgrantee will be held responsible to ensure all requirements are met by the subrecipient and its vendors. Subrecipients cannot own equipment purchased with OHCS funds. Any equipment must be owned by the subgrantee only and the purchase process must conform to grant agreement/contract procurement requirements.

### **Repurposing the Property**

Subgrantee may determine the community's housing needs have changed and the current use of the property is no longer in high demand. The project owner may be allowed to repurpose the use of the property before the end of a restrictive use period by obtaining prior written approval from OHCS. The eligibility restrictions required by the original funding source must apply. To discuss repurposing, the subgrantee must contact the HSS program analyst.

### **Transferring Property Ownership**

Within the Restrictive Use Period, the project owner may not transfer, sell, assign, bequeath, or dispose of any interest in the project to any person, entity or other assignee, without obtaining the prior written consent of OHCS. The proposed use of any monies gained from the transaction must be pre-approved by OHCS.

### **Checklist of Steps to Follow**

File review is the basis for OHCS monitoring. Subgrantee must keep a complete file of all project requirements for 6 years following the final year of the restrictive use period. Follow these steps to ensure you are in compliance with the rules and regulations for using OHCS for Acquisition, Rehabilitation, Renovation or Conversion:

- 1) Read through all these materials to ensure you understand the requirements that apply to your project and your responsibilities.
- 2) Before drawing your first request for funds, ensure that OHCS has received your first completed Monthly Progress Report.
- 3) If required, ensure that the performance of an Environmental Review is complete and submitted to OHCS.
- 4) By the 10th day of the month following each month being reported until the project is placed into service, submit to OHCS a completed Monthly Progress Report.
- 5) By the end of the first calendar year that the project is placed in service, submit to OHCS a completed First Year Report.
- 6) Upon completion of the project and prior to placing the project in service, submit to OHCS a completed Certificate of Occupancy.
- 7) By January 20th of each year after the project is placed into service and for the duration of the applicable restrictive use period, submit to OHCS a completed Annual Certificate of Continuing Program Compliance.

### **(G) Shelter Resident Support Services**

Navigation Center funding can pay to meet the essential needs of shelter residents to facilitate transition out of shelter into more stable housing. Support services must be made available to households that receive hotel or motel vouchers to ensure quick and successful transition to more stable housing. Eligible

support service costs include, but are not exclusive to, at the discretion of the grantee or subrecipient case manager:

- (a) Intake and case management including pre-eligibility determination for housing and other needed services;
- (b) Housing relocation (e.g., first and last month's rent payments and arrearages, manufactured home rental space "lot rent", application fee, security deposit, utility deposit);
- (c) Purchase of identification and driver's license;
- (d) Purchase of birth certificates;
- (e) Credit repair assistance (not debt payment);
- (f) Tenant readiness education;
- (g) Food and clothing;
- (h) Crisis intervention/counseling;
- (i) Transportation;
- (j) Costs to board and care for shelter residents' animals, such as boarding costs, kennels, leashes, veterinary services, food, toys, etc. Subgrantees must have an animal policy in place to ensure the safety and welfare of all residents and provide it to OHCS upon request; and
- (k) Client direct services.

## Financial Management

### (A) Administration

Grantees are allowed to use up to fifteen percent (15%) of their total Navigation Center allocation for administrative costs, including those allowed for subrecipient organizations with whom the grantee contracts. There is an expectation that administrative funds will be shared with subrecipients commensurate to the services provided through the program by subrecipients.

Allowable administrative costs benefit the organization as a whole and cannot be attributed specifically to a particular program. All amounts billed to administration must be supported by actual costs.

Allowable costs include, but are not limited to:

- Senior executive management personnel salaries and benefits (unless they are directly involved in program operations), administrative staff travel costs;
- General services such as accounting, budget development, personnel, contracting, marketing, agency audit, agency insurance;

- Board expenses (excluding meals);
- Organization-wide membership fees and dues specific to homeless systems and programs;
- General agency facilities costs (including those associated with executive positions), such as rent, depreciation expenses, and operation and maintenance (as part of the organization's direct or indirect cost allocation plan); and
- Equipment rental/purchase, insurance, utilities, and IT costs that are not program specific but relate to the administration of the agency as a whole.

## (B) Use of Opus

The OPUS System is a web-based centralized data system designed to meet business processing needs. Subgrantee staff must complete training before being authorized to use the fiscal operations program of OPUS. Training can be provided by the Fiscal Grant Specialist at OHCS.

OHCS maintains an OPUS Manual and OPUS Help Desk. Staff can be reached at:

Email: [opushelp@oregon.gov](mailto:opushelp@oregon.gov)

Ph: (503) 986-2099

Toll Free: (800) 453-5511 Option 6

## (C) Request for Funding Documentation

Grantees must retain supporting documentation of all costs charged to the applicable grant and be able to provide evidence that grant funds were spent on allowable costs. When subgrantee submits a Request for Funds (RFF) on OPUS, they are required to download documentation of the costs for which they are requesting payment. Any RFF submitted without accompanying documentation or with insufficient documentation will be returned to the subgrantee with instructions to provide additional information.

## (D) Budget Change Requests and Grant Activity Amendment

Changes in a subgrantee's scope of work may necessitate the submission of a budget change request. All budget changes require OHCS approval by submitting a Budget Change Request form electronically to: [mga.fiscal@oregon.gov](mailto:mga.fiscal@oregon.gov).

Navigation Center funds may be used for all eligible components and expenditures and does not require the submission of a budget change request, except for acquisition/rehabilitation. Submission for budget change requests of DRF funds to acquisition/rehabilitation will occur after the Real Estate Application has been submitted and approved.

At the discretion of OHCS, additional information or a Grant Activity Amendment Request form may be required for a budget change request.

Grant Activity Amendments are required when there is a shift in program delivery and/or scope of work. All Grant Activity Amendments require OHCS approval by submitting a Grant Activity Amendment Request through the appropriate Smartsheet form.

Grantees must notify, within 30 days, and receive approval from OHCS when adding subrecipients. Notification and approval normally occurs during the Grant Agreement funding application process; however, if changes are made outside of the funding application, Grantees must notify OHCS and obtain approval by submitting a Grant Activity Amendment Request through the appropriate Smartsheet form.

## (E) Funds Spend Down

Grantees are expected to fully obligate or expend grant funds during each funding cycle in accordance with OHCS policy. OHCS will review subgrantee's grant spending in accordance with subgrantee's contract and OHCS policy. Contact your OHCS Program Analyst for any questions regarding your expenditure of funds.

## (F) Procurement

Purchases of equipment or property are subject to additional provisions and requirements as stated in the Grant Agreement Standard Terms and Conditions and Special Provisions exhibits. Fixed assets with a value greater than \$5,000, includes computer equipment, electronic equipment, photography equipment, hand tools and other items. Title to all equipment purchased in whole or part with OHCS funds must be in the name and possession of the subgrantee. Subgrantee shall prohibit its subrecipients from using OHCS funds to purchase equipment. Disposal of any item having an original cost of more than \$5,000, and which is currently valued above \$5,000, requires prior OHCS consent. Property and equipment purchased with OHCS grants shall not be used for collateral or to secure financing.

Purchasing contracted services should only occur when the skills, knowledge and resources are not available within subgrantee's organization or the subgrantee is unable to complete the work within require time limitations. A contractor must be registered to do business in Oregon and have necessary credentials of expertise. Subgrantee is expected to obtain multiple bids or pricing. If using a sole source contract, subgrantee must have written documentation to explain why they were not able to obtain more options.

## Data Requirements

### (A) Data Entry

Navigation Centers are required to utilize the Homeless Management Information System (HMIS) being operated in their geographic Continuum of Care (CoC). HMIS Data and Technical Standards have been established by the U.S. Department of Housing and Urban Development, (HUD).

*(Except participants in OHCS'S HMIS Data Lake, see (F) Comparable Database's)*

Navigation Centers are responsible for posting HUD required Privacy Notices and protecting program participant's confidentiality following all HMIS Data Standards.

## (B) Data Timeliness

Timely and accurate data entry is critical to ensuring meaningful data analysis and reporting. Therefore, it is recommended that Grantees and subrecipients enter data within three business days (or sooner depending on local CoC HMIS policies).

## (C) Data Entry Requirements for Emergency Shelters and Beds

Navigation Centers are required to report overnight shelter stays for participants, which is separate and distinct from participants accessing drop-in services or considered Navigation Center clients. This will allow the counting of bed nights provided in addition to the client level information on participants staying overnight. Facility, congregate based programs will be tracked and reported separately from any hotel/motel, non-congregate program.

## (D) Data Entry Requirements for Services

Navigation Centers are required to report participants who are getting services during the day in addition to shelter support services. This requires both an HMIS entry/exit, and HMIS Service Transaction. OHCS is prescribing the use of 5 standard service types. \*See attached list service types and matching taxonomy codes. HMIS's utilize the Alliance of Information and Referral Systems (AIRS) taxonomy codes for service types. Of course, OHSC welcomes the use of more than just the prescribed service types. All services will be reported.

## (E) Required Data Elements

HMIS Universal and OHCS-required Data Elements that must be collected for ALL programs include, but are not limited to:

1. Name
2. Social Security Number
3. Date of Birth
4. Race/Race Additional
5. Ethnicity
6. Gender
7. Veteran Status
8. Disabling Condition
9. Universal Project Stay Elements (Prior Situation, Length of stay in previous, date this episode started, etc)

10. Overnight Date In, Project Start Date
11. Overnight Date Out, Exit Date
12. Service Project Start Date and each service Start Date
13. Service Project Exit Date and each service End Date
14. Destination
15. Relationship to Head of Household
16. Client Location
17. Current County of Residence (for CAAs that cover more than one county)

VAWA and the Family Violence Prevention and Services Act (FVPSA) contain strong, legally codified confidentiality provisions that limit Victim Service Providers from sharing, disclosing, or revealing victims' personally identifying information (PII), including entering information into shared databases like HMIS. To protect clients, VSPs must enter required client-level data into a comparable database that is comparable to and complies with all HMIS requirements.

### (F) Comparable Database

Navigation Centers, currently using an HMIS Comparable Database, will interact with the OHCS HMIS Data Lake to provide client level data. The comparable database must be able to provide an export file that meets the HUD HMIS XML Schema criteria, HUD comma-separated values (CSV) format, or can use an application programming interface (API) to connect and upload the same required data elements for reporting.

Victim service providers are prohibited from entering data in HMIS; however, they are required to maintain comparable databases which provide aggregate information and data consistent with HMIS data collection requirements.

Comparable Databases must have the following characteristics:

- The victim service provider controls who can access and see client information;
- Access to the database is carefully controlled by the victim service provider;
- Meets the standards for security, data quality, and privacy of the HMIS within the Continuum of Care. The Comparable Database may use more stringent standards than the Continuum of Care's HMIS;
- Complies with all HUD-required technical specifications and data fields listed in HMIS;

- Be programmed to collect data with the most up-to-date HMIS Data Standards;
- Have the functionality necessary to de-duplicate client records within each system in order to provide an aggregate and unduplicated count of clients by project type;
- Be able to generate all reports required by federal and state partners, for example, the HUD-CoC APR, HUD-ESG CAPER and the OHCS Participant Demographic Report; and
- Data fields that can be modified and customized by the victim service provider to benefit clients.

Additionally, individual survivor data must be routinely destroyed as soon as the program no longer needs it to provide client services or to satisfy grant/legal requirements. Victim service providers may suppress aggregate data on specific client characteristics if the characteristics would be personally identifying. Finally, the program's contract with the database vendor should include binding agreements to ensure security of and program control over client data.

## (F) Reporting Requirements

Navigation Centers are required to submit quarterly HMIS produced, program reports by the 20th of the month following the end of each quarter in accordance with OHCS Grant Agreement directives for content and format. At the discretion of OHCS, other reports may be required when deemed necessary to provide program utilization and performance information. The two HMIS produced reports will come from SAP Business Objects. A Master Query to provide all client demographic information and overnight stays, plus a Service Transaction History Report.

Additional guides and assistance with HMIS data entry, data quality and reporting may be found on our website at: <https://www.oregon.gov/ohcs/for-providers/Pages/hmis.aspx>.

## Records Requirements

### (A) Case Files

Documentation of client eligibility and services received must be maintained in client case files (paper or electronically) and include a copy of the coordinated entry assessment to confirm participation in coordinated entry. Documentation for applicants found to be ineligible for assistance or for clients who are no longer eligible to receive assistance is required and will include the client's request for assistance, why they are ineligible and how it was communicated to the applicant. Ineligible clients do not need to be entered into HMIS unless the use of HMIS is a part of the subgrantee or subrecipient's intake/assessment process.

A client services or housing plan is required for those clients receiving more than one time only services and must be in the case file. Existing assessments and active case plans with other providers may be used and included in the client file.

Drop-in or mass shelter facilities that provide bed nights and no case management must maintain sign-in attendance documentation that includes shelter resident self-certification of their homeless status. All other shelter provisions, including issuance of hotel/motel vouchers, require that client eligibility documentation be maintained in the client file.

File documentation will be the basis of OHCS monitoring to ensure subgrantee and subrecipient is in compliance with program requirements and regulations. OHCS recommends that Grantees and subrecipients use a client file checklist to ensure adequate documentation of case files. Sample forms are available on the OHCS website.

## **(B) Records Access**

Grantees and their subrecipient organizations are required to permit OHCS, the Oregon Secretary of State's Office, the federal government, and the duly authorized representatives of such entities access to, and the right to copy, all program client and fiscal records for such purposes as research, data collection, evaluations, monitoring, and auditing. At the sole discretion of OHCS, access to records shall include the removing of records from the Grantees' and subrecipients' office.

## **(C) Records Retention**

Grantees and subrecipients shall retain all program records pertinent to client services and expenditures incurred under Navigation Centers in a manner consistent with the requirements of state and federal law. This includes, but is not limited to, those requirements listed in Administrative Rule, Operations Manual and Special Schedules. Find the OHCS Special Schedule at the Oregon State Archives:

[\(\(https://sos.oregon.gov/archives/Pages/state\\_admin\\_schedules.aspx\)\).](https://sos.oregon.gov/archives/Pages/state_admin_schedules.aspx)

Find the State Agency General Records Retention Schedules at the Oregon State Archives: [\(\(https://sos.oregon.gov/archives/Pages/records\\_retention\\_schedule.aspx\)\).](https://sos.oregon.gov/archives/Pages/records_retention_schedule.aspx)

Grantees and subrecipients shall retain and keep accessible all such fiscal and program records, client records, digital and electronic records, books, documents, papers, plans, and writings for a minimum of (6) six years, or such longer period as may be required by applicable law, whichever date is later. Applicable law includes the following final payment and termination of Navigation Center funding, or until the conclusion of any audit, controversy or litigation arising out of, or relating to, Navigation Centers

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## Appendix A – Maintenance/Rehab Activities

### EXAMPLES OF MAINTENANCE ACTIVITIES vs. REHABILITATION ACTIVITIES FOR ENVIRONMENTAL REVIEW PURPOSES

<b>Feature or System</b>	<b>Maintenance Activities <sup>4</sup></b>	<b>Rehabilitation Activities <sup>5</sup></b>
<b>Site</b>	<ul style="list-style-type: none"> <li>• lawn care (litter pickup, mowing, raking), trimming trees and shrubs</li> <li>• snow/ice removal</li> <li>• neighborhood cleanup</li> <li>• application of pavement sealants, parking lot restriping, directional signage or marking for handicapped accessibility</li> <li>• repair of cracked or broken sidewalks</li> </ul>	<ul style="list-style-type: none"> <li>• new landscaping throughout an area</li> <li>• construction of new walkways, driveways or parking areas, or replacement thereof</li> </ul>
<b>Building Exterior</b>	<ul style="list-style-type: none"> <li>• cleaning and fixing gutters and downspouts</li> <li>• repainting previously painted surfaces (including limited wet scraping and low-pressure washing)</li> <li>• replacing deteriorated section of siding</li> <li>• removal of graffiti</li> </ul>	<ul style="list-style-type: none"> <li>• cleaning masonry or stripping painted surfaces by sandblasting, acid wash, or high pressure washing</li> <li>• applying new exterior siding</li> </ul>
<b>Roof</b>	<ul style="list-style-type: none"> <li>• fixing leaks</li> <li>• application of waterproof coating to a flat roof</li> <li>• replacement of deteriorated flashing</li> <li>• in-kind replacement of loose or missing shingles or tiles</li> </ul>	<ul style="list-style-type: none"> <li>• complete replacement of roof with new shingles, tiles, roll roofing, membrane, or new metal roof</li> <li>• installation of solar panels</li> </ul>
<b>Windows and Doors</b>	<ul style="list-style-type: none"> <li>• washing windows</li> <li>• caulking, weather stripping, re-glazing windows and doors</li> <li>• fixing broken windowpane(s), storm window(s) or damaged entry door</li> <li>• replacing broken door lock</li> <li>• replacing a vandalized entry door to restore security of a building or unit</li> <li>• replacing a single severely damaged window to match</li> <li>• annual switch out of storm and screen panels</li> </ul>	<ul style="list-style-type: none"> <li>• replacement of windows</li> <li>• replacement of exterior doors</li> <li>• adding storm windows or storm doors</li> </ul>
<b>Interior Walls and Ceilings</b>	<ul style="list-style-type: none"> <li>• patching or mending cracked plaster</li> <li>• patching or fixing holes or cracks in drywall</li> <li>• replacing stained ceiling tiles</li> <li>• painting or wallpapering</li> </ul>	<ul style="list-style-type: none"> <li>• installation of new drywall or paneling</li> <li>• installation of new acoustical ceiling</li> <li>• installation of dropped ceilings</li> </ul>
<b>Flooring</b>	<ul style="list-style-type: none"> <li>• cleaning floors</li> <li>• stripping wooden floors and resealing</li> <li>• installation or replacement of carpeting or vinyl flooring*</li> </ul>	<ul style="list-style-type: none"> <li>• installation of new wood floor</li> </ul>

\* These maintenance items may require purchase of flood insurance if they occur in a Special Flood Hazard Area (SFHA), and costs exceed the standard deductible for the specific type of structure or unit under the National Flood Insurance Program (NFIP).

<b>Feature or System</b>	<b>Maintenance Activities</b> <sup>4</sup>	<b>Rehabilitation Activities</b> <sup>5</sup>
<b>Circulation</b>	<ul style="list-style-type: none"> <li>in-kind replacement of broken stair treads or balusters</li> <li>inspection and servicing of elevators</li> </ul>	<ul style="list-style-type: none"> <li>rebuilding stair or constructing new stair</li> <li>installation of new access ramp</li> <li>elevator replacement</li> </ul>
<b>Kitchen</b>	<ul style="list-style-type: none"> <li>replacement of stoves, refrigerators, and microwaves*</li> <li>replacing cabinet hardware*</li> </ul>	<ul style="list-style-type: none"> <li>complete or substantial kitchen remodel</li> </ul>
<b>Bathroom/Laundry</b>	<ul style="list-style-type: none"> <li>unclogging sink or toilet</li> <li>replacing deteriorated toilet in an occupied housing unit*</li> <li>replacing broken medicine cabinet*</li> <li>replacing washing machines and dryers*</li> <li>installation of grab bars</li> </ul>	<ul style="list-style-type: none"> <li>complete or substantial bathroom remodel</li> </ul>
<b>HVAC</b>	<ul style="list-style-type: none"> <li>servicing and maintenance of mechanical systems</li> <li>changing air filters</li> <li>cleaning air ducts</li> <li>installing or replacing a window air conditioner</li> <li>replacing a malfunctioning part of a HVAC system like a thermostat *</li> </ul>	<ul style="list-style-type: none"> <li>installation of new furnace or heat distribution system</li> <li>installation of central air conditioning</li> </ul>
<b>Electrical/Lighting</b>	<ul style="list-style-type: none"> <li>changing light bulbs</li> <li>replacing malfunctioning light fixture, electrical switch or outlet*</li> </ul>	<ul style="list-style-type: none"> <li>major rewiring of building</li> <li>installation of new electrical service</li> <li>replacing or moving electrical panels</li> </ul>
<b>Plumbing</b>	<ul style="list-style-type: none"> <li>fixing plumbing leaks*</li> <li>repairing damage from frozen pipes*</li> <li>repairing water or sewer connection within existing utility trench alignment</li> <li>replacing malfunctioning water heater*</li> </ul>	<ul style="list-style-type: none"> <li>installation of new plumbing system</li> <li>new water or sewer connection</li> </ul>
<b>Security</b>	<ul style="list-style-type: none"> <li>repair of security alarm systems</li> <li>boarding up a vacant building with protective plywood</li> <li>installation of temporary security fencing</li> <li>installation of security devices needed for an individual health facility patient</li> </ul>	<ul style="list-style-type: none"> <li>installation of permanent security bollards</li> <li>installation of new security alarm system</li> </ul>
<b>Life Safety</b>	<ul style="list-style-type: none"> <li>servicing smoke, fire and CO2 detectors</li> <li>installation of smoke, fire and CO2 detectors</li> </ul>	<ul style="list-style-type: none"> <li>making substantial physical changes to a building to comply with fire and life safety codes</li> <li>installing fire suppression system</li> </ul>
<b>Pest Infestation</b>	<ul style="list-style-type: none"> <li>pest inspection/treatment</li> </ul>	

<sup>4</sup> Categorically Excluded from NEPA and not subject to the related authorities listed in 24 CFR 50.4 and 58.5, unless Extraordinary Circumstances apply pursuant to 24 CFR 50.19(a) or 58.35(c).

<sup>5</sup> Generally Categorical Excluded from NEPA and generally require review under related authorities listed in 24 CFR 50.4 and 58.5, but an RE or HUD reviewer may make a determination that an Environmental Assessment or Environmental Impact Statement is required due to individual project circumstances.

## **EXHIBIT D INSURANCE REQUIREMENTS**

### **INSURANCE REQUIREMENTS:**

Grantee shall obtain at Grantee's expense the insurance specified in Exhibit D prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Grantee shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Grantee shall pay for all deductibles, self-insured retention and self-insurance, if any.

### **WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Grantee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subcontractors complies with these requirements. If Grantee is a subject employer, as defined in ORS 656.023, Grantee shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Grantee is an employer subject to any other state's workers' compensation law, Contactor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

### **COMMERCIAL GENERAL LIABILITY:**

**Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$3,000,000.

### **AUTOMOBILE LIABILITY INSURANCE:**

**Required**

Automobile Liability Insurance covering Grantee's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

**PROFESSIONAL LIABILITY:** **Required**       **Not required**

**Professional Liability** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement by the Grantee and Grantee's subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Grantee shall provide continuous claims made coverage as stated below.

**NETWORK SECURITY AND PRIVACY LIABILITY:** **Required**       **Not required**

Grantee shall provide network security and privacy liability insurance for the duration of the agreement and for the period of time in which Grantee (or its Business Associates or subcontractor(s)) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$1,000,000 per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to, Personally Identifiable Information ("PII"), Payment Card Data and Protected Health Information ("PHI")) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of Agency data.

**DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY:** **Required**

**Directors, Officers and Organization** insurance covering the Grantee's Organization, Directors, Officers, and Trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of use of grant funds and donor contributions which includes state or federal funds - with a combined single limit of no less than \$2,000,000 per claim.

**CRIME PROTECTION COVERAGE: EMPLOYEE DISHONESTY or FIDELITY BOND** **Required**

Employee Dishonesty or Fidelity Bond covering loss of money, securities and property caused dishonest acts of a Grantee's employees. Coverage limits shall not be less than \$ 1,500,000.

**PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE:** **Required**       **Not required**

Abuse and Molestation Insurance in a form and with coverage that are satisfactory to the State covering damages arising out of actual, perceived, or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, training, investigation, reporting to proper authorities, and retention of any person for whom the Grantee is responsible including but not limited to Grantee and Grantee's employees and volunteers. Policy endorsement's definition of an insured shall include the Grantee, and the Grantee's employees and volunteers. Coverage shall be written on an occurrence basis in

an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

**EXCESS/UMBRELLA INSURANCE:**

Umbrella coverage in the sum of \$2,000,000 and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Automobile Liability, and Employers' Liability.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Grantee's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**WAIVER OF SUBROGATION:**

Grantee shall waive rights of subrogation which Grantee or any insurer of Grantee may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Grantee will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Grantee or the Grantee's insurer(s).

**CONTINUOUS CLAIMS MADE COVERAGE:**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Grantee shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Agreement, for a minimum of 24 months following the later of:

- (i) Grantee's completion and Agency's acceptance of all Services required under the Agreement, or
- (ii) Agency or Grantee termination of this Agreement, or
- (iii) The expiration of all warranty periods provided under this Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Grantee shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

**NOTICE OF CHANGE OR CANCELLATION:**

The Grantee or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Grantee agrees to periodic review of insurance requirements by Agency under this Agreement and to provide updated requirements as mutually agreed upon by Grantee and Agency.

**STATE ACCEPTANCE:**

All insurance providers are subject to Agency acceptance. If requested by Agency, Grantee shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit D.

**Exhibit E**  
**Recipient's Contractor Construction Insurance Requirements**

**INSURANCE REQUIREMENTS**

Recipient's Contractors and sub-Contractors ("Contractor") shall obtain at Contractor's expense the insurance specified in Exhibit E prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident.

If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000.

Contractor shall require and ensure that each of its subcontractors complies with these requirements.

**COMMERCIAL GENERAL LIABILITY**

**Required**

Commercial General Liability Insurance covering bodily injury and property damage written on an ISO CG 00 01 10 01 (or equivalent). This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this agreement, and shall have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

**AUTOMOBILE LIABILITY**

**Required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

**A. Automobile Liability Broadened Pollution Liability Coverage Endorsement**

**Required**

If the Contractor is transporting any type of hazardous materials under the contract, then endorsements CA 99 48 or equivalent and MSC-90 (if the Contractor is a regulated motor carrier) are required on the Automobile Liability insurance coverage.

**CONTRACTOR'S POLLUTION LIABILITY**

**Required**

Contractor's Pollution Liability Insurance covering Contractor's or appropriate Subcontractor's liability for bodily injury, property damage, loss of use of property, loss of value of property, government ordered cleanup costs, natural resource damage, environmental damage, and environmental or natural resource damage resulting from sudden, accidental and gradual pollution and related cleanup costs incurred by Contractor, or Subcontractor if the coverage is obtained by the Subcontractor, all arising out of the goods or materials delivered or services (including transportation risk) performed under this Agreement is required. Coverage shall be written on an occurrence basis with a per loss limit of no less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limits.

**A. Asbestos Liability Endorsement**

**Required**

The Contractor, or the Subcontractor, if the coverage is obtained by the Subcontractor, shall provide an Asbestos Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, the Contractor or Subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Agreement.

**B. Lead Liability Endorsement**

**Required**

The Contractor, or the Subcontractor, if the coverage is obtained by the Subcontractor, shall provide a Lead Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, the Contractor or Subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance with the separate policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Agreement.

**EXCESS/UMBRELLA INSURANCE**

**☒ Required**

Excess/umbrella insurance coverage in the sum of \$5,000,000 shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Automobile Liability, and Employers' Liability coverage. The amounts of insurance for the insurance required under this Agreement, including this Excess/Umbrella insurance requirement, may be met by the Contractor obtaining coverage for the limits specified under each type of required insurance or by any combination of underlying, excess and umbrella limits so long as the total amount of insurance is not less than the limits specified for each type of required insurance added to the limit for this excess/umbrella insurance requirement.

**WAIVER OF SUBROGATION**

Contractor grants to Owner a waiver of any right to subrogation that the Contractor or its insurers may acquire against the Owner by virtue of the payment of any loss under any property insurance policy required under this Agreement, including Builder's Risk Insurance and Builder's Risk Installation Floater Insurance. Contractor agrees to obtain from their insurer(s) any endorsements necessary to affect this waiver of subrogation.

**ADDITIONAL INSURED**

All liability insurance, except for Workers' Compensation and Professional Liability (if applicable), required under this Agreement must include the State of Oregon, its officers, employees, and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

For Commercial General Liability, the Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

**CONTINUOUS CLAIMS MADE COVERAGE:**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Agreement, for a minimum of 24 months following the later of:

- (iv) Contractor's completion and Agency's acceptance of all Services required under the Agreement,  
or
- (v) Agency or Contractor termination of this Agreement, or
- (vi) The expiration of all warranty periods provided under this Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE**

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured and include copies of all required additional insured endorsements (or equivalent). The

Certificate(s) shall also verify a waiver of subrogation provision in favor of the Owner is included in the Builder's Risk and/or Builder's Risk Installation Floater insurance policies and all other applicable insurance policies as allowed by law. If a Partial Occupancy endorsement is required under the Builder's Risk and/or Builder's Risk Installation Floater insurance policy, a copy of the endorsement must be provided with the Certificate. If a Contractor Pollution Liability coverage requirement includes an Asbestos Liability and/or Lead Liability endorsement(s), copies of the endorsement(s) must be provided with the Certificate. If the Contractor is transporting any hazardous material under this agreement, copies of endorsements CA 99 48 or equivalent and MCS-90 (if applicable) must be included. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

#### **NOTICE OF CHANGE OR CANCELLATION**

The contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

#### **INSURANCE REQUIREMENT REVIEW**

Contractor agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency.

#### **STATE ACCEPTANCE**

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under Exhibit E.

# STAFF REPORT

**DATE:** May 9, 2023  
**TO:** Mayor and City Councilors  
**FROM:** Heather Richards, Community Development Director  
**SUBJECT:** Resolution No. 2023-23, Contract Award – AnyDoor Place, a McMinnville Navigation Center Construction Contract

## STRATEGIC PRIORITY & GOAL:



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

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

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## Report in Brief:

This action is the consideration of Resolution No. 2023-23 awarding the construction contract in the amount to not exceed \$2,479,175.76 for the Construction of the AnyDoor Place, a McMinnville Navigation Center.

## Background:

The City of McMinnville has partnered with the Yamhill Community Action Partnership (YCAP) to manage the construction phase of the AnyDoor Place, a McMinnville Navigation Center. The City received \$1.5M from the Oregon Legislature in the 2021 session for the project. The City has contracted with Fackler Construction Company as a Construction Manager / General Contractor (CM/GC) services to rehabilitate two existing structures, (approximately 2,677 and 2,251 square feet respectively) and build a new addition (approximately 2,420 square feet) joining the two structures as an emergency low barrier shelter and supportive services facility. The City Council approved the CM/GC contract by Resolution 2022-74. This is the approval of the construction contract.

The construction contracts will be executed in two phases. The phased approach will allow some pre-construction and construction expenses incurred on or before June 30, 2023, to be reimbursed to the City from a YCAP/Oregon Housing and Community Services (OHCS) grant. The grant has a June 30, 2023, closing date.

The Phase 1 Construction Contract is for Guaranteed Maximum Price of \$295,108.90 with a start date expected to be May 10, 2023, and expected completion June 30, 2023.

The Phase 2 Construction Contract is for Guaranteed Maximum Price of \$2,184,066.87 with a start date expected to be July 1, 2023, and expected completion May 1, 2024..

**Discussion:**

The City is utilizing the AIA Form A133 contract for the construction contracts. This is the standard CM/GC contract for the construction of buildings. This contract is comprised of the master contract (AIA Form A133), Exhibit A (GMP), Exhibit B (Insurance and Bonds), and AIA 201-2007 (General Conditions). The City has also provided a supplemental conditions document.

Each phase described above will have its own Exhibit A (GMP) for clarity.

All contract documents have been reviewed and approved by legal counsel and the contractor.

**Attachments:**

Resolution No. 2023-23

AIA Form A133

- Supplemental Conditions

AIA Form A133, Exhibit A, Phase 1 GMP

AIA Form A133, Exhibit A, Phase 2 GMP

- Exhibit G1 – Schedule of Values for GMP
- Exhibit G2 – Contract Exclusions
- Exhibit G3 – Plans and Specifications for GMP
- Exhibit G4 – Subcontractor Directory
- Exhibit G5 – Project Schedule

AIA Form A133, Exhibit B

AIA 201-2007

**Fiscal Impact:**

This Resolution approves a contract for a Guaranteed Maximum Price of \$2,479,175.76.

The revenue to support this contract is \$1,350,000 from the City's DAS Grant for a Navigation Center, \$500,000 from the City's ARPA funds for a Navigation Center, \$609,500 from the Yamhill County Coordinated Care Organization and \$500,000 through a subrecipient grant agreement with YCAP for \$500,000.

**City Council Options:**

- 1) Approve Resolution No. 2023-23 authorizing the City Manager to sign the attached Construction Contracts with Fackler Construction Company
- 2) Request more information.
- 3) Do not approve Resolution No. 2023-23.

**Recommendation:**

Staff recommends that the City Council approve Resolution No. 2023-23.

**RESOLUTION NO. 2023-23**

A Resolution authorizing the City Manager to Construction Contracts with Fackler Construction Company for the Construction of the ANYDOOR Place, a McMinnville Navigation Center.

**RECITALS:**

**Whereas**, the AnyDoor Place, a McMinnville Navigation Center, addresses the need for an emergency low barrier shelter and supportive services facility in McMinnville; and

**Whereas**, by Resolution 2022-74, the City Council approved the Fackler Construction Company as the Construction Manager/General Contractor for the ANYDOOR Place, a McMinnville Navigation Center; and

**Whereas**, Fackler Construction Company will construct the ANYDOOR Place, a McMinnville Navigation Center; and

**Whereas**, the Construction Contract will be for pre-construction and construction services between May 10, 2023, and May 1, 2024.

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

1. The City Manager is hereby authorized and directed to execute the Construction Contract per the exhibits to this resolution.
2. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 9th day of May 2023 by the following votes:

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

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

Approved this 9th day of May 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

Exhibits:

- AIA Form A133
- AIA Form A133, Exhibit A, Phase 1 GMP
- AIA Form A133, Exhibit A, Phase 2 GMP
- AIA Form A133, Exhibit B
- AIA 201-2007

**AGREEMENT** made as of the « » day of « » in the year « »  
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address, and other information)*

«Government Agency »« »  
«City of McMinnville»  
«231 NE Fifth Street»  
«McMinnville, OR 97128 »

and the Construction Manager:  
*(Name, legal status, address, and other information)*

« »« »  
«Fackler Construction Company »  
«PO Box 194 »  
«McMinnville, OR 97128 »

for the following Project:  
*(Name, location, and detailed description)*

«AnyDoor Place, McMinnville Navigation Center,  
Rehabilitation of two existing structures and construction of a connecting addition for a  
Night-by-Night Shelter, Day Use Center and Offices for Supportive Services »  
«327 and 329 SW Adams Street»  
«»

The Architect:  
*(Name, legal status, address, and other information)*

« »« »  
«FFA Architecture and Interiors, Inc. »  
«520 SW Yamhill, Suite 900 »  
«Portland, OR 97204 »

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT EXHIBIT B INSURANCE AND BONDS

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

«Navigation Center including a night-by-night low barrier emergency shelter for persons experiencing homelessness, day-use center and supportive services with offices for partner agencies and programs. »

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

«Rehabilitation of two existing historic residential structures and the construction of a new addition connecting the two existing structures on a site that is adjacent Highway 99W and slopes to Cozine Creek. »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

*(Provide total and, if known, a line item breakdown.)*

«GMP \$2,479,175.76  
Phase 1 \$295,108.90  
Phase 2 \$2,066,010.88  
Contingency \$118,055.99  
Line items per Exhibit G1

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

**.1** Design phase milestone dates, if any:

«50% Construction Documents, April 19, 2023  
95% Construction Documents, May 5, 2023  
Building Permit Submittal, May 17, 2023 »

**.2** Construction commencement date:

« May 10, 2023 »

**.3** Substantial Completion date or dates:

« May 1, 2024 »

**.4** Other milestone dates:

« GMP, Phase 1 (work and expenses incurred prior to June 30, 2023), May 10 Notice to Proceed  
GMP, Phase 1 and 2, (full GMP), June 12, 2023 »

**§ 1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
*(Identify any requirements for fast-track scheduling or phased construction.)*

« Phase 1 = All work that can be commenced prior to full building permit issuance (May 10 – June 30, 2023), including site prep, demolition, foundation if applicable, buyout of materials, etc.) »

Phase 2 – All construction activity per this construction agreement, July 1, 2023, commencement – May 1, 2024 – completion.

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

«n/a »

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7** Other Project information:  
*(Identify special characteristics or needs of the Project not provided elsewhere.)*

«This is a high profile public project, all press inquiries should go to the City of McMinnville representative – Jody Christensen and YCAP representative – Jenn Sharp.»

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 4.2:  
*(List name, address, and other contact information.)*

« Jody Christensen »

« CDD Special Projects Manager »  
« City of McMinnville »  
«231 NE Fifth Street»  
« McMinnville, OR 97128 »  
« » Jody.Christensen@mcminnvilleoregon.gov

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:  
*(List name, address and other contact information.)*

« Jenn Sharp on behalf of Yamhill Community Action Partnership  
Sled Shed Consulting  
PO Box 2544  
White Salmon, WA 98672  
Sledshedconsulting@outlook.com»

§ 1.1.10 The Owner shall retain the following consultants and contractors:  
*(List name, legal status, address, and other contact information.)*

.1 Geotechnical Engineer:

«Foundation Engineering Inc. »« »  
« 820 NW Cornell Avenue »  
«Corvallis, OR 97330 »  
« »  
« »

.2 Civil Engineer:

«Emerio Design »« »  
«6445 SW Fallbrook PL #100 »  
«Beaverton, OR 97008 »  
« »  
« »

.3 Other, if any:

*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

« »

§ 1.1.11 The Architect’s representative:  
*(List name, address, and other contact information.)*

«Tejara Brown, Senior Associate»  
« FFA Architecture and Interiors »  
«520 SW Yamhill Street, Suite 900 »  
«Portland, OR 97204 »  
« »  
« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:  
*(List name, address, and other contact information.)*

«Ben Fackler, Project Manager »  
«Fackler Construction Company »  
«PO Box 194 »  
«McMinnville, OR 97128 »  
«503.437.4049 »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
*(List any Owner-specific requirements to be included in the staffing plan.)*

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:  
*(List any Owner-specific requirements for subcontractor procurement.)*

§ 1.1.14.1 The City understands and agrees that Contractor has requested that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. [References to "subcontractor" in this Contract mean a subcontractor at any tier.]

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

§ 1.1.14.3 The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

§ 1.1.14.4 Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

§ 1.1.14.5 Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

§ 1.1.14.5.1 Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

§ 1.1.14.5.2 Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

§ 1.1.14.5.3 Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

§ 1.1.14.5.3.1 All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one

(1) week when the work week is five (5) consecutive days, Monday through Friday; or

§ 1.1.14.5.3.2 All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

§ 1.1.14.5.3.3 All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

§ 1.1.14.5.4 Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

§ 1.1.14.5.5 For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.17.1, 14.17.2, and 14.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

§ 1.1.14.5.6 If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

§ 1.1.14.6 The State of Oregon Prevailing Wage Rates for Public Works Contracts, January 5, 2023, and incorporated herein, in effect at the earlier of when this Agreement becomes a binding and enforceable obligation on the part of the Construction Manager to perform or arrange for the performance of the Work, or when the Construction Phase begins, each as determined pursuant to OAR 839-025-0020(6), shall apply for this Agreement and all contracts for labor between the Construction Manager and any Subcontractor. The Bureau of Labor and Industry Rates will be included with every bid and core package. The Construction Manager must, at a minimum, pay its own forces the prevailing wage rates as applicable.

»

§ 1.1.15 Other Initial Information on which this Agreement is based:

« »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or

oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

## **§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

## **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, , the City of McMinnville Professional Services Agreement dated January 5, 2023 between the contractor and the owner shall apply.

**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the

Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

An initial project schedule is included as an exhibit to this contract and can be amended with the signatures of the architect's representative, the owner's representative and YCAP's representative.

### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### **§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 3.1.6.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

**§ 3.1.6.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.7** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

**§ 3.1.8** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

### **§ 3.1.11 Subcontractors and Suppliers**

**§ 3.1.11.1** If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

**§ 3.1.11.2** The Construction Manager shall develop bidders' interest in the Project.

**§ 3.1.11.3** The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

### **§ 3.1.12 Procurement**

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on

terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### **§ 3.1.13 Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

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## **§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price, which shall not be less than thirty (30) days after delivery of the Guaranteed Maximum Price proposal by the Construction Manager.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The actual amount of this contingency will be determined by the Construction Manager and Owner at the time the final Guaranteed Maximum Price is established. The contingency should be specified either as a lump sum. Together with each application for payment, the Construction Manager shall provide an itemized accounting of all items charged against the Construction Manager's contingency. Any/all use of contingency shall be reviewed and approved by the Owner.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both provided, however, that the Construction Manager's review and revision of the proposal shall be without cost or expense to the Owner. The Construction Manager agrees to provide the Construction Services described herein for an amount Not-to-Exceed the Guaranteed Maximum Price

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The

Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

#### **§ 3.3.2 Administration**

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### **§ 3.3.2.3 Monthly Report**

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### **§ 3.3.2.4 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### **§ 3.3.2.5 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## **ARTICLE 4 OWNER’S RESPONSIBILITIES**

### **§ 4.1 Information and Services Required of the Owner**

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including

schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

#### § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

#### § 4.3 Architect

The Owner shall retain an Architect to provide architectural and design services. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

«9% of Cost of Work »

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« »

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«The owner shall pay no more than 10% of the cost of that portion of the work. »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed «five » percent ( « 5 » %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

«\$300/day for each day after May 1, 2024, except as amended by change orders. »

§ 6.1.7 Other:

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

« The Construction Manager shall not participate in any savings. Further, the Construction Manager agrees that at the Owner's option there shall be a Guaranteed Maximum Price for portions of the Work designated by the Owner or Architect. All savings shall accrue to the Owner's benefit and be documented by Change Order. »

### § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

### § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction. There shall be a fee decrease due to the Construction Manager related to deductive Change Orders. The Construction Manager's fee increase for additive Change Orders shall be 9% of the Cost of the Change Order Work.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to

subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement. For any additive changes that are based on other than an agreed unit-price method, the Construction Manager agrees to charge and accept as full payment a reasonable allowance for Home Office overhead and profit a fee of 9% for any and all changes regardless of whether the Work is performed by the Construction Manager or by any Subcontractor or any other person or entity. When both additions and credits are involved in any one change, the Construction Manager's fee shall be figured on the net increase, if any. If the Work is not performed or provided by, but through the Construction Manager, in no instance shall the Owner be obligated to pay more than 10% plus the Construction Manager's fee above what the Cost of the Work would have been had the Work at issue been performed directly by the Construction Manager.

**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall be subject to the Guaranteed Maximum Price(s) for all or any portion of the Work, or the other terms, conditions and limitations of this Agreement. Further, the "Cost of Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ 7.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

**§ 7.2.2.1** Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity, hourly rate, and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

« »

**§ 7.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only to the extent that such personnel are not properly included in the main office overhead.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

**§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

**§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not owned by the Construction Manager or any Subcontractor and not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges (not to exceed published rates of commercial rental companies) for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. The Construction Manager agrees that no rental charges shall be payable by the Owner once the purchase price for a piece of equipment owned by the Construction Manager has been reached or exceeded and ownership of such equipment shall be transferred to the Owner upon completion of the Work.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. Construction Manager to provide list of anticipated materials stored off site and proof of insurance for stored materials to be provided with monthly draw.

§ 7.5.5 Costs of utilities on-site during construction.

**§ 7.6 Miscellaneous Costs**

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Commercial General Liability insurance and Bond shall be billed at a rate of 4.9% of the GMP Value and any additive Change Orders.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval. Any and all such costs shall be those actually paid incurred with sufficient documentation and shall not be any estimate, minimum billing, or set labor, material, equipment or services rates. The amount of any discount, rebate or salvage shall be deducted when determining a cost.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

## **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

## **§ 7.9 Costs Not To Be Reimbursed**

**§ 7.9.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of Article 1.1.14. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager’s list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the

Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents. The submission of this Application constitutes a certification that the Work is current on the Construction Manager's Construction Schedule, unless otherwise noted on the Application. The Application shall be in a form acceptable to the Owner and shall include an accounting by natural expense categories, including the approved schedule of values.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« Owner shall make progress payments on the contract monthly as Work progresses. Payment shall be based upon estimates of Work completed that are approved by the Owner. A progress payment shall not be considered an acceptance or approval of any Work or waiver of any defects therein. In instances when an invoice is filled out incorrectly, or when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the Owner shall so notify the Construction Manager within fifteen (15) days stating the reason or reasons the invoice is defective or improper or the reason for the dispute. A defective or improper invoice, if corrected by the Construction Manager within seven (7) days of being notified by the Owner, shall not cause a payment to be made later than specified in this section. Payments are due and payable within thirty (30) days of the date the estimate of the Work completed and invoiced therefore are approved by the Owner for payment. Payment is due for only those estimates and invoices approved by the Owner.

»

§ 11.1.3 Provided that an Application for Payment and all supporting documentation is received by the Architect not later than the «25th » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the «25th » day of the «following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty » ( « 30 » ) days after the Architect receives the Application for Payment and the Owner approves the Application for Payment..

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

« 5%. Except with the Owner's prior written approval, payments to Subcontractors shall be subject to retainage of not less than five percent (5%). »

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

« »

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

« »

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

« The retainage held by the Owner shall be included in and paid to the Construction Manager as part of the final payment of the Contract Sum. The Construction Manager shall notify the Owner in writing when the Construction Manager considers the Work complete and the Owner shall, within fifteen (15) days after receiving the written notice either accept the Work or notify the Construction Manager of Work yet to be performed on the Contract.

»

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 11.1.10** Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.
4. release all final liens.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

## § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

« » % « »

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the

Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

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### **§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

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If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

**§ 13.1.6.1** If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## **§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**

### **§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### **§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### **§ 13.2.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

### **§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**§ 14.1** Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### **§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, , neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 14.2.2** The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### **§ 14.3 Insurance and Bonds**

#### **§ 14.3.1 Preconstruction Phase**

#### **§ 14.3.2 Construction Phase**

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

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### **§ 14.5 Other provisions:**

#### **«§ 14.5.1 OPERATIONS AND MAINTENANCE MANUALS**

As part of the Work, Construction Manager shall submit a preliminary operations and maintenance manual which is complete as of the date of its submission for review by the Owner and the Architect prior to the first application for payment when 75 % or more of the Work has been completed. No payments beyond 75% shall be made until the preliminary O&M Manual has been received by the Owner and Architect. The O&M Manuals shall contain but not be limited to a complete set of all submittals, all product data as required by the specifications, training information, a telephone list of consultants, manufacturers, installers and suppliers, manufacturer’s printed data, recording and shop drawings, schematic diagrams of systems, equipment indexes, warranties and bonds. The Owner’s representative shall review and return the O&M Manual. Prior to its submission of its final payment request five complete and approved sets of O&M Manuals shall be delivered by the Construction Manager to the Owner and Architect.

#### **§ 14.5.2 TRAINING SESSIONS**

As part of the Work, and prior to the submission of the request for final payment, the Construction Manager shall schedule with the Owner training sessions for all equipment and systems. The scheduling shall be at least two weeks prior to the proposed date(s), which date(s) shall be convenient for the Owner’s representatives. Training shall occur only after the particular equipment and/or system is completely installed and is operational in its normal operating environment.

**§ 14.5.3 POST PROJECT EVALUATION REPORT**

As part of the Work, and prior to the submission of the request for final payment, the Construction Manager shall assist the Owner in developing a post-project evaluation report pursuant to the ORS 279C.355. As part of that process, the Construction Manager shall propose a draft analysis which includes the following information:

§ 14.5.3.1 A statement of the actual Project cost as compared with original project estimates, and a statement of the amount of the GMP.

§ 14.5.3.2 An analysis of any cost savings attributed to the use of the CM/GC process, including savings due to value engineering, constructability, review and construction below the GMP.

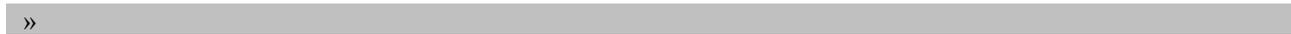
§ 14.5.3.3 The number of project change orders, including an identification of the change orders issued by the Owner, and an analysis of why the change orders were required and the impact on the GMP.

§ 14.5.3.4 A narrative description of the successes and failures during design, engineering and construction of the project.

§ 14.5.3.5 Any additional information related to the cost savings or time savings attributable to the CM/GC process.

**§ 14.5.4 GMP AND CONTRACT TIME ARE REASONABLE**

By agreeing to any existing or future Guaranteed Maximum Price ("GMP") for all or any given portion of the Work, the Construction Manager represents and acknowledges that each GMP is reasonable compensation for any and all Work provided or performed and any and all costs and expenses related or associated therewith. Further, Construction Manager represents and acknowledges that the Contract Time is reasonable and adequate for the completion of the Project and each part thereof; that it has fully examined the Contract Documents and the Project site and is fully satisfied with the nature, quality, restrictions, location and character of the Project.



**ARTICLE 15 SCOPE OF THE AGREEMENT**

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5



[ « » ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Prevailing Wages	Oregon Prevailing Wage Rates for Public Works Contracts	January 5, 2023	All

- .7 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

- «Exhibit G1 – Schedule of Values, GMP Budget
- Exhibit G2 – Contract Exclusions
- Exhibit G3 – Plans and Specifications for GMP
- Exhibit G4 – Subcontractor Directory
- Exhibit G5 – Project Schedule

§ 15.3 Supplemental Conditions (Attached).

This Agreement is entered into as of the day and year first written above.

---

**OWNER** *(Signature)*

«Jeff Towery, City Manager,  
City of McMinnville »« »

*(Printed name and title)*

---

**CONSTRUCTION MANAGER** *(Signature)*

«Ben Fackler, President  
Fackler Construction Company »« »

*(Printed name and title)*

## ARTICLE 15.3

### SUPPLEMENTARY TERMS AND CONDITIONS FOR ANY DOOR PLACE MCMINNVILLE NAVIGATION STATION PROJECT FOR THE CITY OF MCMINNVILLE, OREGON

#### 1. GENERAL

These Supplementary Terms and Conditions amend and supplement the attached AIA Document A133- 2019 and AIA Document A201- 2007 by the addition of a new Article 15.3 to the Contract, entitled Supplementary Terms and Conditions, and other provisions of the Contract Documents as indicated below, and shall govern over any inconsistent provisions of the Contract and General Conditions. All provisions which are not so amended or supplemented shall remain in full force and effect.

#### Section 15.3 ADDITIONAL REQUIRED TERMS AND CONDITIONS

CONTRACTOR shall comply with the following terms and conditions. To the extent that they are different from or inconsistent with any other terms and conditions in the Contract Documents, then the following terms and conditions shall control:

##### 15.3.1 COMPLIANCE WITH ALL GOVERNMENT REGULATIONS

CONTRACTOR shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Damages or costs resulting from noncompliance shall be the responsibility of CONTRACTOR.

15.3.2 CONTRACTOR shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and

- a) CONTRACTOR certifies to OWNER that the CONTRACTOR has not and will not discriminate against minority, women or emerging small business enterprises in the awarding of or obtaining subcontracts, as required by ORS 279A.100 to 279A.110.
- b) CONTRACTOR shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- c) CONTRACTOR certifies that CONTRACTOR is registered with the Construction Contractor's Board.

- d) In accordance with ORS 279C 505(2) CONTRACTOR shall demonstrate that an employee drug testing program is in place.
- e) In accordance with ORS 279C.510 CONTRACTOR shall salvage or recycle demolition debris if feasible and cost effective.

15.3.3 Unless contrary to federal law, CONTRACTOR certifies that it has not accepted a bid or proposal from subcontractors to perform work as described in ORS 701.005 under this Contract unless such subcontractors are registered with the Construction Contractor's Board in accordance with ORS 701.035 to 701.055 or will be so registered at the time they commence work under the contract.

#### 15.3.4 MINIMUM WAGE RATES ON PUBLIC WORKS

15.3.4.1 When the contract price exceeds \$75,000, the CONTRACTOR shall comply fully with the provisions of ORS.279C.800 through 279C.870. Documents establishing those provisions, including the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 276a), as determined by the Commissioner of the Bureau of Labor and industries (BOLI), are included in these Contract Documents by reference.

15.3.4.2 If the project is subject to ORS 279C.800 to 279C.870 and the Davis-Bacon Act (40 U.S.C. 276a), CONTRACTOR and every subcontractor shall pay at least the state prevailing rate of wage as required by ORS 279C.800 to 279C.870 or at least the federal prevailing rate of wage as required by the Davis-Bacon Act, whichever is higher. Every subcontract shall contain this provision.

15.3.4.3 Pursuant to ORS 279C.845, CONTRACTOR and its subcontractors shall submit to the OWNER complete weekly certified statements of payrolls for the week immediately preceding each submission as follows:

Certified statements for each week during which the contractor or subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month.

Before the final payment (covering the last full week of work on the project) is made to the CONTRACTOR by the OWNER.

15.3.4.4 Payroll and Certified Statement forms are available at any BOLI office. The forms must be submitted to: (1) the OWNER; and (2) BOLI's Wage and Hour Division. Payroll and certified statement records must be kept by the CONTRACTOR and Subcontractors for three (3) years from the date of Final Completion of the Contract. The forms shall be submitted to the OWNER in conjunction with the CONTRACTOR's regular payroll cycle.

15.3.5 Notwithstanding ORS 279C.555 or 279C.570 (7), if the CONTRACTOR is required to file certified statements under this section, OWNER shall retain 25 percent of any amount earned by CONTRACTOR until CONTRACTOR has filed the certified statements with OWNER. OWNER will pay the CONTRACTOR the amount retained under this subsection within 14 days after CONTRACTOR files the certified statements, regardless of whether a subcontractor has failed to file certified statements as required by this section.

### 15.3.6 PUBLIC WORKS BOND

15.3.6.1 When the contract price exceeds \$75,000 and CONTRACTOR is required under ORS 279C.800 to 279C.870 to pay prevailing rates of wages, CONTRACTOR and all subcontractors shall file with the Oregon Construction Contractors Board a public works bond with a corporate surety authorized to do business in Oregon in the amount of \$30,000. The bond provisions and language shall meet the requirements of the Board and the Bureau of Labor and Industries. Before starting work, CONTRACTOR shall provide proof to OWNER that CONTRACTOR has filed a public works bond as required under this section.

15.3.6.2 CONTRACTOR shall include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project. Before permitting a subcontractor to start work, CONTRACTOR shall verify that the subcontractor has filed a public works bond as required under this section.

15.3.6.3 A disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 may, for up to one year after certification, elect not to file a public works bond as required under this section. If a business enterprise elects not to file a public works bond, the business enterprise shall give the Board written verification of the certification and written notice that the business enterprise elects not to file the bond. The business enterprise shall notify the OWNER, or if the business enterprise is a subcontractor, the CONTRACTOR of the election before starting work.

### 15.3.7 PROMPT PAYMENT AND LIABILITY FOR CLAIMS

Pursuant to ORS 279C.505 the CONTRACTOR shall:

- a) Make payment promptly, as due, to all persons supplying to such CONTRACTOR labor or material for the prosecution of the work provided for in such Contract.
- b) Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or Subcontractor incurred in the performance of the Contract.

- c) Not permit any lien or claim to be filed or prosecuted against the OWNER, state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- d) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

15.3.8 Pursuant to ORS 279C.580 the CONTRACTOR shall not request payment from the OWNER of any amount withheld or retained in accordance with subsection (5) of ORS 279C.580 until such time as the CONTRACTOR has determined and certified to the OWNER that the Subcontractor has determined and certified to the OWNER that the Subcontractor is entitled to the payment of such amount. A dispute between the CONTRACTOR and First-Tier Subcontractor relating to the amount or entitlement of First-Tier Subcontractor to a payment or a late payment interest penalty under a clause included in the Subcontract pursuant to subsection (3) or (4) of ORS 279C.580 does not constitute a dispute to which the OWNER is a party. The OWNER shall not be included as a party in any administrative or judicial proceeding involving such a dispute.

15.3.9 Pursuant to ORS 279C.580 the CONTRACTOR shall include the following provisions in each Subcontract for property or services entered into by the CONTRACTOR and a First-Tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- a) A payment clause that obligates the CONTRACTOR to pay first-tier subcontractor or material supplier for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to CONTRACTOR OWNER;
- b) An interest penalty clause that obligates the CONTRACTOR if payment is not made within 30 days after receipt of payment from the OWNER, to pay the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph 16.3.3(a). The CONTRACTOR or first-tier subcontractors shall not be obligated to pay an interest penalty if the only reason that the CONTRACTOR or first-tier subcontractor did not make payment when payment was due is that the CONTRACTOR or first-tier subcontractor did not receive payment from the OWNER or CONTRACTOR when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date which payment of the amount due is made, and shall be computed at the rate specified in ORS 279C.515(2).

- c) A clause which requires each of CONTRACTOR's subcontractors to include, in each of their contracts with lower-tier subcontractors or suppliers, provisions to the effect that the subcontractor shall pay its lower-tier subcontractors and suppliers in accordance with the provisions of subsections (a) and (b) above and requiring each of their subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

15.3.10 Pursuant to ORS 279C.515:

- a) If CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with the Project as such claim becomes due, the proper officer(s) representing the OWNER may pay the claim and charge the amount of the payment against funds due or to become due CONTRACTOR under this Contract.
- b) If CONTRACTOR or a First-Tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the OWNER or CONTRACTOR, the CONTRACTOR or First-Tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the CONTRACTOR or First-Tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the OWNER or from the CONTRACTOR, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.
- c) If the CONTRACTOR or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- d) The payment of a claim in the manner authorized in this section shall not relieve the CONTRACTOR or the CONTRACTOR's surety from obligation with respect to any unpaid claims.
- d) CONTRACTOR shall require first-tier Subcontractors to include the same payment clauses contained in their contracts with lower lever subcontractors and suppliers in connection with this project.

#### 15.3.11 PAYMENT FOR MEDICAL CARE

Pursuant to ORS 279C.530, CONTRACTOR shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such CONTRACTOR all sums of which the CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

#### 15.3.12 HOURS OF LABOR

Pursuant to ORS 279C.520, no person shall be employed to perform work under this Contract for more than eight hours in any one day of a 5-day work week, ten hours in one day of a 4-day work week, or forty hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, CONTRACTOR shall pay the employee, except in cases of contracts for personal services as defined in ORS 279C.100, at least time and a half pay for all time in excess of the allowable on Monday through Friday or for work performed on Saturday and on any legal holiday specified in ORS 279C.540. This section will not apply to CONTRACTOR's work under this Contract if CONTRACTOR is currently a party to a collective bargaining agreement in effect with any labor organization, as provided in ORS 279C.540(4). CONTRACTOR shall cause a circular to be posted in accordance with ORS 279C.545 which contains a copy of ORS 279C.540 and the claims rights and limitations for overtime pay set forth therein.

#### 15.3.13 WORKERS' COMPENSATION

The CONTRACTOR, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon Law for all their subject workers. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 each accident.

#### 15.3.14 OWNER'S RIGHT TO SUSPEND THE WORK OR TERMINATE

The OWNER and the OWNER's Authorized Representative have the authority to suspend portions or all of the Work or terminate the Contract due to causes including, but not limited to:

- (a) Failure of the CONTRACTOR to correct unsafe conditions;
- (b) Failure of the CONTRACTOR to carry out any provisions of the Contract:

- (c) Failure of the CONTRACTOR to carry out orders;
- (d) Conditions, in the opinion of the OWNER's Authorized Representative, which are unsuitable for performing the Work;
- (e) Time required to investigate differing site conditions;
- (f) The initiation or pendency of litigation or administrative appeals in any way relating to permits or authorization necessary to undertake and/or continue the Work;
- (g) Any reason considered to be in the public interest.

If the Work is suspended in whole or in part by OWNER pursuant to paragraph 15.3.14 (f) or (g), the CONTRACTOR is entitled to a reasonable extension of the contract time and reasonable compensation for all actual unavoidable out of pocket costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs. During any such suspension, CONTRACTOR shall be and remain obligated to preserve the contract site, the contract Work, whether completed in whole or in part, and any materials stored at the site, in good condition and repair.

In the event OWNER'S termination of the Contract is later found in a final determination by a court of competent jurisdiction to have been without cause, said termination shall be deemed thereafter to have constituted a termination for convenience under Section 15.9 below.

### 15.3.15 OWNER'S RIGHT TO TERMINATE FOR CONVENIENCE

15.3.15.1 In addition to OWNER's right to terminate the Contract in accordance with the Standard General Conditions, OWNER may terminate the Contract in whole or in part whenever OWNER determines that termination of the Contract is in the best interest of the public, or if the circumstances are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work. OWNER may also terminate the contract in the event of the filing or pendency of litigation or administrative appeals in any way relating to the permits or authorizations necessary to undertake and/or continue the Work.

15.3.15.2 The OWNER will provide written notice to the CONTRACTOR and the CONTRACTOR's Surety seven (7) days prior to termination for public convenience. After such notice, the CONTRACTOR and the CONTRACTOR's surety shall provide the OWNER with immediate and peaceful possession of the Project site and premises; materials located on and off the Project site and premises for which the CONTRACTOR received progress payment. If the Contract is terminated pursuant to this paragraph (A15.8), the CONTRACTOR is entitled to reasonable compensation for all materials delivered but not yet paid for, and actual

unavoidable out of pocket demobilization costs resulting from the termination, plus a reasonable allowance for overhead with respect to such demobilization costs. In no circumstances shall CONTRACTOR be entitled to lost profits, or general, special, or indirect or consequential damages due to a termination of the Contract by OWNER.

#### 15.3.16 PROTECTION OF THE ENVIRONMENT

15.316.1 The CONTRACTOR will comply with Oregon Revised Statutes (ORS) 279A.125, 279B.240 to 279B.280, and 279C.525 dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the work. The CONTRACTOR shall conduct operations in conformity to the applicable Sections of ORS Chapters 273, 274, 459, 459A, 465, 466, 467, 468, 468A, and 468B, laws amendatory thereto, and all pertinent regulation of the Department of Environmental Quality and other agencies of the state and the federal government, as well as ordinances or resolutions enacted or adopted by local authorities. It is public policy that all practicable means be exercised to prevent, control, and abate the pollution of waters of the state, and to maintain reasonable purity of the air by the control or abatement of air pollution.

The CONTRACTOR shall exercise every reasonable precaution throughout the life of the contract to safeguard the air resources of the state by controlling or abating air pollution, as defined in ORS 468A.005, in accord with the policy and purpose set forth in ORS 468A.010 and 468A.015.

The CONTRACTOR shall adhere to all permits issued by federal, state, and local agencies. Federal, state, and local agencies having a responsible and/or jurisdiction relating to the environment include, but are not limited to the following agencies:

- U.S. Department of Agriculture
- U.S. Department of Health and Human Services
- U.S. Environmental Protection Agency
- U.S. Army Corps of Engineers
- U.S. Coast Guard
- U.S. Department of Interior, Bureau of Land Management
- U.S. Fish and Wildlife Service
- U.S. Department of Labor
- U.S. Department of Transportation
- U.S. Forest Service
- U.S. Department of Commerce, National Marine Fisheries Service
- Heritage Conservation and Recreation Services
- Oregon Department of Environmental Quality
- Oregon Department of Geology and Mineral Industries
- Oregon Department of Agriculture
- Oregon Department of Energy
- Oregon Department of Fish and Wildlife

Oregon Department of Forestry  
Oregon Department of Human Resources  
Oregon Department of Water Resources  
Oregon Division of State Lands  
Oregon Land Conservation and Development Commission  
Oregon Soil and Water Conservation Commission  
Local County Courts and Boards of Commissioners  
Local City Councils and Commissions  
Local Planning Commissions

#### 15.3.17 TAX LAW CERTIFICATION

The CONTRACTOR certifies to OWNER under penalty of perjury, that CONTRACTOR is to the best of CONTRACTOR's knowledge, not in violation of any tax laws described in ORS 305.380(4).

#### 15.3.18 NOTICES

Any notices permitted or required under the Contract Documents shall be deemed given upon the date of personal delivery or 48 hours after deposit in the United States mail, postage fully prepaid, return receipt requested, addressed to the parties at the addresses set forth on the face of the Contract Documents or any other address as any party may, from time to time, designate by notice given in compliance with this Section.

#### 15.3.19 EXHIBITS

All exhibits, schedules and lists attached to the Contract Documents or delivered pursuant to the Contract Documents shall be deemed a part of the Contract Documents and incorporated herein, where applicable, as if fully set forth herein.

#### 15.3.20 ATTORNEY FEES

In the event of any litigation between the parties to declare or enforce any provision of the Contract Documents, the prevailing party or parties shall be entitled to recover from the losing party or parties, in addition to any other recovery and costs, reasonable attorney fees incurred in such litigation, in both the trial and in all appellate courts.

#### 15.3.21 INTEGRATION

The Contract Documents embody the entire agreement of the parties hereto. There are no promises, terms, conditions or obligations other than those contained herein. The Contract Documents supersede all prior communications, representations or agreements, verbal or written, between the parties hereto and shall not be amended except in writing subscribed to by the parties hereto.

#### 15.3.22 JURISDICTION AND VENUE

The Contract Documents shall be deemed to have been made in the State of Oregon, and shall be governed by the laws of said state. Jurisdiction and venue for any litigation filed in connection with the Contract Documents shall lie and be vested solely in the Circuit Court for Yamhill County, Oregon, and not in any other state or federal court or forum.

#### 15.3.23 SUBCONTRACTOR REGISTRATION

The CONTRACTOR certifies to OWNER that all subcontractors performing work will be registered with the Construction Contractor's Board or licensed by the State Landscape Contractor's Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

#### 15.3.24 EQUAL OPPORTUNITY

CONTRACTOR covenants that the CONTRACTOR shall not discriminate against any person on the grounds of race, color, creed, national origin, sex or handicap and shall comply with the standard federal equal opportunity construction contract specifications set forth in Federal Executive Order 11246.

#### 15.3.25 INDUSTRIAL ACCIDENT PROTECTION

To the extent CONTRACTOR, subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers' Compensation Law. CONTRACTOR shall comply with ORS 656.017, which requires workers' compensation coverage for all subject workers. CONTRACTOR will also comply with the Workers' Compensation law of any state to which CONTRACTOR shall be subject.

END OF SECTION

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the “Agreement”)  
(In words, indicate day, month, and year.)

for the following **PROJECT:**  
(Name and address or location)

« AnyDoor Place, McMinnville Navigation Center »  
«327 and 329 SW Adams Street »

**THE OWNER:**  
(Name, legal status, and address)

« City of McMinnville »« »  
« 231 NE Fifth Street  
McMinnville, OR 97128 »

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

« Fackler Construction Company »« »  
«PO Box 194  
McMinnville, OR 97128 »

## TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed « two hundred ninety five thousand one hundred eight and 90/100 » (\$ « 295,108.90 » ), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.  
(Provide itemized statement below or reference an attachment.)

«Per Exhibit G1 »

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[ «MAY 10, 2023 » ] The date of execution of this Amendment.

[ «MAY 10, 2023» ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 **Substantial Completion**

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[  ] Not later than  (  ) calendar days from the date of commencement of the Work.

[  ] By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
<input type="text"/>	<input type="text"/>

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

§ A.3.1.2 The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

«Per Exhibit G3 »

Section	Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

«Per Exhibit G3 »

Number	Title	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
N/A	

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
*(Identify each assumption and clarification.)*

«Exhibit G2 »

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
*(List any other documents or information here, or refer to an exhibit attached to this Amendment.)*

« Project Asbestos Survey and Report  
Phase 1 Environmental Report  
Geotechnical Report  
Site Survey»

**ARTICLE A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:  
*(List name, discipline, address, and other information.)*

«Per Exhibit G4 »

This Amendment to the Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*  
\_\_\_\_\_  
« »  
*(Printed name and title)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*  
\_\_\_\_\_  
« »  
*(Printed name and title)*

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the “Agreement”)  
(In words, indicate day, month, and year.)

for the following **PROJECT:**  
(Name and address or location)

« AnyDoor Place, McMinnville Navigation Center »  
«327 and 329 SW Adams Street »

**THE OWNER:**  
(Name, legal status, and address)

« City of McMinnville »« »  
« 231 NE Fifth Street  
McMinnville, OR 97128 »

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

« Fackler Construction Company »« »  
«PO Box 194  
McMinnville, OR 97128 »

## TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed « two million one hundred eighty four thousand sixty six and 87/100 » (\$ « 2,184,066.87 » ), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.  
(Provide itemized statement below or reference an attachment.)

«Per Exhibit G1 »

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[ « » ] The date of execution of this Amendment.

[ «JULY 12, 2023» ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

« Upon issuance of building permits from City of McMinnville »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 **Substantial Completion**

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[  ] Not later than  (  ) calendar days from the date of commencement of the Work.

[  ] By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
<input type="text"/>	<input type="text"/>

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

§ A.3.1.2 The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

«Per Exhibit G3 »

Section	Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

«Per Exhibit G3 »

Number	Title	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
Landscaping Allowance	9,000.00

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
*(Identify each assumption and clarification.)*

«Exhibit G2 »

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
*(List any other documents or information here, or refer to an exhibit attached to this Amendment.)*

« Project Asbestos Survey and Report  
Phase 1 Environmental Report  
Geotechnical Report  
Site Survey»

**ARTICLE A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:  
*(List name, discipline, address, and other information.)*

«Per Exhibit G4 »

This Amendment to the Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER *(Signature)*

« »  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
CONSTRUCTION MANAGER *(Signature)*

« »  
\_\_\_\_\_  
*(Printed name and title)*

**EXHIBIT G1**

<b>Phase 1 Construction Costs</b>			<b>Notes</b>
<b>1</b>	<b>General Requirements</b>	<b>\$ 26,000.00</b>	
	A.8.3 Proposal Fixed Fee	\$ 26,000.00	Mobilization and percentage of GR Fee
		\$ -	
<b>2</b>	<b>Existing Conditions</b>	<b>\$ 24,530.43</b>	
	Demolition	\$ 24,530.43	All interior/exterior demolition of project. Includes demolition permit
		\$ -	
<b>3</b>	<b>Concrete</b>	<b>\$ -</b>	
		\$ -	
<b>6</b>	<b>Wood, Plastics, Composites</b>	<b>\$ -</b>	
		\$ -	
<b>7</b>	<b>Thermal and Moisture Protection</b>	<b>\$ -</b>	
		\$ -	
<b>8</b>	<b>Openings</b>	<b>\$ -</b>	
		\$ -	
<b>9</b>	<b>Finishes</b>	<b>\$ -</b>	
		\$ -	
<b>10</b>	<b>Specialties</b>	<b>\$ -</b>	
		\$ -	
<b>11</b>	<b>Appliances</b>	<b>\$ -</b>	
		\$ -	
<b>12</b>	<b>Furnishings</b>	<b>\$ -</b>	
		\$ -	
<b>21</b>	<b>Fire Suppression</b>	<b>\$ -</b>	
		\$ -	
<b>22</b>	<b>Plumbing</b>	<b>\$ 59,615.00</b>	
	Plumbing Fixtures	\$ 59,615.00	All fixtures, drains, water heaters and piping can be purchased and stored prior to June 30, 2023
		\$ -	
<b>23</b>	<b>HVAC</b>	<b>\$ 68,400.00</b>	
	HVAC Equipment	\$ 68,400.00	All ducting, heat pump and mini split systems purchased and stored prior to June 30, 2023
<b>26</b>	<b>Electrical</b>	<b>\$ 61,310.00</b>	
	Electrical Equipment	\$ 61,310.00	All lighting and switchgear can be ordered and paid for prior to June 30, 2023. Equipment is long lead and will not be onsite until after June 30, 2023
		\$ -	
<b>28</b>	<b>Fire Detection and Alarm</b>	<b>\$ -</b>	
		\$ -	
<b>31</b>	<b>Earthwork</b>	<b>\$ 18,240.00</b>	
	Earthwork Complete	\$ 18,240.00	Erosion Control and Site Prep can be completed prior to June 30, 2023
		\$ -	
<b>32</b>	<b>Landscaping</b>	<b>\$ -</b>	
		\$ -	
<b>Direct Construction Cost Total</b>		<b>\$ 258,095.43</b>	
<b>CM/GC Fees</b>		<b>\$ 37,013.47</b>	
	<b>Proposal Fees</b>		
<b>9.00%</b>	CM/GC Fee A.8.2	\$ 23,228.59	
<b>4.90%</b>	CM/GC Bond/Liability Insurance A.8.4	\$ 13,784.88	
<b>Phase 1 Total</b>		<b>\$ 295,108.90</b>	

<b>Phase 2 Construction Costs</b>		
<b>1</b>	<b>General Requirements</b>	<b>\$ 148,450.00</b>
	A.8.3 Proposal Fixed Fee	\$ 148,450.00
		\$ -
<b>2</b>	<b>Existing Conditions</b>	<b>\$ -</b>
	Demolition	\$ -
<b>3</b>	<b>Concrete</b>	<b>\$ 103,384.46</b>
	Foundation	\$ 98,700.00
	Flatwork - INCLUDED IN ABOVE	\$ -
	Trench Patching	\$ 4,684.46
		\$ -
<b>6</b>	<b>Wood, Plastics, Composites</b>	<b>\$ 218,962.00</b>
	Cabinetry	\$ 51,322.00
	Rough Carpentry Material	\$ 49,640.00
	Rough Carpentry Framing	\$ 118,000.00
		\$ -
<b>7</b>	<b>Thermal and Moisture Protection</b>	<b>\$ 172,537.15</b>
	Insulation	\$ 27,477.00
	Dampproofing/Waterproofing	\$ 1,883.15
	Siding	\$ 80,734.00
	TPO Roofing	\$ 20,263.00
	Architectural Roofing	\$ 14,000.00
	Rigid Poly with Ply	\$ 23,660.00
	Gutters and Downspouts	\$ 4,520.00
		\$ -
<b>8</b>	<b>Openings</b>	<b>\$ 83,471.00</b>
	Doors	\$ 39,366.00
	Hardware	\$ 30,180.00
	Windows	\$ 13,925.00
		\$ -
<b>9</b>	<b>Finishes</b>	<b>\$ 306,260.00</b>
	Gyp Board	\$ 121,000.00
	Acoustic Tile Ceilings	\$ 10,950.00
	Tiling	\$ 61,920.00
	Resilient Flooring	\$ 49,360.00
	Wall Protection	\$ 8,250.00
	Interior Painting	\$ 45,670.00
	Exterior Painting (included in above)	\$ -
	Rubber Base	\$ 9,110.00
		\$ -
<b>10</b>	<b>Specialties</b>	<b>\$ 4,321.29</b>
	Signage	\$ 299.14
	Bath Accessories	\$ 3,323.00
	FEC	\$ 699.14
		\$ -
<b>11</b>	<b>Appliances</b>	<b>\$ 1,791.44</b>
	Appliance Install	\$ 1,791.44
		\$ -
<b>12</b>	<b>Furnishings</b>	<b>\$ 11,840.00</b>
	Countertop (included in cabinetry)	\$ -
	Casework	\$ 11,840.00
		\$ -
<b>21</b>	<b>Fire Suppression</b>	<b>\$ 36,726.00</b>
	Fire Sprinkler	\$ 36,726.00
		\$ -
<b>22</b>	<b>Plumbing</b>	<b>\$ 114,017.00</b>
	Plumbing	\$ 114,017.00

		\$	-
<b>23</b>	<b>HVAC</b>	<b>\$</b>	<b>91,600.00</b>
	HVAC	\$	91,600.00
		\$	-
		\$	-
<b>26</b>	<b>Electrical</b>	<b>\$</b>	<b>309,410.00</b>
	Electrical	\$	309,410.00
		\$	-
<b>28</b>	<b>Fire Detection and Alarm</b>	<b>\$</b>	<b>72,515.10</b>
	Fire Alarm	\$	21,366.07
	Access Control	\$	27,171.00
	Security Alarm	\$	6,993.00
	Data and Network Cabling	\$	16,985.03
		\$	-
<b>31</b>	<b>Earthwork</b>	<b>\$</b>	<b>122,600.00</b>
	Earthwork Complete	\$	122,600.00
		\$	-
<b>32</b>	<b>Landscaping</b>	<b>\$</b>	<b>9,000.00</b>
	Landscaping Allowance	\$	9,000.00
		\$	-
<b>Direct Construction Cost Total</b>		<b>\$</b>	<b>1,806,885.44</b>
<b>CM/GC Fees</b>		<b>\$</b>	<b>259,125.44</b>
<b>Proposal Fees</b>			
<b>9.00%</b>	CM/GC Fee A.8.2	\$	162,619.69
<b>4.90%</b>	CM/GC Bond/Liability Insurance A.8.4	\$	96,505.75
<b>Phase 2 Total</b>		<b>\$</b>	<b>2,066,010.88</b>
<b>Construction Total</b>		<b>\$</b>	<b>2,361,119.77</b>
<b>Contingency 5%</b>		<b>\$</b>	<b>118,055.99</b>
<b>GMP Total</b>		<b>\$</b>	<b>2,479,175.76</b>

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## CLARIFICATIONS, EXCLUSIONS AND ASSUMPTIONS

- This GMP Proposal has been prepared based on the following exclusions and assumptions:
  - Any required structural and civil permits are by others
    - Plumbing, electrical, HVAC, Fire Sprinkler and Low Voltage are in scope
  - Extension agreements required by McMinnville Water & Light are by others
  - Special inspections are by others
  - Additional repairs to existing finishes unless specifically noted or damaged during course of construction
  - Asphalt cutting and repair within the ODOT right of way
    - Installation of water line to be installed by boring under the highway
    - Sewer connection to be made to existing lateral outside of ODOT right of way
  - City sidewalk replacement
  - Additional signage not required by code
  - Asbestos and lead inspections
  - Asbestos removal
  - Site Survey work



# Exhibit G3 Plans and Specifications List

Printed on Tue May 2, 2023 at 02:51 pm PDT

Job #: 22462 AnyDoor Place  
327 Adams St.  
McMinnville, Oregon 97128

## 95CD\_4.28.23\_ADP (04/28/23)

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
<b>Architectural</b>					
A-100	FLOOR PLAN - LOWER LEVEL	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-101	FLOOR PLAN - LEVEL 1	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-102	FLOOR PLAN - LEVEL 2 & LOW ROOF	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-110	REFLECTED CEILING PLAN - LOWER LEVEL	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-111	REFLECTED CEILING PLAN - LEVEL 1	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-112	REFLECTED CEILING PLAN - LEVEL 2	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-120	OVERALL ROOF PLAN	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-201	BUILDING ELEVATIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-202	BUILDING ELEVATIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-301	BUILDING SECTIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-302	BUILDING SECTIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-350	WALL SECTIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-351	WALL SECTIONS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-400	ENLARGED PLANS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-401	ENLARGED PLANS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-450	STAIR & RAMP PLANS, SECTIONS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-500	EXTERIOR DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-501	EXTERIOR DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-502	EXTERIOR DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-503	EXTERIOR DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-601	INTERIOR ELEVATIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-602	INTERIOR ELEVATIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-650	INTERIOR DETAILS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-651	INTERIOR DETAILS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-652	INTERIOR DETAILS	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-701	WALL ASSEMBLY TYPES	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-702	FLOOR, CEILING, ROOF ASSEMBLY TYPES	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-710	DOOR & FINISH SCHEDULE	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-901	FURNITURE REFERENCE PLAN - LOWER LEVEL	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-902	FURNITURE REFERENCE PLAN - LEVEL 1	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
A-903	FURNITURE REFERENCE PLAN - LEVEL 2	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
AD-100	DEMO PLAN - LOWER LEVEL	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
AD-101	DEMO PLAN - LEVEL 1	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)

Amended on 05.09.23



# Exhibit G3 Plans and Specifications List

Printed on Tue May 2, 2023 at 02:51 pm PDT

Job #: 22462 AnyDoor Place  
327 Adams St.  
McMinnville, Oregon 97128

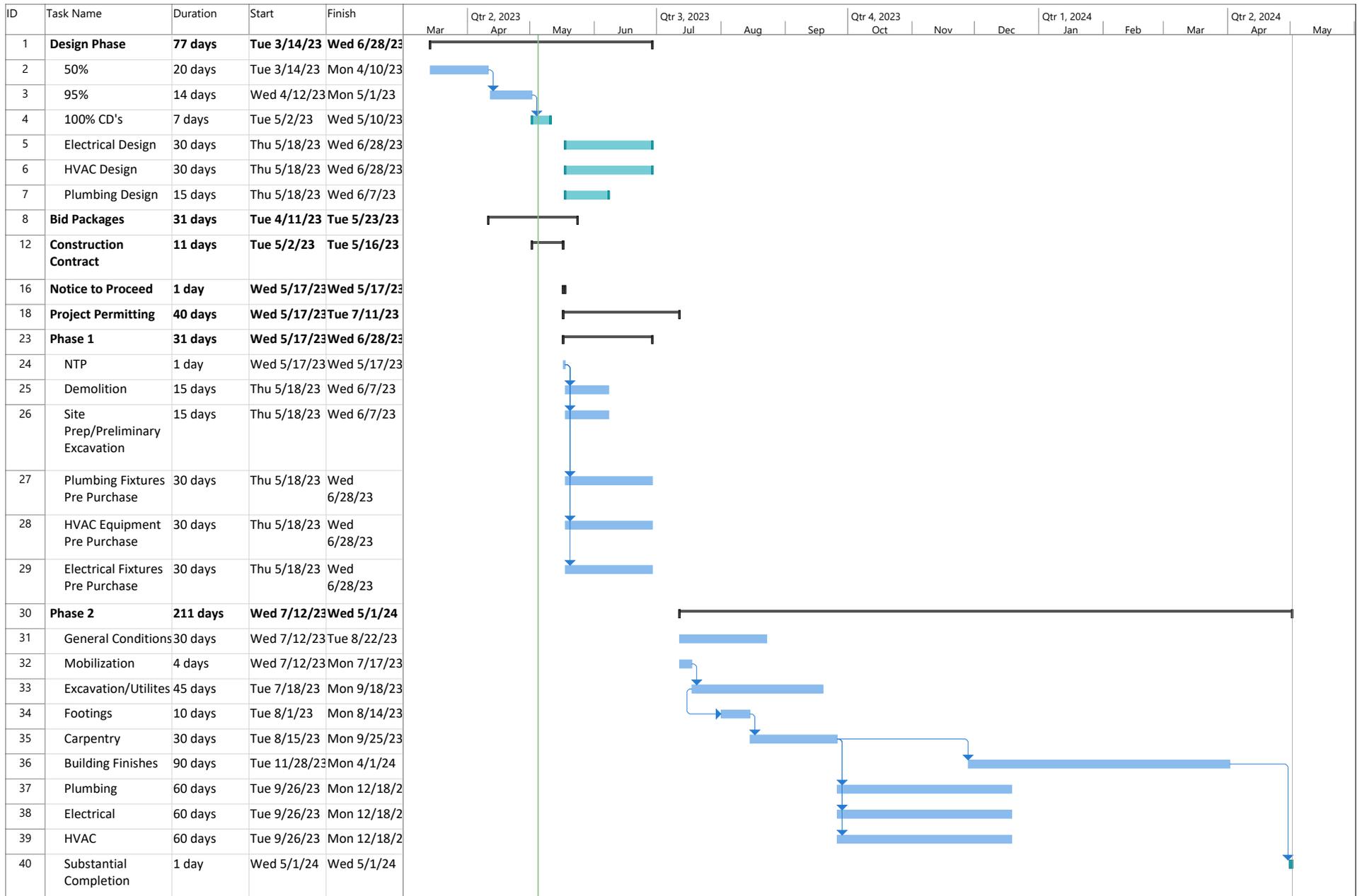
Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
AD-102	DEMO PLAN - LEVEL 2	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
AG-001	SYMBOLS AND ABBREVIATIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
AG-002	ADA STANDARDS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
<b>Civil</b>					
C-100	COVER SHEET	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
C-150	EXISTING CONDITIONS PLAN	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
C-200	DEMOLITION PLAN	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
C-300	CIVIL SITE AND GRADING PLAN	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
C-400	UTILITY AND EROSION CONTROL PLAN	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
C-500	DETAILS	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
C-501	DETAILS	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
<b>General</b>					
G-000	COVER SHEET	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
G-101	CODE ANALYSIS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
G-102	CODE ANALYSIS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
G-104	ARCHITECTURAL SPECIFICATIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
G-105	ARCHITECTURAL SPECIFICATIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
G-106	ARCHITECTURAL SPECIFICATIONS	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
<b>Structural</b>					
S0.01	DRAWING INDEX AND LIST OF ABBREVIATIONS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S0.02	GENERAL STRUCTURAL NOTES	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S0.03	GENERAL STRUCTURAL NOTES CONT.	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S0.04	GENERAL STRUCTURAL NOTES CONT.	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S0.05	SPECIAL INSPECTIONS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S0.06	SPECIAL INSPECTIONS CONT.	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-100	LOWER LEVEL FOUNDATION PLAN	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-101	LEVEL 1 FRAMING PLAN	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-102	LEVEL 2 / LOW ROOF FRAMING	2	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-120	ROOF FRAMING PLAN	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-501	CONCRETE DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-502	CONCRETE DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-503	CONCRETE DETAILS	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-701	WOOD DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-702	WOOD DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-703	WOOD DETAILS	1	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-704	WOOD DETAILS	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)
S-705	WOOD DETAILS	0	04/28/2023	04/28/2023	95CD_4.28.23_ADP (04/28/23)

Amended on 05.09.23  
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## Project Directory

Name	Address	Email / Phone / Fax
<b>5 Star Drywall</b>	PO Box 3547 Salem, Oregon 97302 United States	(503) 851-7146 (business)
<b>Artector Inc</b>	Artector Inc 7354 SE Johnson Creek BLVD Portland, Oregon 97206 United States	(503) 946-1900 (business)
<b>Atlas Flooring</b>	1302 SE 1st Ave Battleground, Washington 98604 United States	(360)984-1824 (business)
<b>City of McMinnville</b>	231 NE Fifth St McMinnville, Oregon 97128 United States	971 387 1800 (business)
<b>D&amp;S Concrete Construction Inc.</b>	PO Box 44 Dayton, Oregon 97114 United States	(503) 474-7273 (business)
<b>Fackler Construction Company</b>	PO Box 194 McMinnville, Oregon 97128-5932 United States	(503) 472-7767 (business)
<b>Gormley Plumbing</b>	Gormley Plumbing PO Box 117 McMinnville 97128	
<b>Innova NW</b>	Innova NW P. O. Box 1291 McMinnville, Oregon 97128 United States	503 472 6306 (business) info@innovativesc.com
<b>Market Contractors</b>	10250 NE Marx St Portland, Oregon 97220 United States	5033584764 (business)
<b>Portland Millwork Inc.</b>	Portland Millwork Inc. 29600 SW Seely Ave Wilsonville, Oregon 97070 United States	503-612-6828 (business)
<b>Timberwood LLC</b>	Timberwood LLC 3230 Beacon ST NE Salem, Oregon 97301 United States	503-884-8654 (business)
<b>USI JB Insulation</b>	14255 SW Galbreath Dr. Sherwood, Oregon 97140 United States	503-625-9700 (business)
<b>US West Corporation</b>	US West Corporation PO Box 6002 Myrtle Creek, Oregon 97457 United States	541-863-6969 (business)
<b>Washington Roofing Co</b>	Washington Roofing 1700 SW Hwy 18 McMinnville, Oregon 97128 United States	
<b>W. H. Cress Company, Inc.</b>		503-620-1664 (business) tara@whcress.com
<b>Wurdinger Excavation Inc</b>	Wurdinger Excavation Inc 7030 Homestead Lane Monmouth, Oregon 97361	503-713-7555 (business) stuart@wurdingerexcavating.com

Name	Address	Email / Phone / Fax
	United States	
<b>Wyatt Fire Protection Inc.</b>	Wyatt Fire Protection 9095 SW Burnham Tigard, Oregon 97223 United States	



Project: 22462_Anydoor Place_C Date: Fri 5/5/23	Task		Project Summary		Manual Task		Start-only		Deadline	
	Split		Inactive Task		Duration-only		Finish-only		Progress	
	Milestone		Inactive Milestone		Milestone		External Tasks		Manual Progress	
	Summary		Inactive Summary		Manual Summary		External Milestone			

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the « » day of « » in the year « 2023 »  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

« AnyDoor Place, McMinnville Navigation Center»  
« 327 and 329 SW Adams Street »

**THE OWNER:**  
(Name, legal status, and address)

« City of McMinnville  
231 NE Fifth Street »« »  
«McMinnville, OR 97128 »

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

«Fackler Construction Company »« »  
« PO Box 194  
McMinnville, OR 97128 »

## TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for Construction. Such insurance shall be written for not less than the following limits, or greater if required by law. There shall be no cancellation or change in any policy, potential exhaustion of limits or intent not to renew without thirty (30) days prior written notice to the Owner.

### ARTICLE B.2 OWNER'S INSURANCE

#### § B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required

by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**B.2.1.1 Insurance Requirements.** The Construction Manager must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of the Construction Manager's activities or Work hereunder. Any and all agents or subcontractors with which the Construction Manager contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Construction Manager must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Construction Manager's liability hereunder. The policy or policies maintained by Construction Manager shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

**B.2.1.2 Certificates of Insurance.** As evidence of the insurance coverage required by this Contract, the Construction Manager shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. The Construction Manager agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and the Construction Manager will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

**B.2.1.3 Primary Coverage.** The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. The Construction Manager shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, The Construction Manager will be required to maintain such policies in full force and effect throughout any warranty period.

**B.2.1.4 Insurance Carrier Rating.** Coverages provided by Construction Manager and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

**B.2.1.5 Additional Insured and Termination Endorsements.** The City and Yamhill Community Action Partnership will be named as an additional insured with respect to Construction Manager's liabilities hereunder in insurance coverages. Additional Insured coverage under Construction Manager's Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers. Yamhill Community Action Partnership, its employees, consultants, agents, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Construction Manager must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

## **§ B.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

## **§ B.2.3 Required Property Insurance**

**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties

to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:  
*(Indicate below the cause of loss and any applicable sub-limit.)*

Cause of Loss	Sub-Limit

**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:  
*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit

**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ B.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- [  ] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.

« »

- [ « » ] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

« »

- [ « » ] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

« »

- [ « » ] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

« »

- [ « » ] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

« »

- [ « » ] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

« »

- [ « » ] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

« »

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

- [ « » ] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.  
*(Indicate applicable limits of coverage or other conditions in the fill point below.)*

« »

- [ « » ] **§ B.2.5.2 Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

**ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS****§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

B.3.1.1.2 As evidence of the insurance coverage required by this Agreement, Construction Manager shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Construction Manager agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Construction Manager will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

B.3.1.1.3 The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. The Construction Manager shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, The Construction Manager will be required to maintain such policies in full force and effect throughout any warranty period.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « » (\$ «\$2,000,000 » ) each occurrence, « » (\$ «\$3,000,000 » ) general aggregate, and « » (\$ « » ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

B.3.2.2.2 Commercial General Liability Insurance: The Construction Manager and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

**§ B.3.2.2.2** The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ B.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than « » (\$ «2,000,000 » ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

B.3.2.3.1 If the Construction Manager or any subcontractors will be using a motor vehicle in the performance of the Work herein, The Construction Manager shall provide the City a certificate indicating that Construction Manager and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

**§ B.3.2.4** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages

required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ B.3.2.5 Workers' Compensation at statutory limits.**

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

**§ B.3.2.6 Employers' Liability with policy limits not less than** « » (\$ «500,000 ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

**§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks**

**§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than** « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

**§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than** « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

**§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than** « » (\$ «2,000,000 ») per claim and « » (\$ «2,000,000 ») in the aggregate.

The Construction Manager shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. The Construction Manager will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

**§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than** « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

**§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than** « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

**§ B.3.3 Construction Manager's Other Insurance Coverage**

**§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:**

*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[ « » ] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

« »

[ « » ] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ « » ] § B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ « » ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ « » ] § B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[ « » ] § B.3.3.2.6 Other Insurance  
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

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

Coverage

Limits

\_\_\_\_\_

**§ B.3.4 Performance Bond and Payment Bond**

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

B.4.1 Payment and Performance Bonds. The Construction Manager shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

B.4.2 Maintenance/Warranty Bond. The Construction Manager shall maintain a one (1) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

B.4.3 Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds before starting work on this Contract or any subcontract hereunder, The Construction Manager and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Construction Manager or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety’s liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. The Construction Manager further certifies that the Construction Manager will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

B.4.4 Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.



**for the following PROJECT:**

*(Name and location or address)*

«McMinnville Navigation Center»  
«327 Adams Street, McMinnville Oregon»

**THE OWNER:**

*(Name, legal status and address)*

«City of McMinnville »« »  
«21 NE Fifth Street  
McMinnville, OR 97128 »

**THE ARCHITECT:**

*(Name, legal status and address)*

«FFA Architecture »« »  
«520 SW Yamhill, Suite 900  
Portland, OR 97204 »

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement and Amendments thereto, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract together with the performance bond and the payment bond represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents, specifically described in the Agreement, is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results therein.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to represent the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s payment obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Drawings and Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents discovered by the Contractor; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 While the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect or Owner issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities **unless the Contractor recognized, or in the exercise of ordinary care, reasonably should have recognized, such error, inconsistency, omission, difference or nonconformity and failed to report it in writing to the Architect and Owner.**

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor, the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and that the Work will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

Unless otherwise provided in the Contract Documents, the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs, losses and expenses attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. Claims by either party in opposition to such findings must be made within 21 days after the Architect has given notice of the finding.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the

Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs and other expenses under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall be satisfactory to the Owner. So long as the superintendent remains employed by the Contractor or any related entity, the superintendent shall not be replaced without the Owner's prior written consent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has with the prior written approval of the Owner, given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, if requested to do so by the Owner, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such belief is promptly furnished in writing to the Architect and the Owner.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended except by written directive of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Owner will provide administration of the Contract with the assistance of the Architect as set forth in the contract between the Owner and the Architect as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed by the Owner and the Architect, to become generally familiar with and keep Owner informed of the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and recommend to Owner certify the amounts due the Contractor and the Owner will review and certify the amounts due to the Contractor.

**§ 4.2.6** The Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** If requested by the Owner, the Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare for the Owner's and Contractor's approval, Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect, in consultation with the Owner, will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site..

**§ 4.2.11** The Architect will interpret and concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If authorized by the Owner, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised, provided that the Owner shall cause such schedule to be binding upon any separate contractors retained by the Owner.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### **§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner in writing apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction, bodily injury to any of Owner's or separate contractor's employees or damage to the Work. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will reasonably allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner or the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including a reasonable allowance for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by preparation of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

## § 7.4 MINOR CHANGES IN THE WORK

The Architect with the approval of the Owner, has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time [provided that the Contractor shall have the affirmative responsibility and obligation to take all possible and reasonable steps to ameliorate the effects of the delay, which steps shall be reflected in the Change Order.](#)

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, when and only when approved in writing, by the Architect and the Owner, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment [for operations completed](#) prepared in accordance with the most recent schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to promptly pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to promptly pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor upon no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If Owner does not make payment of the amount duly owing to Contractor, within ten days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within days after the date established in the Contract Documents the amount certified and recommended by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

## **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, **all as built drawings and warranties have been prepared and delivered to Owner, all subcontractors and material suppliers have been fully paid except for any disputed amounts, and all governmental inspections have been approved and final occupancy permits issued.**

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been

completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit evidencing that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or equipment or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1** employees on the Work and other persons who may be affected thereby;
- .2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the Architect and the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop any ongoing Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. If verified, when the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended if and as appropriate and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, if any.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, and provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, or a breach of the relevant provision of Contract, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning

reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5. The cost of payment and performance bonds required by the Contract Documents is included in the Guaranteed Maximum Price.

## § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The proceeds of such policy shall be payable to the Owner, and shall be used to repair, replace and/or restore the improvements.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

## § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

## § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action

against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

## **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it shall, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered [which is not contrary to requirements specifically expressed in the Contract Documents and which](#) the Architect has not specifically requested to examine prior to its being covered, the Architect and the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction and replacement shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. [If any of the Work is found to be not in accordance with the requirements of the Contract Documents](#) during the one-year period for correction of Work, and if the Owner fails to promptly thereafter notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, unless such tests, inspections or approvals [replace or modify pre-existing requirements in which event the Owner shall bear any net additional costs thereof.](#)

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of

when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and out of pocket costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract

Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed in accordance with the Contract Documents, and costs incurred by reason of such termination.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. [Such notice shall include, to the extent then known by the Contractor, the full details and substantiating data to permit evaluation by the Owner and the Architect. If further, or other information subsequently becomes known to the Contractor, it shall be promptly furnished to the Owner and the Architecture in writing.](#) Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal and general office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit for completed Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, [including those alleging error or omission by the Architect, but excluding](#) those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those

Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Architect will review all Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) recommend rejection of the Claim in whole or in part, (3) recommend approval of the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished or (3) advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 MEDIATION**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the

parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.