

**City Council Meeting Agenda**  
**Tuesday, August 08, 2023**  
**6:00 p.m. – Work Session Meeting**  
**7:00 p.m. – City Council Regular Meeting**

*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, August 7th** 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, August 7th** 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/89603395803?pwd=YmRsODhuaElQb0NuQTRvWEtNWjBBUT09>

*Zoom ID: 896 0339 5803*

*Zoom Password: 245784*

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

*ID: 896 0339 5803*

**6:00 PM – WORK SESSION MEETING – VIA ZOOM AND SEATING AT CIVIC HALL**

1. CALL TO ORDER
2. STORMWATER UTILITY ANALYSIS
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. Lemonade Day Proclamation

4. INVITATION TO COMMUNITY MEMBERS FOR PUBLIC COMMENT –

*The Mayor will announce that 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. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
- b. Department Head Reports
  - 1. Comcast Cable Franchise Renewal Update (Staff Report in packet)

6. CONSENT AGENDA

- a. Consider the request from Ocelli Cellars LLC dba: Ocelli Cellars for Winery 2<sup>nd</sup> Location, OLCC Liquor License located at 801 SW Baker Street.
- b. Consider the request from Patton Valley LLC dba: Patton Valley Wines for Winery 2<sup>nd</sup> Location, OLCC Liquor License located at 801 SW Baker Street.
- c. Consider the request from Stickmen McMinnville LLC dba: Stickmen Brewing Company for Commercial Full on-premises, OLCC Liquor License located at 1031 NE Lafayette Ave.
- d. Consider **Resolution No. 2023-45**: A Resolution approving code compliance liens on properties to recover unpaid civil penalty citations.
- e. Consider **Resolution No. 2023-49**: A Resolution authorizing the City Manager to enter into a contract with Solid Waste Systems (SWS) for \$569,836.55 for the purchase of a Sewer Equipment Co. of America (SECA) ECO-900 Combination Cleaner Vacuum Truck for the City's Wastewater Services Conveyance System through Sourcewell, an Interstate Cooperative Purchasing Program.
- f. Consider **Resolution No. 2023-50**: A Resolution awarding the Professional Services Contract for the 30% design of the Third Street Improvement Project, Project # 2023-4.
- g. Consider **Resolution No. 2023-51**: A Resolution approving the acceptance of an FAA and Oregon Department of Aviation (COAR) Grants for the Airport Master Plan Update, Project 2022 – 10.
- h. Consider **Resolution No. 2023-52**: A Resolution of the City of McMinnville Approving the Second Amendment to Personal Services Contract with Erskine Law Practice LLC to Provide City Prosecutorial Services.

7. ORDINANCE

- a. Consider the first reading with a possible second reading of **Ordinance No. 5137**: An Ordinance Amending Titles 2.50, Code Compliance, and 8.10, Public Nuisances, of the McMinnville Municipal Code.

8. ADJOURNMENT OF REGULAR MEETING



**City of McMinnville**  
**Public Works Department**  
231 NE Fifth Street  
McMinnville, OR 97128  
(503) 434-7312  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** July 18, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Anne Pagano, Public Works Director  
**SUBJECT:** Stormwater Utility Analysis Council Work Session August 8, 2023

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### **Report in Brief:**

The purpose of the City Council Work Session on August 8, 2023, is to provide background information and need regarding consideration of establishing a Stormwater Utility, and to provide an update on our progress in the analysis from our Consultant, Deb Galardi. We will also touch on the status of the Wastewater Master Plan, and the combined Advisory Committee that staff will be assembling.

### **Background:**

#### ***Stormwater Utility***

One of the City's values is Stewardship. As stated in the Mac-Town 2032 Strategic Plan, "*We are responsible caretakers of our shared public assets and resources. We do this to preserve the strong sense of community pride which is a McMinnville trademark.*" Additionally, one of the Council's goals is to "*create and implement an environmental sustainability and/or a Climate Action Plan*". The City's stormwater system does not have sufficient and sustainable funding to achieve this goal relative to protecting waterways from pollution and erosion. There are long standing, substantial funding shortfalls for preventive maintenance, replacement of aging infrastructure, and to meet broader and increasingly restrictive water quality regulatory requirements.

This lack of resources compromises the City's efforts to be responsible environmental stewards. Limited funding from Wastewater Services and Street Funds provides resources to address reactive needs only. These funds are dedicated to wastewater and transportation needs. Consequently, the stormwater system has taken a backseat to targeted needs for these funds.

A stormwater utility would apportion operating and capital expenses to users based on system demand and benefit, similar in concept and practice used for the wastewater utility. A stormwater utility concept

is broadly recognized, in Oregon and nationally, as an equitable and sustainable approach for management of a community's stormwater system.

### ***Wastewater Master Plan Update***

The City contracted with Jacobs Engineering Group in 2022 to update the 2008 Wastewater Master Plan. The scope of work includes a system wide evaluation of the wastewater conveyance and treatment infrastructure. This includes new population projections, condition assessments and capital improvements needed to meet stringent permit requirements. The scope of work also includes an update of the City's wastewater user fees, Sewer Systems Development Charges (SDC) and Wastewater Financial Plan.

### **Discussion:**

#### ***Stormwater Utility***

The community's stormwater system serves a watershed area of approximately 10,700 acres through an integrated system of catch basins, detention basins, open channels (drainageways, creeks) and storm sewers. The service area within the Urban Growth Boundary encompasses roughly 8,400 acres of the watershed. Our earliest records for the system date back to facilities constructed in 1911 that have continued in service for more than 100 years.

Stormwater facilities include:

- 3,665 catch basins
- 17 detention basins
- 45 miles of open channel drainageways
- 114 miles of storm sewers

These facilities are significant, sustained investments in the stormwater system. They minimize health, life and safety risks during flooding, protect properties from damage due to localized flooding, protect water quality by capturing sediments, heavy metals and nutrients bound to these solids, and reduce oil and grease from entering waterways.

The regulatory environment for management of stormwater quality, most recently with the Mercury Total Maximum Daily Load (TMDL), have resulted in unfunded mandates the City must comply with to avoid enforcement action. The City will be embarking on an update to the 2009 Stormwater Master Plan next year and is currently working to meet Mercury TMDL requirements over the next five years as required by the TMDL. A dedicated funding source is needed for both activities soon.

Once the Stormwater Master Plan is completed, the City will have a list of capital improvements that are recommended over a period of time. A funding source will be needed to implement these projects.

In addition to current TMDL regulatory requirements, McMinnville, potentially in the near future, will be required to obtain a permit for stormwater discharged to drainageways and the South Yamhill River. This permitting process is authorized by the federal Clean Water Act as part of the National Pollutant Discharge Elimination System (NPDES) and goes by the acronym MS4 (municipal separate storm sewer system). MS4 permits regulate operation and management of the community's stormwater system, including streets, catch basins, constructed channels and storm drains. Municipalities that need to obtain an MS4 permit are classified as either a "Phase I" or "Phase II" MS4. Phase I MS4s cover areas with populations greater than 100,000 (large and medium) while regulated Phase II (small) MS4s serve populations less than 100,000.

EPA and DEQ have the discretion to require smaller communities or groups of communities to operate under an MS4 permit. Newberg, Albany, Ashland, Corvallis, Oregon City, Wilsonville are examples where DEQ has exercised their discretion to require MS4 permits for smaller cities. We anticipate the State Department of Environmental Quality will require McMinnville to operate under an MS4 permit within the next five-years.

Once in place, the MS4 permit will be a substantial, sustained, and costly regulatory requirement. Specific elements of an MS4 permit may include:

- Development and implementation of a Stormwater Management Plan
- Stormwater management programs for new construction
- Erosion and sediment control programs
- Programs to reduce illicit discharges and ensure proper disposal of household hazardous wastes
- Spill prevention and response program
- Ongoing water quality monitoring to characterize stormwater and identify pollutants
- Implementation of TMDL Action Plans
- Pesticide, herbicide, and fertilizer management programs
- Programs to address discharges from industrial facilities

McMinnville does not currently have dedicated funding to meet upcoming MS4 permit requirements. Compliance with the Federal Clean Water Act MS4 permits will be required but is also consistent with City's goal for responsive environmental stewardship. One element for the Stormwater Master Plan Update will be development of a comprehensive Stormwater Management Plan and projection of actions and funding needed to meet future MS4 permit requirements.

The City has a duty to comply with all elements of the MS4 permit or face enforcement actions by DEQ and possible third-party litigation. DEQ's specific language for non-compliance with permit conditions is cited below:

*The permittee must comply with all conditions of this permit. Failure to comply with any permit condition is a violation of Oregon Revised Statutes (ORS) 468B.025 and the federal Clean Water Act and is grounds for an enforcement action. Failure to comply is also grounds for DEQ to terminate, modify and reissue, revoke, or deny renewal of a permit.*

The City's Operations, Wastewater and Engineering staff maintain this network and meet regulatory requirements within current funding limits. Limited and unstable funding has made operation of the system largely reactionary with no resources for a managed preventive maintenance program.

The infrastructure is aging and much of it has exceeded or is approaching the end of its service life. Funding for a storm sewer replacement capital improvements program has been largely absent. There are several known points of failure in the system along major storm drain trunk lines that are near failure and may require emergency repairs rather than planned replacements through a capital improvements program.

Our current funding approach for the stormwater system does not equitably apportion costs based on demand and benefits. Wastewater user fees are based on the volume and strength of wastewater. Street Fund revenue is funded from gas tax. The current funding approach limits services targeted for these funds. In the case of the Wastewater Fund, resources are diverted from preventive maintenance and capital improvements to clean and inspect high priority stormwater lines and meet emergency needs. Street funds are diverted for street sweeping, catch basin cleaning, and limited maintenance of detention basins. This funding could be dedicated to pavement management and measures to extend the service lives of arterial and collector roadways.

The Stormwater Utility Analysis was initiated to explore more equitable and sustainable ways to fund operation of the stormwater system. The analysis began in October 2022 when the City contracted with Galardi Rothstein Group to develop rate alternatives and a financial needs assessment, and to provide public engagement assistance. The Galardi Rothstein team is well known and experienced in development of stormwater utilities in Oregon and nationwide. A memorandum from the Galardi Rothstein Group summarizing our progress to date on the Stormwater Utility analysis is included as Attachment No. 1.

Over ninety percent of stormwater utilities nationwide use impervious areas as the basis for charging stormwater user fees. Impervious areas are used because stormwater runoff from these areas is directly related to stormwater system management needs. Consequently, one of the first steps in developing a stormwater utility is to determine a community's impervious areas.

The City retained the firm of Raftelis Financial Consultants, Inc. in April 2023 for GIS services to measure impervious areas for a sample of residential and all commercial, industrial, multifamily, and institutional properties. Raftelis completed their analysis of representative residential properties in June 2023. The impervious areas for residential properties are generally similar (with a few outliers) and a uniform charge for this user group has been assumed. A copy of Raftelis' residential property analysis is included as Attachment No. 2. There are significant variations in impervious areas for nonresidential customers and individual measurements for each customer are required to achieve equitable user fee rates. Measurements of non-residential properties are expected to be completed in September 2023.

### ***Wastewater Master Plan Update***

Initial data collection for the Wastewater Master Plan has been completed. Jacobs anticipates most of the technical work will be completed in early 2024. The technical analysis will result in recommended conveyance and treatment improvements. Staff anticipates the recommended improvements will be substantial given a tightening regulatory environment and our discharge to the South Yamhill River, a low flow stream.

The final step in the Wastewater Master Plan update will be to consider how the recommended operating, maintenance and capital needs can be funded. This will involve a review of user fee rates, fee structure and Sewer SDC charges.

### ***Public Engagement***

Targeted public engagement is essential to community understanding, support, and policy choices regarding the level of service, cost of this service and rate payer equity in apportioning costs for the stormwater and wastewater utilities.

Staff will be using public engagement tools to help foster a transparent, open process as alternatives are developed. These tools include, but are not limited to:

- Project status summaries on the City's IHeartMAC web site,
- Technical information regarding stormwater and wastewater rate alternatives,
- Public meetings to share results of the Stormwater Utility Analysis,
- Public meetings to share results of the Wastewater Master Plan,
- Presentation to the City's Affordable Housing and Diversity, Equity and Inclusion Committees,
- City Council Work Session to share results of the Stormwater Utility Analysis, and
- City Council Work Session to share results of the Wastewater Master Plan.

A combined Stormwater/Wastewater Project Advisory Committee will be efficient given the commonality of infrastructure, regulatory and environmental requirements, understanding utility rate financing, cost allocation, rate equity and rate credits.

The Stormwater Utility and the Wastewater Master Plan Update are, in themselves, significant community investments. Funding recommendations from both efforts will have substantial, long-term financial and level of service value to the community. Staff will be recruiting representatives for the Stormwater/Wastewater Project Advisory Committee in August in anticipation of a first meeting in September 2023. The Project Advisory Committee would be a limited duration, project focused group that will engage and participate in the evaluation of funding alternatives for both utilities.

The Committee will be targeted at customer groups. A nine-member Project Advisory Committee will be formed with the following user groups represented.

- (5) members, Single and Multiple Family user representatives
- (1) member, Industrial user representative
- (1) member, Commercial user representative
- (1) member, Development Community user representative
- (1) member, Institutional user representative

The financial impact and complexity of user fee structure alternatives are significant, and staff are recommending a City Council member serve as a liaison with the Project Advisory Committee.

The Project Advisory Committee will meet every other month for a total of 6 meetings between September 2023 and July 2024. We anticipate each meeting will be for approximately two hours. Additionally, the Committee or a representative will attend two City Council Work Sessions (one for Stormwater and one for Wastewater), and two public meetings (one for Stormwater, one for Wastewater).

Stormwater and wastewater topics will be discussed at each Committee meeting. The initial focus will be on the Stormwater Utility. This focus will change to the Wastewater Master Plan Update, rates and Sewer SDC as the Stormwater Analysis is completed and the scope and cost of recommended wastewater projects are available.

**Recommendation:**

Staff recommends the City Council appoint a Council liaison for the Stormwater/Wastewater Project Advisory Committee.

**Attachments:**

1. Galardi Rothstein Group Memo
2. Raffelis GIS report, ERU Analysis



## Attachment No. 1

**PREPARED FOR:** Anne Pagano, Public Works Director  
**PREPARED BY:** Deb Galardi, Galardi Rothstein Group  
**SUBJECT:** Stormwater Utility Study  
**DATE:** July 13, 2023

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## Introduction

The City of McMinnville (City) is considering implementation of a stormwater utility and dedicated user fee to fund stormwater management. Galardi Rothstein Group was engaged by the City to assist in the development of a stormwater system funding plan and evaluation of rate structures and other program elements.

Stormwater utilities have been implemented by dozens of cities in Oregon to provide equitable and dedicated funding to meet regulatory requirements, and system operation, maintenance, and replacement needs. The chart attached illustrates a range of stormwater monthly rates charged in Oregon (based on 2021 data).

This memorandum summarizes key elements to be addressed as part of the stormwater utility development.

## Stormwater Utility Development

### *Annual Revenue Requirements*

As with the wastewater utility, annual stormwater funding requirements include capital and operation and maintenance costs, as well as policy-based set-asides for contingencies and reserves. Specific cost elements to be considered for stormwater include:

- Inspection and maintenance activities
- Regulatory compliance activities
- Public education
- Technical services



- Customer service
- Administration
- Capital improvements.

In estimating annual revenue needs, the project team is considering costs of existing activities (e.g., street sweeping, limited cleaning and inspection of stormwater lines and other assets) that are currently funded from wastewater rates or street funds, as well as additional costs needed to meet regulatory, environmental, safety, and system reliability needs. Different funding “packages” will be identified for the City Council’s consideration to allow balancing of desired levels of service against customer rate impacts.

### ***Stormwater Rate Structure***

Site impervious area is the most common basis for recovering stormwater utility costs from customers, as it provides an indirect measure of stormwater discharge that has implications for stormwater management. Stormwater utility rate structures may also include per-account or dwelling unit charges for recovering costs that relate to customer services, billing, and in some cases, water quality and quantity costs associated with impervious area in the public right-of-way.

The determination of the portion of annual costs to be recovered from impervious area or other account or unit charges has direct implications on the distribution of costs to customer types (e.g., residential vs. commercial) and different sizes of customers. The project team is currently developing customer impervious area measurements for purposes of developing stormwater rate structure options. Once that process is complete, specific rate options will be developed and presented to the City Council for consideration.

### ***Rate Modifiers***

It is common practice for stormwater utilities to include credit or discount programs for private activities or investments that reduce a customer’s impact on the stormwater system. Credit programs may include incentives for runoff volume or flow control, or water quality. Development of the credit program must balance customer incentives against the additional administrative costs associated with program implementation and monitoring.

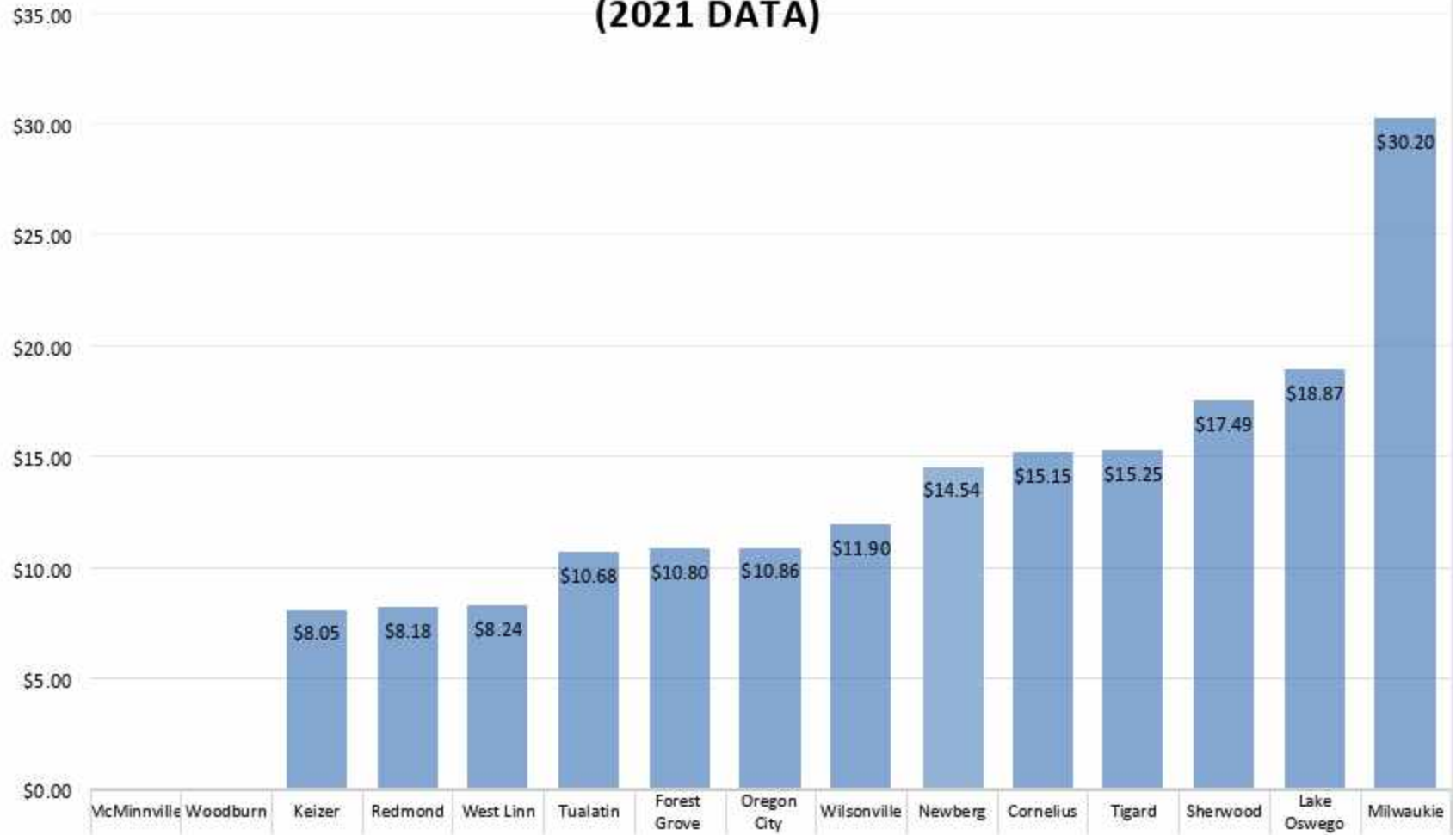
Like the City’s other rates, the stormwater rate structure may include policy-based discounts for customers experiencing financial hardships or other circumstances, and stormwater-specific exemptions (e.g., undeveloped parcels). Credit program options and other rate policies will be considered in the context of the rate structure and funding plan development.

## **Implementation Plan**

Concurrent with development of the funding plan and rate structure will be the development of the implementation plan which will require coordination across multiple City departments and with McMinnville Water and Light to develop the legal, financial, and customer billing

framework to implement the utility and the associated charges. More details on implementation steps will be provided to the City Council at future meetings.

## SAMPLE RESIDENTIAL STORMWATER MONTHLY BILLS (2021 DATA)



## City of McMinnville, Oregon Stormwater ERU Analysis June 8, 2023

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The following analysis and results are presented by Raftelis to the City of McMinnville (City) in support of Task 1 of the Stormwater Utility Implementation Data Development project. This task includes the determination of an Equivalent Residential Unit (ERU) for the City, which is a billing unit often used by stormwater utilities with impervious area-based rate structures. An ERU reflects the typical amount of impervious area on a single family residential (SFR) parcel and allows for simplified billing of the largest customer group - single family properties. Impervious surface area is the most common rate structure among those communities with stormwater fees because it is a good measure of a ratepayer's demand on the stormwater system. The more impervious area on a property, the more stormwater the property generates and the greater the demand for the utility's stormwater management services. Raftelis' determination of the City's ERU is based upon the impervious area digitization analysis described below. The information provided in this memo describes Raftelis' methodology for completing this Task and the results of our analysis.

### Data

Raftelis' analysis was based on 2022 aerial imagery and Yamhill County geographic tax parcels provided by the City in January and April 2023.

### Methodology

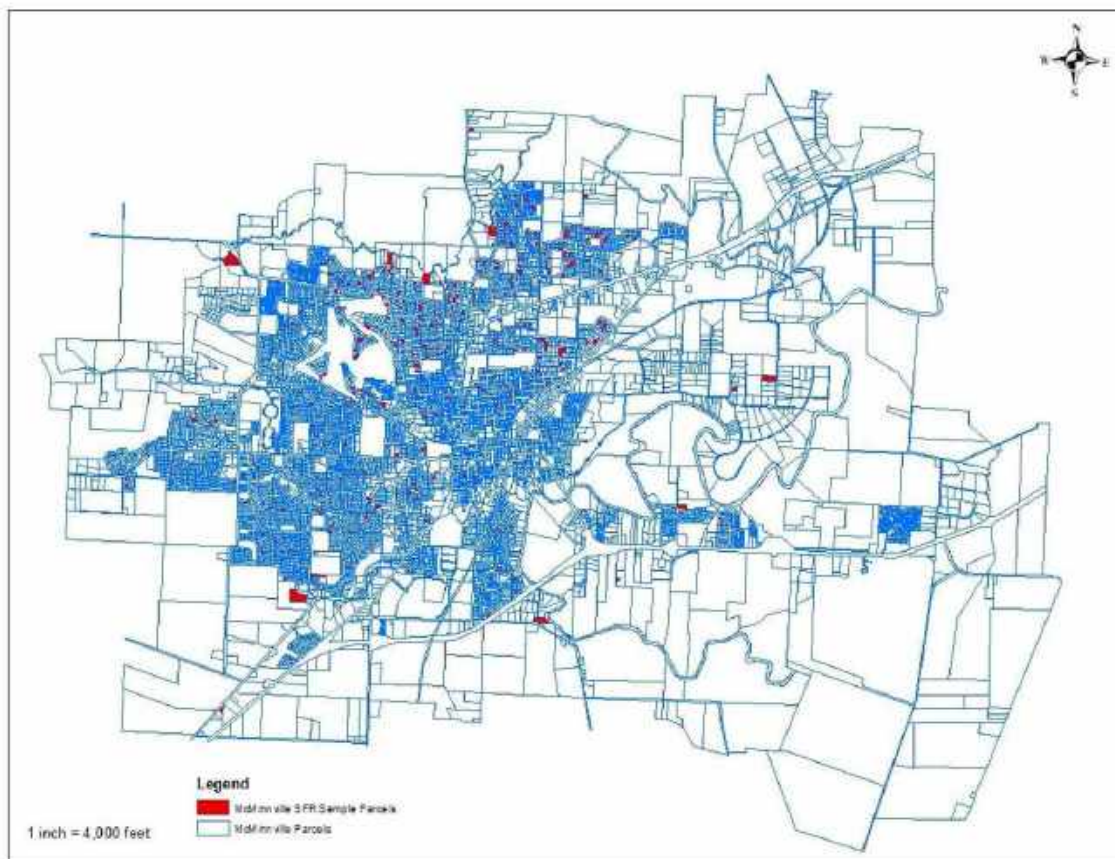
A Raftelis GIS analyst began by generating a random sample of 400 parcels falling into one of the following Yamhill County Tax property class code (PCA) categories that represent the SFR class:

PCA Category	Parcel Count in Sample
101	322
109	11
111	18
121	2
191	2
207	31
401	6
409	3
451	1
551	3

PCA 101 also includes duplex and single-family attached (SFA) property types. Often, duplex properties have impervious area measurements and overall development patterns substantially similar to single family properties and are therefore good candidates for including in the SFR customer class. Therefore, Raftelis included them in this analysis. SFA properties were not

included in this sample and their impervious area will be measured and evaluated separately under Task 2 of our Scope of Services. The results of that analysis will be provided under separate cover. PCA 207 includes mobile home and manufactured home types, some of which have one dwelling per parcel and some of which have multiple dwellings per parcel. Only those with one dwelling per parcel were included in the population for this sample. Those with multiple dwellings per parcel are considered multi-family properties and their impervious area will be measured under Task 3 of our Scope of Services.

The sample size was selected to provide 95% confidence that the ERU value is within 5% of true value (margin of error) and is representative of the population of the City's SFR properties. We also performed a visual and tabular review of the resultant sample properties to verify that they encompassed a representative range of geography, structure age, and housing type. In some cases, an original randomly selected sample property was obscured by vegetation and could not be accurately measured. In these cases, the analyst removed the obscured parcel from the review and replaced it with an additional randomly selected parcel. The final sample list is attached as Appendix A, and a map of the final, measured sample parcels throughout the City is shown below in Figure 1. The final, measured sample of SFR property types are highlighted in red, while other parcels are in blue. Please note that some parcel identification numbers (PIN) are duplicated, as parcels within the PCA 207 group have identical PIN numbers if they are within the same development and are distinguished in the tax parcel data by lot codes. Lot codes for those parcels are also provided in Appendix A.



*Figure 1. City of McMinnville Sample Distribution*

Using ArcGIS, overlaying parcels on top of 2022 aerial imagery, the analyst created new spatial features to represent the impervious area on each property based on visual assessment of the property and met the definition of “impervious”. Impervious area was defined as “hard surfaces that don’t allow infiltration of stormwater into the ground.” Examples of impervious surface include rooftops, driveways, patios, private sidewalks, parking lots and compacted gravel. Swimming pool water, railroad ballast, open graded aggregate and landscaping gravel are not considered impervious surfaces. The impervious area polygons were created to match the footprint on the ground of these surfaces, rather than rooflines which may be obscured by the angle of the aerial photography.

Figure 2 provides a selection of digitized SFR property types. The sample property is outlined in bright green, the impervious area features created by Raftelis are translucent yellow. Per the impervious surface definition, swimming pools and landscaped areas are excluded, and outbuildings, if any, are included.



*Figure 2. Example of SFR Properties’ Impervious Area Digitization (photos not at the same scale)*

### **ERU Results**

Raftelis’ 400 sampled parcels had a wide range of impervious area amounts, from a minimum of 658 square feet to a maximum of 15,970 square feet. Raftelis recommends using the median value of impervious area on SFR properties to calculate the ERU. Compared with the mean (average) impervious area, the median is more statistically robust, and less sensitive to outliers, the very small or very large impervious surface amounts in the sample, and therefore a more accurate representation of typical SFR impervious area within the City. Based on the median value, the ERU value for McMinnville is 3,512 square feet of impervious area. The distribution of sampled impervious area for the sample, with the median demarcated, is shown in Figure 3 below.

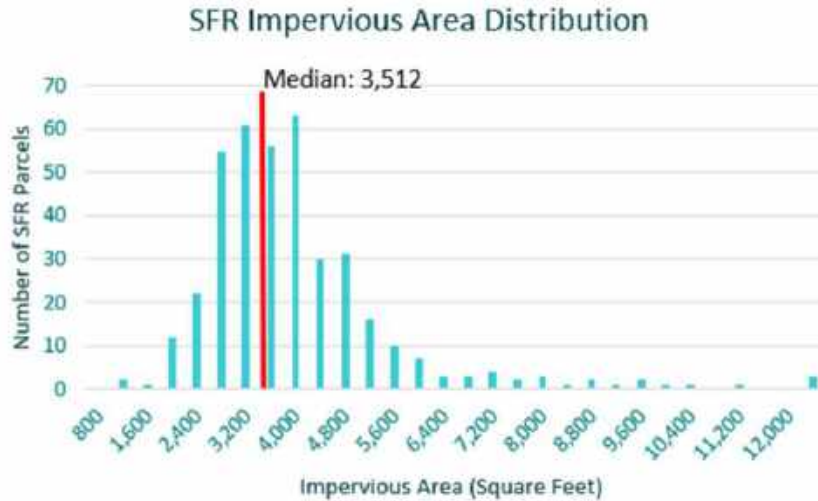


Figure 3. Impervious Area Distribution for SFR Properties in the McMinnville ERU Sample

### Benchmarking

At the request of the City, Raftelis compared the McMinnville ERU to the ERU values for other similarly sized stormwater utilities in the State of Oregon. The 2021 populations of these cities range from approximately 20,000 to 60,000, except for the City of Medford (~86,000) and the City of Bend (~102,000). Those values in comparison to the City's ERU value are provided in Figure 4 below.

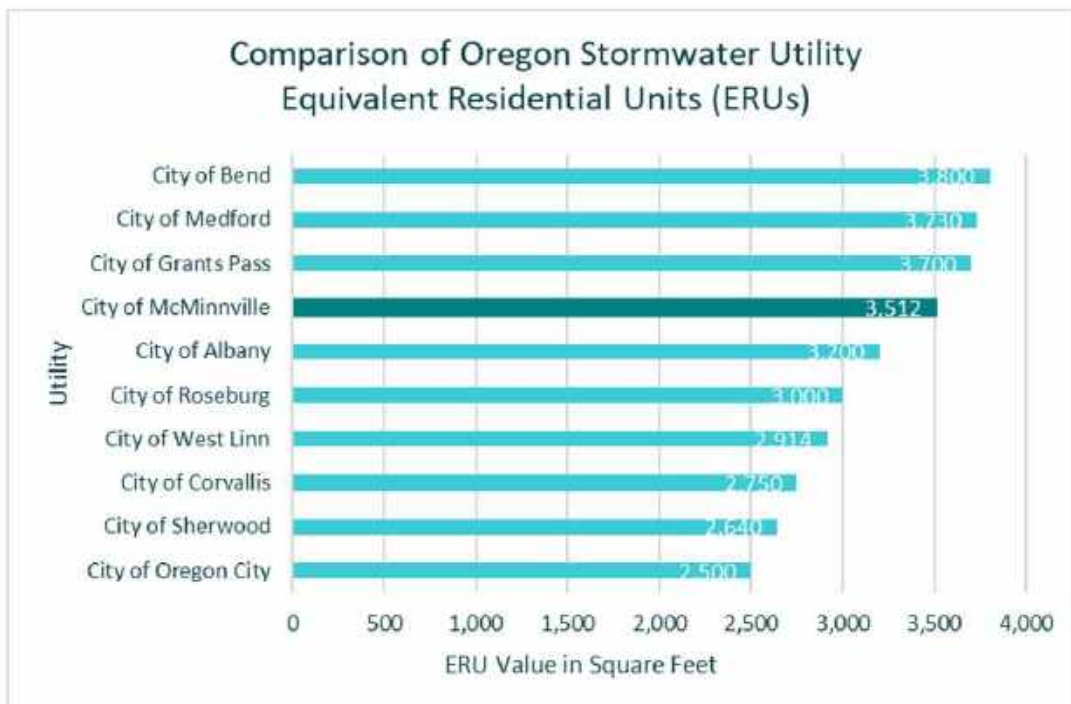


Figure 4. Comparison of ERU Values in Oregon Stormwater Utilities

**Appendix A**  
**Final SFR Sample Parcel ID Number and Lot Numbers**



<b>Parcel Identification Number</b>	<b>Lot Code</b>
R4409 00700	
R4409 02000	Lot 92
R4409 02000	Lot 1
R4409 02000	Lot 39
R4409 02000	Lot 31
R4409 02000	Lot 85
R4409 02000	Lot 82
R4409 02000	Lot 77
R4409 02000	Lot 75
R4409 02000	Lot 26
R4409 02000	Lot 12
R4409 02004	
R4409CA04700	
R4409CA04800	
R4409CA05600	
R4409CA05700	
R4409CA10000	
R4409CA11500	
R4409CA12200	
R4409CA13000	
R4409CA14100	
R4409CA14800	
R4409CA15200	
R4409CA18300	
R4409CA19900	
R4409CA20500	
R4409CA21500	
R4409CB02500	
R4409CB04300	
R4409CD00204	
R4409CD00208	
R4409CD00212	
R4409CD00213	
R4409CD00713	
R4409CD00715	
R4409CD01200	
R4409DA10300	
R4409DC00400	
R4409DC00801	
R4409DC00803	
R4409DC03400	

R4409DC05300	
R4409DC06700	
R4409DC07000	
R4409DC08000	
R4409DC08801	
R4409DC09100	
R4409DC09400	
R4409DC09500	
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R4416BA01201	
R4416BA02500	
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R4416BB00315	
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R4416BB00323	
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R4416BB03800	
R4416BB04800	
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R4416DC01700	
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R4417DB06700	
R4417DB07500	
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R4417DB09200	
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R4419AD00106	
R4419AD00609	
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R4420BC02400	
R4420BC02400	
R4420CA02703	
R4420CA03405	
R4420CB00801	
R4420CB01222	
R4420CB01611	
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R4420CB01804	
R4420CB01810	
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R4420CC00200	
R4420CC00307	
R4420CC02000	
R4420CC06900	
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R4420CD03018	
R4420CD03800	
R4420CD04900	
R4420DA02701	
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R4421CD07800	
R4421CD07916	
R4421DB00600	
R4421DD00902	
R4421DD00904	
R4422 03500	
R4422DD01300	
R4422DD06700	
R4424C 00200	Lot 154
R4424C 00200	Lot 228
R4424C 00200	Lot 14
R4427 01000	
R4428BA01900	
R4428BC00310	
R4428BC01110	
R4428BC02016	
R4428BD01500	
R4428BD01807	
R4428D 00200	
R4428D 00200	
R4429 02501	Lot 2
R4429AB05102	
R4429BA03901	
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R4430 00102	Lot 107
R4430 00102	Lot 44
R4430AA02921	
R4430AA03000	Lot 91
R4430AB00100	Lot 212
R4430AB00100	Lot 165
R4430AB00100	Lot 23
R4430AB00100	Lot 185

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R4524DA02900	
R4524DB00100	
R4524DB01900	
R4524DB03800	
R4524DB04800	

An event occurred on Thursday, July 20th, 2023 at Joe Dancer park that I would like to make everyone here today aware of. I hope by sharing this event, I will promote a decision in favor of setting boundaries to protect our children swiftly.

My name is Kim Lattig, I am a 25 year resident to Yamhill County, 10 years in McMinnville, and a single mother to a six year old. I saved enough money to be able to afford to send my son to a local day camp for children ages 6-9 years old. It was \$325 for my son to interact with 14 other kids from 9am until 2pm Monday July 17th until Friday, July 21st. I'd like to note, that's equivalent cost wise to an entire month's worth of groceries for our small family.

The camp experience seemed fine each day at pick up, but the leaders of the camp had informed us parents about having to divert the kids off of the forest paths due to safety reasons. On Thursday, July 20th, at parent pick-up, all parents were informed in person about the following incident. I am going to <sup>paraphrase from</sup> read a transcript of the incident provided to me by Daniel Coyle, the director of "Coyle Outside" who partners with McMinnville & Chehalem Department of Parks & Recreation. <sup>covering 28 local parks.</sup>

<sup>ed</sup>  
"While traveling on a foot trail in the park in the forest, our group ~~reported~~ <sup>traveling at fast</sup> encountering a male adult on a bicycle ~~traveling faster~~ and with less notice ~~than was assessed by the instructor to be sufficient~~ to safely avoid contact.... The instructor reported asking the bicyclist to ~~provide more notice~~ <sup>or</sup> travel more slowly or on foot when on the trails they were using. The instructor reported that the bicyclist complained that he was not at fault and that the group or its use of the trail was ~~in some way~~ problematic. The instructor relayed that the interaction was not ~~entirely~~ appropriate in tone/language for camp participants to be witness to but was otherwise not overtly threatening.

<sup>near</sup>  
Later in the same day the group was on foot ~~proximal to~~ a bridge <sup>near</sup> the park and ~~indirectly~~ encountered this same individual a second time. The individual was underneath the bridge and ~~repeatedly~~ started shouting complaints ~~about~~ toward the group while throwing leaves out from under the bridge. Nothing made contact with the

ENTERED INTO THE RECORD  
DATE RECEIVED: 08/08/2023  
SUBMITTED BY: Kimberly Lattig  
SUBJECT: Public Comment

*group itself. At least one of the camp participants reported being hesitant/scared and wondering if this was similar to a Troll like she had read about in stories. The instructor escorted the group away from the site and carried on with camp without further incident.*

Now in all, an adult yelling at a group of young kids, and throwing leaves at them seems harmless, but here are the things that my son told me:

"The guy was yelling at us saying we ruined his day and he is angry with us."

"There were needles and trash on the forest paths."

"I don't want to go to Joe Dancer anymore, I don't feel safe."

A child of your community doesn't feel safe in our local parks. Many children don't feel safe, including those in my son's camp that day. Why is this acceptable? Why does a 6 year old have to be familiar with drug paraphernalia to go to our local parks and avoid it?

To prevent this situation from escalating, I propose that we create safe havens & kid safe zones within our parks. This would mean keeping unsafe encampments of transients away from the parks in similar fashions to how we treat school zones. This would also mean safe paths to and from the parks including safe permanent bike paths in the currently dangerous marsh lane zones, connecting Riverside Drive, to Brooks Lane.

*This would be a <sup>small & reasonable</sup> actionable item towards a safer landscape for our children. ~~actionable~~*

# PROCLAMATION

**Whereas**, Lemonade Day is a fun, free experiential learning program that launched in Houston, Texas in 2007, and has grown from 2,700 kids in one city to over 1 million kids in cities across America and Canada; and

**Whereas**, there are 400 kids in McMinnville and surrounding communities who will be learning how to be young entrepreneurs by opening and operating their own businesses – a lemonade stand; and

**Whereas**, the community’s business leaders are supporting and encouraging these young entrepreneurs to be brave and do big things; and

**Whereas**, since its inception, Lemonade Day has provided access to the experience of business ownership to youth from all walks of life who learn lifelong skills and principles while learning how to make money where they are encouraged to “spend a little, save a little, and share a little”; and

**Whereas**, the mission of Lemonade Day is to empower today’s youth to become tomorrow’s entrepreneurs;

**Now, therefore, I, Remy Drabkin**, Mayor of the City of McMinnville, Oregon, do hereby proclaim Saturday, August 19th, 2023, as



## **LEMONADE DAY** MCMINNVILLE

in McMinnville. We urge all citizens to recognize and encourage our kids’ efforts as they learn about being young entrepreneurs while they open and operate their own businesses.

**In Witness Whereof**, I have hereunto set my hand and caused the official Seal of the City of McMinnville to be affixed this 8th day of August, 2023.

-----  
Remy Drabkin, Mayor



## STAFF REPORT

**DATE:** August 8, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Jennifer Cuellar, Finance Director  
**SUBJECT:** Comcast Cable Franchise Renewal Update

---

### Strategic Priority and Goal:



#### CITY GOVERNMENT CAPACITY

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

### Report in Brief:

The City of McMinnville has a cable franchise agreement with Comcast with an extension approved on December 12, 2022, until July 9, 2023, and further extended on June 13, 2023, until September 13, 2023.

Staff has engaged an attorney, Nancy Werner, as special legal counsel to the city to support us in the negotiation process for new cable franchise agreement.

The discussions with Comcast have been proceeding, albeit slowly. On July 26, 2023, Comcast raised the possibility of doing a five-year extension instead of a renewal at this time, and we would like to get your feedback on that proposal.

### Activity Update:

The City's attorney received an initial draft from Comcast in mid-January. Over the next two months, Ms. Werner worked with staff to identify priorities, work through the draft agreement and make responses and revisions to it. The City provided Comcast with a revised draft on March 15<sup>th</sup>, and after several calls between Ms. Werner and Comcast's representative, Comcast sent a revised draft on April 28<sup>th</sup>. The city provided an updated draft on June 5<sup>th</sup>.

The City has not received a new draft with specific feedback or suggestions though did receive the aforementioned proposal to extend the current agreement for five years.

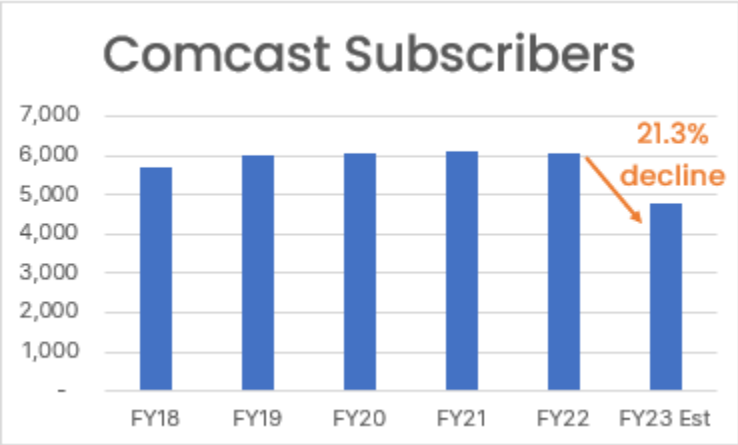
### Fiscal Impact:

Cable franchise revenue is separated into two types – the franchise fee based on the cable company's use of the public right of way (it has a 5% legal maximum in federal statute) and support for Public Educational and Governmental (PEG) Access capital investments.

<b>Cable Franchise Fees (5% federal maximum level)</b>						
	<u>FY23 Est</u>	<u>FY22</u>	<u>FY21</u>	<u>FY20</u>	<u>FY19</u>	<u>FY18</u>
General Fund (55%)	179,100	185,955	178,704	166,965	167,097	172,034
McMinnville Community Media (45%)	146,500	152,145	146,212	136,608	136,716	140,755
<b>Total</b>	<b>325,600</b>	<b>338,100</b>	<b>324,916</b>	<b>303,573</b>	<b>303,813</b>	<b>312,789</b>
<b>Cable Franchise - Public Educational Governmental (PEG) Access</b>						
	<u>FY23 Est</u>	<u>FY22</u>	<u>FY21</u>	<u>FY20</u>	<u>FY19</u>	<u>FY18</u>
McMinnville Community Media	57,100	72,600	73,548	72,394	71,809	68,216

The City of McMinnville splits the franchise fee revenue with the city’s community access television station, McMinnville Community Access (MCM), with 55% staying with the city and the balance supporting the operations of MCM. PEG funds are calculated on subscribership numbers and are passed through in their entirety to MCM to fund capital needs.

With the eroding customer base for cable services, an alternative approach to creating a more stable revenue base over time for PEG funds to support capital costs of community access television is one of the considerations of the renewal process.



**Council Options:**

1. Continue negotiation process for a new franchise agreement with Comcast (staff recommendation) as quickly as we are able, understanding that this may take longer than the current extension through September 13, 2023.
2. Accept a five-year extension of the current agreement, as proposed by Comcast

## Liquor License Recommendation

---

BUSINESS NAME / INDIVIDUAL: Ocelli Cellars LLC dba: Ocelli Cellars  
BUSINESS LOCATION ADDRESS: 801 SW Baker Street  
LIQUOR LICENSE TYPE: Winery 2<sup>nd</sup> location

Is the business at this location currently licensed by OLCC

Yes  No

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

-----

Hours of operation: Monday – Thursday 11 am to 5 pm, Friday – Sunday 11 am to 7 pm  
Entertainment: N/A  
Hours of Music: N/A  
Seating Count: 49

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

City Manager / Designee





## OREGON LIQUOR & CANNABIS COMMISSION LIQUOR LICENSE APPLICATION

### Instructions

---

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. You can submit the application if:
  1. You have WRITTEN documentation showing the date the local government received the application or;
  2. The local government has provided you their recommendation.
4. **Email the application that contains the local government recommendation or proof of submission 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.
- **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**

---

**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 |  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

## LOCAL GOVERNMENT USE ONLY

LOCAL GOVERNMENT:

**After providing your recommendation, return this application to the applicant WITH the recommendation marked below**

**City/County name:**

(Please specify city or county)

**Date application received: July 31, 2023**

Optional: Date Stamp Received Below

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

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

\_\_\_\_\_  
Date

**Ocelli Cellars**

Trade Name

## Liquor License Recommendation

---

BUSINESS NAME / INDIVIDUAL: Patton Valley LLC dba: Patton Valley Wines  
BUSINESS LOCATION ADDRESS: 801 SW Baker Street  
LIQUOR LICENSE TYPE: Winery 2<sup>nd</sup> location

Is the business at this location currently licensed by OLCC

Yes  No

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

-----

Hours of operation: Monday – Thursday 11 am to 5 pm, Friday – Sunday 11 am to 7 pm  
Entertainment: N/A  
Hours of Music: N/A  
Seating Count: 49

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 |  Additional Privilege

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## Full On-Premises

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

## Winery

- Primary location
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## 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

## LOCAL GOVERNMENT USE ONLY

LOCAL GOVERNMENT:

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(Please specify city or county)

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Optional: Date Stamp Received Below

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- Recommend this license be denied

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

\_\_\_\_\_  
Date

**Patton Valley Wines**

Trade Name

## Liquor License Recommendation

---

BUSINESS NAME / INDIVIDUAL: Stickmen McMinnville LLC dba: Stickmen Brewing Company

BUSINESS LOCATION ADDRESS: 1031 NE Lafayette Ave

LIQUOR LICENSE TYPE: Commercial Full on-premises

Is the business at this location currently licensed by OLCC

Yes  No

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

-----

Hours of operation: Sunday-Saturday 11 am to 10 pm

Entertainment: Recorded music

Hours of Music: same as open

Seating Count: 98 total: 70 restaurant and 28 outdoor

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



OREGON LIQUOR & CANNABIS COMMISSION  
**LIQUOR LICENSE APPLICATION**

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# LIQUOR LICENSE APPLICATION

Page 1 of 4

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

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- 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

## LOCAL GOVERNMENT USE ONLY

LOCAL GOVERNMENT:

After providing your recommendation, return this application to the applicant WITH the recommendation marked below

City/County name:

(Please specify city or county)

Date application received: 7/27/2023

Optional: Date Stamp Received Below

Recommend this license be granted

Recommend this license be denied

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

\_\_\_\_\_  
Date

Stickmen Brewing Company

Trade Name

## STAFF REPORT

**DATE:** August 8, 2023  
**TO:** McMinnville City Council  
**FROM:** Nic Miles, Code Compliance Officer  
**SUBJECT:** Unpaid Citations and Abatement Costs

### STRATEGIC PRIORITY & GOAL:



**OBJECTIVE/S:** Build a community culture of safety (consider safety best practices)

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### Report in Brief:

This is the consideration of Resolution No. 2023-45, approving liens on property that have not paid for the costs associated with property nuisance abatements per Section 8.10 of the McMinnville Municipal Code. These liens represent the few property nuisances that were not able to be resolved voluntarily.

### Background:

In October 2019, City Council voted to approve amendments to Title 2 and Title 8 of the McMinnville Municipal Code. Those updates provided code compliance staff with more efficient tools for addressing property maintenance and health and safety concerns in an expeditious time frame. Since that time, code compliance staff has continued to resolve most complaints through voluntary compliance. For those property owners who do not voluntarily comply, the City will abate the property and then invoice the property owner for the full costs of the abatement including staff time. Per Section 2.50.250(F) of the McMinnville Municipal Code, if the property owner refuses to pay the invoice, the City has the right to lien the property for the unpaid invoice per the McMinnville Municipal Code after City Council approval. Resolution No. 2022-54 represents unpaid civil penalty citations and corrective action costs for four properties with unpaid invoices from citations or abatements in the first six months of 2022.



**Discussion:**

Unpaid Abatement Costs and Citations:

*1444 NE HWY 99W*

*Animals and Animal Excrement: \$250 Citation*

- Code compliance staff received complaints that stray cats were being fed at this property, and then were leaving the area to defecate at adjacent properties.

*1428 SW Emily Dr.*

*Discarded Motor Vehicles (parking in yard): \$250 Citation*

- Code compliance staff received complaints from neighbors that residents at this property were storing numerous vehicles and trailers in their front yard, which caused vision issues at the adjacent intersection.

*1034 NE Davis St.*

*Debris, Junk and Garbage; Storage: \$1000*

- Code compliance staff received complaints from neighbors that a tenant at this property was accumulating junk and debris in the driveway, front yard and side yard areas.

*3017 NE McDonald Ln.*

*Discarded Motor Vehicles: \$250.00*

- Code compliance staff received complaints from a neighbor that there were several inoperable vehicles parked in the driveway of this property, many also being either dismantled or having expired registration.

**Attachments:**

Resolution No. 2023-45

**Fiscal Impact:**

Placing these unpaid citations as liens against the properties will result in eventual full cost recovery, including administrative time and resources.

**Recommendation:**

Staff recommends that these unpaid citations be placed on the lien docket.

Suggested Motion -

*"I move to approve Resolution No. 2023-45"*

**RESOLUTION NO. 2023-45**

A Resolution approving code compliance liens on properties to recover unpaid civil penalty citations.

**RECITALS:**

**WHEREAS**, On August 13, 2019, the McMinnville City Council adopted Ordinances No. 5078 and 5079, amending the McMinnville Municipal Code to restructure the code compliance program with an emphasis on efficiency, timeliness, voluntary compliance, and the ability to abate properties and issue civil penalties when voluntary compliance was not achieved; and

**WHEREAS**, per Section 2.50.250(F) of the McMinnville Municipal Code, if the city needs to obtain a correction action warrant to abate properties that were not voluntarily abated for public safety, health, and welfare, the city can bill the property owner for the full cost recovery of that abatement; and

**WHEREAS**, per Section 2.50.250(F)(2) of the McMinnville Municipal Code, if the property owner refuses to pay the full costs of the correction action within thirty (30) days, the City Council can lien the property by resolution; and

**WHEREAS**, per Section 2.50.310 of the McMinnville Municipal Code, the city can issue a Notice of Civil Penalty to the property owner; and

**WHEREAS**, per Section 2.50.250(F)(2) of the McMinnville Municipal Code, if the property owner refuses to pay the civil penalties within thirty (30) days, the City Council can lien the property by resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON**, that the following properties have been assessed either corrective action costs or civil penalties that after due process and notification, the property owners have refused to pay within thirty (30) days and are now approved to be recorded as liens on the property:

<b>Property Address</b>	<b>Violation Type</b>	<b>Amount of Lien</b>
1444 NE HWY 99W	Civil Penalty Citation	\$250.00
1428 SW Emily Drive	Civil Penalty Citation	\$250.00
1034 NE Davis Street	Civil Penalty Citation	\$1000.00
3017 NE McDonald Lane	Civil Penalty Citation	\$250.00

Adopted by the Common Council of the City of McMinnville at a meeting held the 8<sup>th</sup> day of August 2023 by the following votes:

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

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

Approved this 8th day of August 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

# STAFF REPORT

**DATE:** July 28, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Joe Rinkes, Conveyance System Supervisor  
**SUBJECT:** Purchase of a Combination Sewer/Storm Cleaner Vacuum Truck

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## **Report in Brief:**

This action is the consideration of a resolution to enter into a contract with Solid Waste System (SWS) for the purchase of a combination sewer/storm cleaner vacuum truck for the City's Conveyance System Maintenance Staff at Wastewater Services through Sourcewell, an Interstate Cooperative Purchasing Program.

## **Background:**

This truck will be replacing a 2003 model. The Conveyance System Staff uses the combination sewer/storm cleaner vacuum truck to clean – sewer main lines and laterals, storm lines, catch basins, culverts, pollution control manholes, tanks, and vaults at the WRF, water feature vaults, and spills. It's used to hydro-excavate – for sewer and storm repairs, irrigation repairs, water line repairs, to locate utilities, and many other types of excavations. The truck is also used to clear root, grease, and other blockages from storm and sewer lines. This is the single most important piece of equipment for the Conveyance System and is used to assist every single department within the City of McMinnville.

## **Discussion:**

Sourcewell issued a public solicitation for sewer vacuum, hydro-excavation, and municipal pumping equipment which was awarded a contract, solicitation Number 101221, between Sourcewell and Sewer Equipment Co. of America. The competitive bid process used by Sourcewell meets Oregon Revised Statutes for procurement of goods and services, and members can use this procurement option. The City of McMinnville is registered Sourcewell member #41616.

Using a comparison matrix, trucks from three manufacturers were demoed and evaluated and scored by Conveyance System staff. In addition, references were checked from similar end users relating to reliability, dealer service, ease of operation, and performance related questions.

The Sewer Equipment Co. of America (SECA) ranked highest in score, received positive responses from end users. The SECA truck should be considered the preferred manufacturer at a cost of \$569,836.55.

As required by ORS 279A, a "Notice of Intent" was published in the July 12, 2023, Daily Journal of Commerce and no comments were received.

## **Attachments:**

1. Resolution 2023-49
2. RFP #101221 and Contract Award
3. SWS Sole Source Letter

4. Scoring and References
5. McMinnville 900-ECO Quote
6. DJC Notice of Intent – July 12, 2023

**Fiscal Impact:**

The Adopted FY24 budget includes \$600,000 in the Wastewater Capitol Fund (77). Using the Sourcewell competitive bid procurement option, the price for the equipment is \$569,836.55.

**Recommendation:**

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to enter into a Contract with Solid Waste Systems for \$569,836.55 for the purchase of a Combination Sewer/Storm Cleaner Vacuum Truck for the City's Wastewater Services Conveyance System through Sourcewell, an Interstate Cooperative Purchasing Program.

## RESOLUTION NO. 2023 - 49

A Resolution authorizing the City Manager to enter into a contract with Solid Waste Systems (SWS) for \$569,836.55 for the purchase of a Sewer Equipment Co. of America (SECA) ECO-900 Combination Cleaner Vacuum Truck for the City's Wastewater Services Conveyance System through Sourcewell, an Interstate Cooperative Purchasing Program.

### RECITALS:

**Whereas**, This truck will be replacing a 2003 model. The Conveyance System Staff uses the combination sewer/storm cleaner vacuum truck to clean – sewer main lines and laterals, storm lines, culverts, pollution control manholes and catch basins, tanks, and vaults at the WRF, water feature vaults, and spills. It's used to hydro-excavate – for sewer and storm repairs, irrigation repairs, water line repairs, to locate utilities, and many other types of excavations. The truck is also used to clear root, grease, and other blockages from storm and sewer lines. This is the single most important piece of equipment for the Conveyance System and is used to assist every department within the City of McMinnville; and

**Whereas**, Sourcewell issued a public solicitation for sewer vacuum, hydro-excavation, and municipal pumping equipment which was awarded a contract, solicitation Number 101221, between Sourcewell and Sewer Equipment Co. of America. The competitive bid process used by Sourcewell meets Oregon Revised Statutes for procurement of goods and services, and members can use this procurement option. The City of McMinnville is registered Sourcewell member #41616; and

**Whereas**, Using a comparison matrix, trucks from three manufacturers were demoed and evaluated and scored by Conveyance System staff. In addition, references were checked from similar end users relating to reliability, dealer service, ease of operation, and performance-related questions. The Sewer Equipment Co. of America (SECA) ranked highest in the score and received positive responses from end users. The SECA truck should be considered the preferred manufacturer at a cost of \$569,836.55; and

**Whereas**, On July 12, 2023, a Notice of Intent to Award a contract to Solid Waste System (SWS) to purchase a Sewer Equipment Co of America ECO-900 Combination Sewer/Storm Cleaner Vacuum Truck was posted in the Daily Journal. Objections to this purchase needed to be received by July 20, 2023. As of July 21, 2023, no objections had been received for this purchase; and

**Whereas**, Funding for the new combo-vac truck is included in the adopted FY24 Wastewater Capitol Fund (77).

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

1. That entry into a Contract with Solid Waste Systems (SWS) for \$569,836.55 is acknowledged and approved. Contract and Invoice are included as attachment No. 1
2. The City Manager is hereby authorized and directed to execute the Contract with Solid Waste Systems (SWS).

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 8th day of August 2023 by the following votes:

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

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

Approved this 8th day of August 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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



## SWS Equipment, LLC.

13502 Pacific Ave S Tacoma, WA 98444

All Correspondence remit to: P.O. Box 13040, Spokane, WA 99213

800-892-7831 1-800-892-7831 F 509-533-1050

[www.swsequipment.com](http://www.swsequipment.com)

## QUOTE

Quote #: BCNMQ1140

Date: 07/07/23

Sales Rep: Blake Matzdorff

FOB: Origin

Ship Via: Best Way

Est. Ship Date: Q2 2023

Terms: Net 30

### Quote To:

City of McMinnville Public Works  
Joe Rinkes  
3500 NE Clearwater Drive  
Mcminville OR 97128  
(503) 434-7313

### Ship To:

City of McMinnville Public Works  
Joe Rinkes  
3500 NE Clearwater Drive  
Mcminville OR 97128  
(503) 434-7313

### We are pleased to propose the following for your consideration

Qty	Description	Unit Price	Ext. Price
1.0	SOURCEWELL CONTRACT #12201-SCA		
1.0	Sewer Equipment 900-ECO 12 Yard Truck Mounted Combination Sewer Cleaner.	\$330,450.00	\$330,450.00

#### Standard Options Include:

##### Vacuum System:

4400 CFM Blower (Blower Speed 2200 RPM).  
8 in Vacuum Hose system.  
18 in Hg vacuum rating.  
Dual Cyclone Separator.  
Dual Element 10 Micron Final Filter.  
Remote Vacuum Relief.  
Analog Vacuum Display.  
(6) Tube / Tube Rack.

##### Boom:

Telescoping Boom System.  
Telescoping Reach 17 ft 2 in to 27 ft 2 in.  
Hydraulic Powered Boom.  
180° Working Radius.  
Boom Joystick Control.

##### Debris Tank:

12 Cubic Yard Capacity.  
Exten Steel Construction.  
Debris Level Indicator.  
Hydraulic Dump, 50° Dump Angle (LIFT CLYINDER).  
Dual Ported Rear Door w/ Knife Valve.  
Dump Height 60 in.  
Hydraulic Open/Close/Lock Door.

##### Water System:

1300 Gallon Capacity Water Tank.  
Giant plunger style triplex 65 gpm @ 2000 psi w/ 30 min run dry.  
Black Duraprolene™ Water Tank Construction w/ 10 Year Warranty.  
Cold Weather Recirculation System.  
2.5 in Hydrant Fill system.  
Air Purge Valve.  
Variable Volume Delivery.

Qty	Description	Unit Price	Ext. Price
	<p>Low Water Warning Light. Analog Pressure Display. Front and Mid Ship Hand Gun Ports.</p> <p>Electrical: NEMA 4 Control Panel. Hour Meter (Blower &amp; Water Pump). Military Spec. Sealed Switches.</p> <p>Truck: Mounting to Approved Chassis. (1) Alum Toolbox 24 in x 42 in x 100 in - Behind Cab. LED D.O.T. Approved Lighting. (2) Tow Hooks Front Bumper.</p> <p>Hose Reel &amp; Hose: Front Mounted Telescoping &amp; Rotating. 800 ft X 1 in Hose Capacity. 10 ft Leader Hose. Single Side Controls.</p> <p>Accessories: (3) 8 in x 6 ft Extension Tube, (1) 8 in X 3 ft Extension Tube. (1) 8 in x 6 ft Crowned Suction Nozzle. (1) 6 in x 10 ft Flat Discharge Hose. (6) Quick Clamps. BB Hose Guide. Tri-Star (chisel point) nozzle. DD (high flow) nozzle. Finned Nozzle extension. Nozzle Rack (Mounted midship toolbox). 25 ft Fill Hose. Upstream Pulley Guide. Washdown gun. Cleaner, Tip, Torch, Small. (1) Hydrant Wrench. (1) Paper Owners Manual.</p>		
1.0	Freightliner Chasis 114SD Tandem Axle	\$126,167.00	\$126,167.00
1.0	Automatic Level Wind with Hydraulic up/down action	\$8,915.00	\$8,915.00
1.0	Footage Meter (mounted on Jet hose reel)	\$903.00	\$903.00
1.0	Foot Pedal Reel Payout/Retrieve	\$2,250.00	\$2,250.00
1.0	Secondary Operators Station (Controls Include Analog Water And Vacuum Pressure Gages And Reel Payout/Retrieve)	\$1,546.00	\$1,546.00
1.0	1000ft Sewer Hose (3/4" I.D., 3000 P.S.I. Operating Pressure)	\$5,285.55	\$5,285.55
1.0	High Capacity Hose Reel in Lieu of Standard Capacity. (Increases capacity to 1000ft of 1in hose or 600ft of 1-1/4in hose)	\$2,623.00	\$2,623.00
1.0	TRIPLEX PLUNGER STYLE WATER PUMP RATED AT 55 GPM @ 3000 PSI (includes drain valves)	\$10,133.00	\$10,133.00
1.0	Additional 200 gallon Duraprolene Water Tank w/ 10 year warranty - (between rails)	\$6,500.00	\$6,500.00



Qty	Description	Unit Price	Ext. Price
1.0	Water Tank Low Level Audible Alarm (level set point is fixed at 150 gallons)	\$617.00	\$617.00
1.0	Fill hose storage rack	\$248.00	\$248.00
1.0	Standard Hydroexcavation Cleaning Kit 20 gpm @ 2000psi 8"x6' digging tube, 8gpm rotary digging wand, 10 gpm linear nozzle (shipped loose) (2) 5' extension wands and automatic reel w/ 75' of 3/8" hose	\$7,346.00	\$7,346.00
2.0	Central Washdown System (includes 50' of 1/2" hose on a spring retracting hose reel mounted mid-ship)	\$1,683.00	\$3,366.00
1.0	Rear toolbox group w/ (2) long handle tool storage tubes (includes (2) 24inx18inx18in boxes, (1) 63.75inx17.25inx12in cabinet and (2) 4in" tubes)	\$3,569.00	\$3,569.00
1.0	(2) 30inx18inx18in passenger side toolbox with retractable two-step ladder. Note #1: N/A with Cold Weather Hydroexcavation Cleaning Kits	\$2,730.00	\$2,730.00
1.0	Additional 18inX18inX30in Aluminum Toolbox - (1 Maximum Mounted Passenger Side Rail)	\$1,143.00	\$1,143.00
1.0	Extendable Boom System with 17' 2" to 25' 2" Reach		
1.0	Manual/Electric Boom Control Valve (Control valves have built-in levers for manual boom control)(Located at midship control panel)	\$502.00	\$502.00
1.0	Dual Variable Vacuum Control Valve (Located at both Hose Reel & Midship Stations)	\$2,985.00	\$2,985.00
1.0	Decant Screen on Rear Door Port (Swing out perforated shield)	\$1,680.00	\$1,680.00
1.0	Wireless Remote Control Pendant (controls include hose reel payout/retrieve, water pump on/off, vacuum relief on/off, boom up/down, boom left/right, boom extend/retract and module kill switch)	\$5,427.00	\$5,427.00
1.0	Wireless Remote Alarm (Buzzer alarm sounds off when truck is taken out of neutral with remote is not in docking station)	\$295.00	\$295.00
1.0	Enhanced Visibility Camera System (includes front and rear mounted camera heads with monitor in cab)	\$1,830.00	\$1,830.00
1.0	(12 Light) Premier Strobe Package	\$3,750.00	\$3,750.00
1.0	LED Arrow Stick (Factory Standard)	\$1,283.00	\$1,283.00
1.0	LED Manhole Area Work Light	\$541.00	\$541.00
1.0	LED Curbside Body mounted work light	\$541.00	\$541.00
1.0	LED Boom Mounted Work lights (2) (complete with limb guard)	\$1,116.00	\$1,116.00
1.0	LED Rear Mounted work lights (2) Located above rear door	\$1,116.00	\$1,116.00

Qty	Description	Unit Price	Ext. Price
1.0	Air Purge Winterization System (supplied by chassis air system)	\$1,642.00	\$1,642.00
1.0	Six (6) 28" DOT Safety Cones and holder	\$449.00	\$449.00
1.0	Central Lubrication System	\$3,373.00	\$3,373.00
1.0	Paint Debris Boom: Standard *Sterling White (FDG91327)		
1.0	Paint Debris Tank: Standard *Sterling White (FDG91327)		
1.0	Paint Hose Reel - Upright Standard *Sewer Blue (PAN 287)		
1.0	Paint Frame - Standard Black (FDG9000)		
1.0	Paint Slide Frame - Standard Black (FDG9000)		
1.0	Enz Combo Truck Nozzle Kit	\$9,515.00	\$9,515.00
1.0	Estimated Freight	\$15,000.00	\$15,000.00
1.0	Pre-Delivery Inspection	\$2,500.00	\$2,500.00
1.0	Operators Training	\$2,500.00	\$2,500.00
1.0	Managed by Blake		
1.0	Sewer Equipment Company of America equipment warranty as is stated on warranty certificates. In General, units are warranted against defects in material or workmanship for a period of 12 months or 2000 hours from date of in-service. Duraprolene water tanks for a period of 10 years. Super Poly tanks are warranted for 5 years. Optional warranties may be available		

**Order Total                    \$569,836.55**

Please contact me if I can be of further assistance.

**QUOTE VALID FOR 10 DAYS**

**PRICING IS SUBJECT TO CHANGE BASED ON CURRENT MATERIALS AND AVAILABILITY  
 APPLICABLE SALES TAX NOT INCLUDED UNLESS OTHERWISE NOTATED - AMOUNT BASED ON FINAL INVOICE DATE  
 ANY IMPLIED WARRANTY AS PER MANUFACTURER'S STANDARD WRITTEN WARRANTY  
 PAYMENT DUE UPON COMPLETION OF WORK OR AS SPECIFIED ABOVE**

*Due to a high level of uncertainty with regards to pricing changes from our vendors and the freight industry, the price and freight charges on this document may be adjusted prior to shipping.*

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**Solicitation Number: RFP #101221****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Sewer Equipment Co. of America, 1590 Dutch Rd., Dixon, IL 61021 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

**1. TERM OF CONTRACT**

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All rights will cease upon expiration or termination of this Contract.

**2. EQUIPMENT, PRODUCTS, OR SERVICES**

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

### 3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

#### **4. PRODUCT AND PRICING CHANGE REQUESTS**

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

## **5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS**

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

## **6. PARTICIPATING ENTITY USE AND PURCHASING**

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

**B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM.** Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

**C. SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

**D. TERMINATION OF ORDERS.** Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

**E. GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

## **7. CUSTOMER SERVICE**

**A. PRIMARY ACCOUNT REPRESENTATIVE.** Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcwell and Participating Entity inquiries; and
- Business reviews to Sourcwell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcwell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

## **8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT**

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcwell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcwell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcwell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcwell, the Supplier will pay an administrative fee to Sourcwell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcwell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased



by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

## **9. AUTHORIZED REPRESENTATIVE**

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

## **10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE**

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

### **11. INDEMNITY AND HOLD HARMLESS**

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

### **12. GOVERNMENT DATA PRACTICES**

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Supplier under this Contract.

### **13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT**

#### **A. INTELLECTUAL PROPERTY**

1. *Grant of License.* During the term of this Contract:
  - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
  - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively “Permitted Sublicensees”) in advertising and promotional materials for the purpose of marketing the Parties’ relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

**3. Use; Quality Control.**

- a. Neither party may alter the other party’s trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party’s trademarks only in good faith and in a dignified manner consistent with such party’s use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

**5. Termination.** Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party’s name or logo (excepting Sourcewell’s pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell’s written directions.

**B. PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

**C. MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

**D. ENDORSEMENT.** The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

#### **14. GOVERNING LAW, JURISDICTION, AND VENUE**

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

#### **15. FORCE MAJEURE**

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

#### **16. SEVERABILITY**

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

#### **17. PERFORMANCE, DEFAULT, AND REMEDIES**

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

## 18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

## **19. COMPLIANCE**

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

## **20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION**

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

## **21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS**

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.



C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

**22. CANCELLATION**

Sourcwell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcwell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

Sewer Equipment Co. of America

DocuSigned by:  
*Jeremy Schwartz*  
By: C0FD2A139D06489...  
Jeremy Schwartz  
Title: Chief Procurement Officer  
Date: 11/23/2021 | 8:44 PM CST

DocuSigned by:  
*Shawn Bondele*  
By: B5011C400B714B6...  
Shawn Bondele  
Title: Inside Sales Manager  
Date: 11/23/2021 | 4:13 PM EST

Approved:

DocuSigned by:  
*Chad Coauette*  
By: 7E42B8F817A64CC...  
Chad Coauette  
Title: Executive Director/CEO  
Date: 11/24/2021 | 6:48 PM CST

# RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies

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## Vendor Details

Company Name: Sewer Equipment Co. of America  
Does your company conduct business under any other name? If yes, please state: IL  
Address: 1590 Dutch Road  
DIXON, IL 61021  
Contact: Shawn Bondele  
Email: shawnbondele@sewerequipment.com  
Phone: 815-835-5623  
Fax: 815-284-0452  
HST#: 36-2786536

## Submission Details

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Submitted By: Shawn Bondele  
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Transaction #: 44e1e7e4-e719-4802-a155-e76c8332dafc  
Submitter's IP Address: 98.142.194.242

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## Specifications

**Table 1: Proposer Identity & Authorized Representatives**

**General Instructions** (applies to all Tables) Sourcwell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Sewer Equipment Co. of America
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Rock Rentals
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Sewer Equipment
4	Proposer Physical Address:	1590 Dutch Rd., Dixon, IL 61021
5	Proposer website address (or addresses):	www.sewerequipment.com, www.rock-rental.com, www.sewershop.com
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Shawn Bondele Inside Sales Manager 1590 Dutch Rd. Dixon, IL 61021 shawnbondele@sewerequipment.com 815-835-5566
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Shawn Bondele Inside Sales Manager 1590 Dutch Rd. Dixon, IL 61021 shawnbondele@sewerequipment.com 815-835-5566
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Tom Hochmuth Regional Sales Manager 1590 Dutch Rd. Dixon, IL 61021 tomhochmuth@sewerequipment.com 815-342-1700  Vanessa Gomez Inside Sales Coordinator 1590 Dutch Rd. Dixon, IL 61021 vanessagomez@sewerequipment.com 815-835-5566

Table 2: Company Information and Financial Strength

Line Item	Question	Response *															
9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	<p>"Best Product, Best Local Support" is a promise to our customers and is also a tagline that acts as a guiding principle to us each day. We have long been known for robust and innovative products that focus on simplicity, an increasingly rare characteristic in our marketplace. Sewer Equipment is also unique among manufacturers for our breadth of product, which ultimately allows our salespeople and distributors to sell in a consultative fashion. No other manufacture provides full size combination (jet/vacuum) trucks, mini combo trucks, water recycling combo trucks, truck and trailer jets both large and small, rodders, easement machines, and accessories for sewer cleaning applications as well as purpose built hydro excavation and air excavation trucks of all sizes.</p> <p>Our 76-year history has been one of growth and meaningful innovation. In 1941, our founder, H.T. O'Brien, developed the idea of using a rotating, spring tipped rod for cleaning drains in buildings, and a company was born. Throughout the 1940's and into the 1960's, O'Brien Manufacturing refined and expanded this principle to include trailer mounted rodders for cleaning mainline sewer pipes – these rodders were the predecessors of today's sewer jettors. The late 1960's saw the advent of modern-day sewer jet trucks and water powered rotating root cutters by O'Brien. O'Brien Manufacturing was sold in the early 70's and Sewer Equipment Company of America was opened by Jim O'Brien, son of the founder. The company grew from accessory sales to the manufacture of rodders, bucket machines, vacuum trailers, and truck and trailer jettors. In the mid 2000's we began manufacturing an extensive line of hydro excavating trucks and trailers. In 2012, the company was moved from a 37,000 sq/ft manufacturing facility in Chadwick IL to a 122,000 sq/ft plant in Dixon IL to accommodate our growth. This move allowed us to begin producing the 900-ECO combination sewer cleaner 2015. In the 6 years since its release, the 900-ECO has achieved approximately a 13% share of this hotly contested segment, measured in annual new truck sales in the US. In the last 4 years, we have also released the 400-ECO mini combo truck, the Genesis water recycling combo, and the AX-4000 air excavator truck. May of 2021 marked the completion of our 9000th piece of "big equipment" in company history.</p>															
10	What are your company's expectations in the event of an award?	We would immediately schedule a video conference meeting with all distributor sales personnel, reiterating the terms of the contract and calling attention to any changes. This would be followed up with in person reviews as well as e-mail / social media blasts to dealers and end users. We would remain the sole source of responsibility for this contract and would handle all order entry and reporting tasks required by the contract as we currently do.															
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Sewer Equipment has a consistent track record of growth and profitability. The company's past performance assures ample resources to enhance our product offerings for the markets we serve. Sewer Equipment maintains insurance coverage that is customary for the business being conducted. (Attachment – 11-2020 Sewer Equipment Co....., 11 – Huntington National Bank....., 11 – 2021-2022 Sewer Equipment COI)															
12	What is your US market share for the solutions that you are proposing?	<p>Our US Market Share data listed here for combination trucks, truck jets, and hydro excavation trucks is based on data reporting through the American Association of Equipment Manufacturers.</p> <table border="1"> <tr> <td>Combination Sewer Cleaners</td> <td>(2018) 6.4%</td> <td>(2019) 7.1%</td> <td>(2020) 14%</td> <td>(2021y.t.d.) 13.3%</td> </tr> <tr> <td>Truck Jets</td> <td>(2018) 58.5%</td> <td>(2019) 8%</td> <td>(2020) 44.6%</td> <td>(2021y.t.d.) 31.7%</td> </tr> <tr> <td>Hydro-Excavation Trucks</td> <td>(2018) 5.9%</td> <td>(2019) 9.3%</td> <td>(2020) 6.9%</td> <td>(2021y.t.d.) 8.1%</td> </tr> </table>	Combination Sewer Cleaners	(2018) 6.4%	(2019) 7.1%	(2020) 14%	(2021y.t.d.) 13.3%	Truck Jets	(2018) 58.5%	(2019) 8%	(2020) 44.6%	(2021y.t.d.) 31.7%	Hydro-Excavation Trucks	(2018) 5.9%	(2019) 9.3%	(2020) 6.9%	(2021y.t.d.) 8.1%
Combination Sewer Cleaners	(2018) 6.4%	(2019) 7.1%	(2020) 14%	(2021y.t.d.) 13.3%													
Truck Jets	(2018) 58.5%	(2019) 8%	(2020) 44.6%	(2021y.t.d.) 31.7%													
Hydro-Excavation Trucks	(2018) 5.9%	(2019) 9.3%	(2020) 6.9%	(2021y.t.d.) 8.1%													
13	What is your Canadian market share for the solutions that you are proposing?	<p>Our Canadian Market Share data listed here for combination trucks, truck jets, and hydro-excavation trucks is based on data reporting through the American Association of Equipment Manufacturers.</p> <table border="1"> <tr> <td>Combination Sewer Cleaners</td> <td>(2018) 1.7%</td> <td>(2019) 2.0%</td> <td>(2020) 7.7%</td> <td>(2021y.t.d.) 7.5%</td> </tr> <tr> <td>Truck Jets</td> <td>(2018) 66.7%</td> <td>(2019) 42.9%</td> <td>(2020) 75%</td> <td>(2021y.t.d.) 75%</td> </tr> <tr> <td>Hydro-Excavation Trucks</td> <td>(2018) 2.1%</td> <td>(2019) 2.0%</td> <td>(2020) 0%</td> <td>(2021y.t.d.) 7.8%</td> </tr> </table>	Combination Sewer Cleaners	(2018) 1.7%	(2019) 2.0%	(2020) 7.7%	(2021y.t.d.) 7.5%	Truck Jets	(2018) 66.7%	(2019) 42.9%	(2020) 75%	(2021y.t.d.) 75%	Hydro-Excavation Trucks	(2018) 2.1%	(2019) 2.0%	(2020) 0%	(2021y.t.d.) 7.8%
Combination Sewer Cleaners	(2018) 1.7%	(2019) 2.0%	(2020) 7.7%	(2021y.t.d.) 7.5%													
Truck Jets	(2018) 66.7%	(2019) 42.9%	(2020) 75%	(2021y.t.d.) 75%													
Hydro-Excavation Trucks	(2018) 2.1%	(2019) 2.0%	(2020) 0%	(2021y.t.d.) 7.8%													
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	Since its formation, Sewer Equipment has never petitioned for bankruptcy protection.															
15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	As a manufacturer, our primary means of going to market is via exclusive distributors that are typically responsible for covering the municipal entities in an entire state/states, multiple provinces, or multiple countries. We have distributors in 46 States and 2 Providences in Canada, as well as 5 overseas countries. The only exception is in some states/provinces that are in a transitional phase. Distributors act on our behalf as local sales, service, training, and warranty providers. These distributor sales and service people are 3rd party employees and are looked after by regional sales managers from Sewer Equipment. Distributor service personnel work closely with, and have direct access to Sewer Equipment's warranty department, technical service department and engineering group.															
16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	<p>As a United States based company, we are an Illinois corporation registered with the Illinois Secretary of State (File No. 50370119). Our Federal Employer Identification Number is 36-2786536. Our Illinois Certificate of Resale Number is 0252-2705.</p> <p>As a manufacturing making mobile products operating on US highways, we have two dealer licenses. DL1582 for trucks and DLT1419 for trailers. Each of our Dealers also hold Dealer Licenses in their respective territories.</p> <p>Where required, Sewer Equipment is licensed as a Manufacturer or Motor Vehicle Converter including Iowa Manufacturer License No. M241, Texas Motor Vehicle Converter License No. 105517, Louisiana Motor Vehicle Converter License No. CV-2021-00122, Washington Vehicle Manufacturer License No. 08152 and Montana New Motor Vehicle Manufacturer License No. 139.</p> <p>Sewer Equipment is also a member of the National Association of Trailer Manufacturers. This assures our trailers are manufactured in accordance with all DOT and NATM guidelines.</p>															
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Sewer Equipment has not within the ten-year period preceding this bid been debarred or suspended from any public transactions (Federal, State, or local).															

**Table 3: Industry Recognition & Marketplace Success**

Line Item	Question	Response *
18	Describe any relevant industry awards or recognition that your company has received in the past five years	Sewer Equipment was awarded patent number "US 9,863,135 B2" for our Hydro-Drive system on January 9th, 2018. This Hydro-Drive System is the heart of our 900-ECO Combination Sewer Cleaner and has been a major contributor to the continued growth and success of our company.  In the July 2021 issue of THE MUNICIPAL, Sewer Equipment was featured in an article "Moving Beyond Transactional Relationships Toward Partnerships." referencing a sale to King County, WA, where they utilized the Sourcwell Contract for the purchase and National Cooperative Lease for the financing.  Sewer Equipment's products are in focus on almost a monthly basis in Industry Trade Publications such as CLEANER, DIG DIFFERENT, and MUNICIPAL WATER & SEWER.
19	What percentage of your sales are to the governmental sector in the past three years	(2018) 47%, (2019) 52%, (2020) 53%, (2021) 54%
20	What percentage of your sales are to the education sector in the past three years	(2018) .032%, (2019) .058%, (2020) 0%, (2021) 0%
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	The figures below do not include state and other local contracts that are managed by our distributors. These are only contract held directly by Sewer Equipment.  HGAC (2018) \$361,491.00, (2019) \$496,502.00, (2020) \$0.00, (2021) \$0.00, State of Ohio (2018) \$66,914.00, (2019) \$337,639.00, (2020) \$569,970.00, (2021) \$248,523.00 Florida Sheriffs (2018) \$0.00, (2019) \$0.00, (2020) \$0.00, (2021) \$87,886.00 BuyBoard (2018) \$0.00, (2019) \$0.00, (2020) \$0.00 (2021) \$52,325.00
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Sewer Equipment partners with Fedharmony on a GSA contract. We also directly hold a DLA contract.  GSA (2018) \$0.00, (2019) \$250,619.00, (2020) \$263,271.00, (2021) \$58,479.00 DLA (2018) \$0.00, (2019) \$256,309.83, (2020) \$274,847.00, (2021) \$0.00

**Table 4: References/Testimonials**

Line Item 23. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *
City of Reno, NV	Zac Haffner	775-399-8692
City of Salem, OR	Jerry Smith	503-385-7560
City of Atlanta, GA	Robert Horton	404-982-1426

**Table 5: Top Five Government or Education Customers**

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *
City of Atlanta, GA	Government	Georgia - GA	Combination Sewer Cleaners	8 - 900-ECO's	\$2,171,740.00
City of Reno, NV	Government	Nevada - NV	Combination Sewer Cleaners, Truck Jets, Easement Machines	3 - 800-HPRs, 3 - 900-ECO's, 1 - JAJ-600WH	\$1,141,776.00
Snohomish County	Government	Washington - WA	Combination Sewer Cleaners	3 - 900-ECO's	\$812,988.00
City of Salem, OR	Government	Oregon - OR	Combination Sewer Cleaners	3 - 900-ECO's	\$755,912.00
City of Hamilton, ON	Government	ON - Ontario	Hydro Excavators	2 - Ramvac HX-12's	\$705,804.00

**Table 6: Ability to Sell and Deliver Service**

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *
25	Sales force.	We directly employ a national sales manager as well as an eastern, central, and western regional sales manager that are responsible for our distributor network. We employ 3 inside salespeople as well as 7 direct salespeople that serve markets that are not fully covered by distribution (primarily contractors, but also some federal agencies and education to a very small degree). Three full time demonstration specialists work with our regional sales managers and distributor salespeople to allow our customers to "try it before they buy it", which is a very important aspect of our sales program.



26	Dealer network or other distribution methods.	In total, our distributor network employs approximately 140 salespeople. As a premium specialty product, our distributors are quite focused on the Sewer Equipment line, typically spending 50% or more of their efforts on our offerings. A new focus moving forward will be an intensive product and presentation technique training (SEAL - Sewer Equipment Advanced Learning) program for our distributors, with the goal being the most educated and knowledgeable sales staff in the industry. This has already begun with a dealer "walkaround" event (live product presentation), in which dealer salespeople presented several products to their peers and factory personnel and were graded for certification purposes. This program will be expanded with more events and more content in the coming years.	*
27	Service force.	(See attachment: 27 Service Distributor Map – US) As the Sewer Equipment distributor network evolves, our service presence has improved in recent years. With more professional organizations in our ranks, our number of service techs at the dealer in the US and Canada is approximately 170. Each of our distributors is required to have at least two technicians certified at Sewer University, a multi-day class that is regularly held at our Dixon IL headquarters. 99% of our customer's service needs are accommodated at the distributor level. Sewer Equipment also employs 3 mobile service technicians equipped with service trucks that fill in any gaps in service coverage and cover special projects. A relatively unique offering for customers in remote regions is our willingness to provide warranty coverage via a 3rd party repair shop of their choice or to reimburse the customer to perform simple warranty repairs themselves. This is very popular among customers in the rural western US, and is largely made possible by our simple products and factory tech support.	*
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	As in the past, Sewer Equipment distributors will provide Sourcewell quotations to customers and will accept purchase orders from customers following Sourcewell guidelines as called out in our Quick start guide for distributors which will be updated (Attachment - 28 Quick Start Guide for dealers- Sourcewell INTERNAL - rev6 4-6-2020). Upon securing the order from the end user, the distributor will in turn place their order with Sewer Equipment and must include a copy of their customer's purchase order complete with Sourcewell discount information, customer Sourcewell number, and our Sourcewell contract number. Said in a simpler way, customers will order from their authorized distributor, and the distributor will order from Sewer Equipment as they normally would, with the exception that Sourcewell quote and order protocols will be followed.	*
29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	The first and likely most important aspect of our service program is building equipment that can be worked on by the customer or a local shop. Because Sewer Equipment has consciously avoided the use of computers, circuit boards, and CANbus communication protocols in our products, a mechanic with traditional skills and a knowledge of 12-volt wiring systems can often help themselves. If the customer does not possess the skills or cannot resolve the issue on their own, they should make a call to their local distributor to schedule a service visit, or to our corporate service technicians for assistance via the phone.  Our corporate, in-house customer service department is comprised of both parts sales specialists and technical support specialists that provide toll-free service and tech support 24-7 & 365 days a year to end users and distributor service groups. Depending upon the issue, many can be handled over the phone with minor adjustments to either the operator's use of the equipment or to the machine itself. Our support specialists have extensive experience in troubleshooting issues and offering solutions.  If repair service and parts are required, our specialists will work with the customer and/or dealer to most quickly and easily remedy the situation. To assist in this process, every unit we build is assigned a 4 digit serial number that allows us to retrieve electronic copies of each document related to the system from the sales order to product manuals that contain as built wiring diagrams and hydraulic schematics.  We stock an extensive inventory of repair parts and accessories to give expedited service to our customers. Due to our stock levels and standardization on most buy out components, we have a track record of consistently shipping 95+% parts the same day ordered. For those remaining parts, we go to our vendor suppliers for support to meet our customer and dealer network needs.  In regard to response time, most customers can expect a personal visit from a dealer technician within 24 hours with some exceptions due to geographic challenges. As detailed above, technical phone support is available all day, every day.	*
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	All personnel, physical assets, and procedures are already in place to provide our products and product support nationwide.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	We are prepared and have already utilized the Sourcewell contract in Canada for a substantial transaction with Hamilton, Ontario (2 Hydro-Excavator trucks)	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Hawaii is the only geography not covered by an exclusive distributor, but we do utilize a non-exclusive reseller to facilitate service issues and the few sales that we see there.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Although we are willing and able to serve all sectors, 98-99% of our customers fall in the government segment with some tribal entities and an occasional school district or university mixed in.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	We do not have any restrictions in regards to the contract for the States of Alaska and Hawaii.	*

**Table 7: Marketing Plan**

Line Item	Question	Response *
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	<ul style="list-style-type: none"> <li>• Product Literature: We display the Sourcewell contract awarded logo on our product line cards, product catalogs, and our website. See supporting document "Sewer Equipment Co. of America Full Product Line Catalog".</li> <li>• Website: We will highlight this in our website blog content when awarded and highlight on our social platforms.</li> <li>• Magazines: Collaborate with Industry Partners and Trade Publications advertise and write articles highlighting the benefits of utilizing the Sourcewell Contract.</li> <li>• Training on Finance Options: Promote the use of the Contract and Finance Options during our yearly Dealer Meetings.</li> <li>• Main Phone Line: Our on-hold message for our main Sewer Equipment phone line includes a narrative describing the contract and benefits to our customers.</li> <li>• Tradeshows: We display Sourcewell flags/banners at the major industry shows and our distribution (dealer) partners do as well at dozens of local shows each year.</li> <li>• Field: Our three regional sales managers, national sales manager, and demonstration specialists promote the contract at in person customer visits and demonstrations. Trailing has also been provided to our distribution (dealer) partners on how to also promote the contract in the field</li> </ul>
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Our marketing platforms include: our websites (Sewer Equipment and Rock Rental), ad campaigns through Google AdWords, LinkedIn ads, and Facebook ads, social media platforms such as LinkedIn, Facebook, and Twitter, advertising and editorial content with trade magazines, and email campaigns to established dealer networks and customers.
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	<p>We feel that Sourcewell provides the medium and Sewer Equipment supplies the product, both supplying prospects. Sourcewell's marketing efforts are important to expose municipalities to the contract and the accepted option as an alternative to the traditional bid process. Sewer Equipment's responsibility is to market our product to prospects and our distribution network.</p> <p>Integrate Into Sales Process:</p> <ul style="list-style-type: none"> <li>• We will continue with our existing plan which is mentioned in number 35 above. In addition to what is mentioned we have additional plans already in place that we will continue with that include: <ul style="list-style-type: none"> <li>o WWETT show, Indianapolis, February 2022: announce renewal of contract at annual dealer meeting.</li> <li>o Each year we present the top 3 Sourcewell dealer salespersons with monetary awards covered by Sewer Equipment.</li> <li>o Our secured dealer portal website includes: all Sourcewell pricing, Sourcewell quick start guide which outlines all pertinent details of our contract.</li> <li>o Internal quarterly sales meeting includes update on sales success regarding the contract.</li> <li>o When a new dealer is brought on, we allocate for 1 hour of Sourcewell training.</li> </ul> </li> </ul>
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	We do not have an e-procurement system in place at this time.

**Table 8: Value-Added Attributes**

Line Item	Question	Response *
39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	<p>Operational training is standard and provided free of charge by our distributors at time of delivery of new machines. Because a large percentage of our customers are repeat buyers, we choose to offer additional on-site operator training by a factory representative on an optional basis for those that feel they need it. Price is \$1,839.00 for the first day and \$1,370.00 for each subsequent day, including all expenses such as transportation.</p> <p>Model specific maintenance training is optional, customizable, and available on demand. This covers daily, weekly, monthly, and annual maintenance requirements as well as basic and model specific troubleshooting. This is typically 2 days at our plant and is \$943 per person. Meals and lodging are included in the price and customer is responsible for transportation.</p>
40	Describe any technological advances that your proposed products or services offer.	<p>Our primary "advancement" revolves around the principle of keeping our systems simple. Particularly in the combination truck, hydro excavator, and full-size truck jet market, nearly every manufacturer has moved to microprocessor-controlled modules that incorporate touch screens and complex digital user interfaces. We have retained the use of traditional 12-volt control systems. This makes our trucks easier and safer to run, easier to maintain without special training and tools (increasing up-time) and eliminates the obsolescence and fragility of high-tech components.</p> <p>We are in the process of manufacturing the world's only battery powered rodder for the City of Seattle sewer collections department.</p> <p>The Genesis Recycling Combination truck is an exclusive partnership with Cappellotto of Italy that allows us to offer their world leading technology of this product in North America with the sales efforts and support of our nationwide dealer network.</p> <p>Our patented Hydro Drive system utilized on our 900-ECO drives our blower and water pump in a very unique but surprisingly simple manner that offers a host of benefits. Eliminating the transfer case present in most other designs removes a potential maintenance headache, allows our truck to work in neutral offering unmatched operator safety and ease of setup, and consumes less horsepower, thus cutting fuel consumption and emissions.</p> <p>The 800-HPRTV Series IV was recently refined and is the most user friendly and productive TV/Jet combination systems in the truck and trailer market, allowing customers to TV and clean sewer lines simultaneously.</p>

41	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>Company</p> <p>2020 solar panel project.</p> <p>Through the Illinois Adjustable Block Program Sewer Equipment's 706.86 kW solar system is generating 11,871 REC's (Renewable Energy Credits). (attachment – 41 Sewer Equipment Solar Renewable... and attachment - 41 Illinois Adjustable...), Sewer Equipment participated in ComEd's Smart Inverter rebate program which incentivizes non-residential customers to make renewable energy investments. (attachment – 41 Smart Inverter...)</p> <p>To date, Sewer Equipment's solar charging system has saved CO2 emissions of 895,396 lbs. (attachment 41 Solar Edge summary.)</p> <p>Battery powered forklifts and material handling devices utilize solar charging</p> <p>Adoption of low VOC paints has decreased overall VOC generation despite a 10-fold increase in production in the last 10 years.</p> <p>Installation of a water recirculation system for jetter testing, saving hundreds of thousands of gallons per year.</p> <p>Recycling Program</p> <p>Utilization of reusable, steel transport skids for our locally sourced large components eliminates the need for one-use wood and plastic skids.</p> <p>Recycling of wood and cardboard shipping components</p> <p>Plant-wide paper and plastic recycling program</p> <p>Products</p> <p>The Genesis recycler combo truck can clean sewers all day without using a drop of fresh water. It processes the debris and water that is vacuumed during the operating process, using the reclaimed water for jetting.</p> <p>Our 900-ECO truck, 800HPR-ECO truck and 747-ECO trailer operating system allows the engine to operate at 30-50% lower speed while in the work mode, offering reductions in fuel use, emissions, and ambient noise.</p> <p>Our rodders are the only commonly accepted waterless sewer cleaning tools, making them popular in arid regions where water conservation is of importance. Thousands of gallons of water are saved daily versus traditional sewer jet-vac technology.</p> <p>Although traditionally gas powered, we have now developed a battery powered rodder.</p> <p>Biodegradable hydraulic fluid is offered as an option in all our systems.</p> <p>We have manufactured several CNG powered jet trucks for the Southern California Market</p>
42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	<p>Sewer Equipment has not received any third-party ECO ratings specifically. However, a patent has been granted by the US Patent office for our HydroDrive system described above, as used on our 900-ECO. This system does provide fuel saving vs traditional drive systems. (Attachment 42 HydroDrive...)</p>
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	<p>We continue to receive the EDGE credit from the State of Illinois. This credit is based on the number of jobs created and retained. (Attachment 43 Edge Credit.....)</p>
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	<p>One of the most unique attributes of our offering is our unprecedented breadth of product. No other manufacturer in our marketplace offers everything from small jetters used in the plumbing segment to full size combo trucks, and everything in between. This means that our distributors can be consultants starting with assessing a customer's needs and then supplying the proper product. This also makes us one of the only suppliers of smaller products in the sewer industry that has a strong nationwide sales and service network.</p>

**Table 9A: Warranty**

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *
45	Do your warranties cover all products, parts, and labor?	Sewer Equipment's standard warranty policy covers all items manufactured by Sewer Equipment except for wear items. Many major components are covered by their respective manufacturers warranty policy. (Attachment 45 Warranty Policy.....)
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Sewer Equipment's standard warranty policy covers 12 months or use or 2000 hours. The 2000 hours limit covers typical usage by all Municipalities.
47	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Sewer Equipment provides up to 3 hours of travel time for warranty reimbursement. Our Dealers pick up travel time in addition to the 3 hours as needed. Our Municipal customers do not have to pay for travel time regardless of where they are located.
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcwell participating entities in these regions be provided service for warranty repair?	Sewer Equipment has dealers that cover 46 of States in the U.S. In Canada we have dealers currently covering 4 Provinces. Our dealers cover service in these areas. For customer in other states or provinces in Canada we have two options for service. First Sewer Equipment employs direct field service personnel that we can send directly to the customers locations. We also work with third party service centers across North America that will do warranty work on Sewer Equipment products. Regardless of the customers location, we have service handled.
49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Sewer Equipment assist in processing warranty claims for all purchased items covered by their respective manufacturer's warranties. For most items we handle these claims directly with the manufacturer for a seamless claim by the end user. This would be similar to claims on Sewer manufactured items. The only exception is auxiliary engines. Engine warranty claims and repairs are handled by the respective manufacturers service centers around the country. Sewer Equipment does assist with communication between the end user and the service center.
50	What are your proposed exchange and return programs and policies?	If the customer decides to return a purchased item such as a spare part, Sewer Equipment charges a 25% re-stocking fee. The customer will also be responsible for shipping charges. This policy does not apply to new custom-built equipment sold through our dealer network. Any potential return for new equipment would be negotiated with the selling dealer.
51	Describe any service contract options for the items included in your proposal.	Sewer Equipment's dealer network offers service packages for customers. These packages are priced by our dealers. For regions not supported by our dealer network, Sewer Equipment offers quarterly maintenance packages with work performed by our own Field Service Personnel. Pricing is on a case-by-case basis based on expectations of the customer.

**Table 9B: Performance Standards or Guarantees**

Describe in detail your performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your performance materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *
52	Describe any performance standards or guarantees that apply to your services	Sewer Equipment does not have any performance guarantees that apply to service. We do offer a 27/7 phone support for all service-related issues. For urgent parts needs, we typically ship 90% of orders within 24 hours.
53	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	We do not have service performance standards currently but are looking to implement a program in 2022.

**Table 10: Payment Terms and Financing Options**

Line Item	Question	Response *
54	Describe your payment terms and accepted payment methods?	Sewer Equipment's payment terms for all municipal and educational Customers is Net 30. Our dealers would also utilize Net 30-day terms to their customers.
55	Describe any leasing or financing options available for use by educational or governmental entities.	Sewer Equipment utilizes and recommends NCL Government Capital for leasing options to our Municipal Customers. This has proved very useful for long term leasing arrangements. For short term rental needs, we offer rentals through our subsidiary Rock Rentals. Many of our dealers also partner with us in offering short term equipment rentals.
56	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Sewer Equipment and our dealers utilize our standard Sourcwell Price sheets for quoting to our customers. When a customer submits a purchase order to one of our dealers, the dealer submits a copy of the customer purchase order along with the worksheet used for quotation to us. We utilize this information to establish the Sourcwell Contract fee. All other related transaction documents are handled between our dealers and customers. See copies of our worksheets uploaded in the pricing section.
57	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcwell participating entities for using this process?	Sewer Equipment does not accept P-Card for payments currently.

**Table 11: Pricing and Delivery**

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *
58	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Sewer Equipment utilizes a straightforward discount off list pricing model for all our new equipment sales. This also applies to all spare parts and accessories. Pricing for all our new equipment models has been uploaded and is included with this submittal. We do not utilize SKUs for our equipment. All worksheets are identified by their model name. Pricing for all parts and accessories is not included with this submittal as the number of items is quite large. MSRP pricing for most items can be found at <a href="http://www.sewershop.com">www.sewershop.com</a> .
59	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The Sourcewell Contract discount for all new equipment is 3% off MSRP. The discount for parts and accessories is 5% off MSRP. The discount for rentals is 3% off published rates. The buyout price for rentals if applicable is priced at 3% off MSRP. These discounts are minimums, and our dealers may provide additional discounts.
60	Describe any quantity or volume discounts or rebate programs that you offer.	Sewer Equipment does not have a standard volume discount pricing structure. However, us and our dealers will offer volume discounts as necessary on a case by case basis. When offered, these discounts are noted on the quote to be above and beyond the standard Sourcewell discount.
61	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Sewer Equipment and/or our dealers will provide non-standard items to be mounted on our equipment at request of our customers. These items are quoted on a case-by-case basis and are considered part of our product. These non-standard items are subject to the Sourcewell discount.  Sewer Equipment and/or our dealers will also supply chassis for our truck mounted models. These chassis are currently being quoted at cost on a case by case basis due to pricing influx in the market. We consider these items to be "pass-thru" items and are not subject to Sourcewell discounts or fee reporting.
62	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Items that can be included on a quotation to a customer but are not on our pricing worksheet or discussed in the above sections include the following. Dealer supplied freight, training, and pre-delivery inspections. These items are not subject to Sourcewell Discount or fee reporting.
63	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Sewer Equipment charges freight from our Dixon, IL location to our Dealers location. We charge freight on a per mile bases. Our dealers may impose an additional charge for freight from their location to the customers location depending on location. That is a separate charge as listed in question 62.
64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	For freight charges to customers located outside of the continental United States or Canada, we will with our freight broker to establish the lowest price options for our customers. Our customers are also welcomed to take on the freight responsibility themselves.
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	We do not currently offer any unique freight programs other that what is listed above.

**Table 12: Pricing Offered**

Line Item	The Pricing Offered in this Proposal is: *	Comments
66	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Sewer Equipment has always offered a discount from list price on the Sourcewell Contract.

**Table 13: Audit and Administrative Fee**

Line Item	Question	Response *
67	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	<p>Our Sourcewell pricing worksheets are accessible for download on our dealer website. This assures that our dealer sales staff have access to the correct price pages. These contract specific price sheets have the 3% minimum discount already listed to prevent error.</p> <p>Sewer Equipment audits every incoming order to determine if our Dealers have sold it via the Sourcewell Contract. If it was determined it was a Sourcewell sale, we verify all contract pricing via our worksheet and the customer purchase order. Every customer purchase order utilizing the Sourcewell contract must list their Sourcewell membership number and Sewer Equipment's contract number. Upon confirming the order is purchased via the contract, we document every order on an Excel spreadsheet. This spreadsheet tracks contract sell price, contract fee, and so on. Our Accounting Department audits this spreadsheet on every order that is completed before shipping. We also identify the use of the contract on our order tracking database for an easy to access record of all Sourcewell orders.</p> <p>For fee reporting and remittance we have a dedicated person in our Accounting Department that audits the Sourcewell Orders spreadsheet and reports sales on a quarterly basis. Fees are paid based on this quarterly reporting.</p>
68	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	We continually monitor contract usage against overall sales volumes through our Dealerships. We track and award the highest grossing dealer salesperson that utilizes the Sourcewell Contract on a yearly basis during our dealer awards ceremony. It should be noted that the Sourcewell Contract is the only contract where we offer this award. We also compare the Sourcewell contract against competing national contracts and dealer held state contracts. These comparisons help us to put emphasis on training dealer sales staff.
69	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	<p>Sewer Equipment will pay an administrative fee to Sourcewell based on 1% of the Sourcewell sell price to the customer. This 1% fee is paid on our equipment, spare parts, and accessories. We do not pay the administrative fee on chassis which are considered a pass thru with our units. We will also pay the 1% administrative fee on all rental billings limited to 18 months and to buyouts of rentals based on the negotiated buyout price.</p> <p>The fees are calculated and paid on a quarterly basis.</p>

**Table 14A: Depth and Breadth of Offered Equipment Products and Services**

Line Item	Question	Response *
70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	<p>Sewer Equipment is offering an extensive range of equipment that all fall into the Sewer Vacuum, &amp; Hydro-Excavation Category on this proposal. Our list of offered equipment is as follows....</p> <ul style="list-style-type: none"> <li>• Our models 400-ECO &amp; 900-ECO Combination Sewer Cleaners</li> <li>• Our Genesis Recycler Sewer Cleaner</li> <li>• Our Mongoose Series of Truck and Trailer Jetters</li> <li>• Our 545 &amp; 747 Series of Truck and Trailer Jetters</li> <li>• Our 800 Series Truck Jetters</li> <li>• Our Ramvac Series Hydro Excavation Trucks</li> <li>• Or Ramvac Series Air Excavation Trucks.</li> <li>• Our JAJ Series of Easement Machines for Sewer Cleaning</li> <li>• Our 444, 866 &amp; 877 Rodders for Sewer Cleaning</li> <li>• Spare parts and Accessories for above listed equipment.</li> <li>• Our Rental Program of above equipment.</li> </ul>
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	All our equipment falls under the primary category on the proposal.

**Table 14B: Depth and Breadth of Offered Equipment Products and Services**

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments
72	Sewer vacuums or combination sewer cleaners	<input checked="" type="radio"/> Yes <input type="radio"/> No	See Equipment List
73	Hydro or air excavation equipment	<input checked="" type="radio"/> Yes <input type="radio"/> No	See Equipment List
74	Jetters and rodders	<input checked="" type="radio"/> Yes <input type="radio"/> No	See Equipment List
75	Dewatering, mud, trash, and centrifugal pumps	<input type="radio"/> Yes <input checked="" type="radio"/> No	No items specifically in this category, but our Geneisis Recycler unit does de-water before dumping.
76	Pumps used in lift stations, sewage treatment, water treatment, or water collection facilities	<input type="radio"/> Yes <input checked="" type="radio"/> No	No items specifically in this category, but our 900-ECO with optional trash pump can be used as an emergency pump system.
77	Accessories, supplies and replacement or wear parts related to the offerings above.	<input checked="" type="radio"/> Yes <input type="radio"/> No	

**Table 15: Industry Specific Questions**

Line Item	Question	Response *
78	Describe any product or equipment features that improve operator safety.	Our 900-ECO with patented HydroDrive system operates with the transmission in neutral and no transfer case required which has the potential to pop into gear and drive away. All of our ECO Series equipment operators at a reduced RPM for lowered noise for the operator. Our standard wireless remote has an e-stop safety check built in.
79	Describe any product or equipment innovations that increase uptime and operator productivity.	Our 900-ECO with patented HydroDrive system operates with the transmission in neutral and no transfer case required. The operator simply puts the truck in neutral, sets the parking brake, gets out of the truck, and turns on one switch to activate the unit. Then they can vacuum and/or jet within seconds. We do not utilize any completed computers or touch screens that prevent the operator from using while wearing gloves.  Our dig-deep boom available on the 900-ECO and our HX12 series allows for increase vacuum depth without the need for as many vacuum tube additions.

**Table 16: Exceptions to Terms, Conditions, or Specifications Form**

**Line Item 80. NOTICE:** To identify any exception, or to request any modification, to the Sourcwell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcwell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

**Documents**

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcwell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcwell.
3. Sourcwell may reject any response where any document(s) cannot be opened and viewed by Sourcwell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

- [Pricing](#) - Price Sheets.zip - Monday October 11, 2021 13:50:43
- [Financial Strength and Stability](#) - Financials.zip - Monday October 11, 2021 13:51:14
- [Marketing Plan/Samples](#) - Marketing Documents.zip - Monday October 11, 2021 13:52:29
- [WMBE/MBE/SBE or Related Certificates](#) - 43 Edge Credit Cert of Verification.pdf - Monday October 11, 2021 13:53:20
- [Warranty Information](#) - 45 WARRANTY POLICY AND PROCEDURE.docx - Monday October 11, 2021 13:52:48
- [Standard Transaction Document Samples](#) - Sourewell Order Transaction Document.pdf - Monday October 11, 2021 13:57:20
- [Upload Additional Document](#) - Additional Documents.zip - Monday October 11, 2021 13:54:30



**Addenda, Terms and Conditions**

**PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE**

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
  1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
  2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
  3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Shawn Bondele, Inside Sales Manager, Sewer Equipment Co. of America

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

Yes  No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
<b>Addendum_3_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221</b> Thu September 30 2021 03:29 PM	<input checked="" type="checkbox"/>	2
<b>Addendum_2_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221</b> Fri September 10 2021 02:40 PM	<input checked="" type="checkbox"/>	2
<b>Addendum_1_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221</b> Thu August 26 2021 05:40 PM	<input checked="" type="checkbox"/>	1

Attachment No. 3

Ramvac  
www.ram-vac.com

Mongoose Jetters  
www.mongoosejettters.com

Sewer Equipment Co. of America  
www.sewerequipment.com

Sewer Equipment  
1590 Dutch Road  
Dixon, IL 61021

Office: 815.835.5566  
Toll Free: 800.323.1604  
Fax: 815.284.0452



June 2, 2023

Subject: SWS Equipment – Authorized Dealer for Sewer Equipment

To whom it may concern:

This letter serves to state that SWS Equipment is the exclusive duly authorized dealer for Sewer Equipment products utilizing the Sourcewell Contract in the States of Idaho, Montana, Oregon, and Washington. This includes new equipment, spare parts, and service.

Reference Sourcewell Contract # 101221-SCA.

Regards,

A handwritten signature in blue ink that reads "Shawn Bondele".

Shawn Bondele  
Regional Sales Manager  
shawnbondele@sewerequipment.com

## Combo Vac Truck Scoring 0 - 3

	SECA		Vactor		VacCon	
	Notes	Score	Notes	Score	Notes	Score
Service Dept. Location	Wilsonville	2	Portland	1	Gresham	1
Loner/Rental Program	Yes	1	Yes	1	Yes	1
Trade-In Option	Yes	1	Yes	1	Yes	1
High Dump	Yes (60")	3	Yes (60")	3	Yes	3
Debris Capacity	12 Yard	3	12 Yard	3	11 Yard	2
Water Capacity	1,500 Gallons	3	1,300 Gallons	1	1,500 Gallons	3
Water Output	55gal @ 3,000psi	2	70gal @3,000psi	3	50gal @3,000psi	1
Water Pump	Tri-plex or Single	3	Single Piston	2	Tri-Plex	3
Hose reel Style	Slide and Pivot	2	Slide and Pivot	2	Slide or Swing	3
3/4" Hose Reel cap.	1,200'	2	1,200'	2	1,300'	2
Foot Pedals	Yes	3	No	0	Yes on Lesser Model	1
Fan or PD Vacuum	PD	3	PD	3	Both But Pushing Fan	1
Washdown Gun Location	Anywhere	1	Anywhere	1	Anywhere	1

### Combo Vac Truck Scoring 0 - 3

Wireless Remote	Yes (can control all fun.)	2	Yes (nice large controls)	3	Yes (can control all fun.)	2
Storage Boxes	Lots of Storage	1	Lots of Storage	1	Lots of Storage	1
Suction Tube Storage	Hanging (very simple)	3	Swing Down	1	Lazy Susan	1
Suction Boom Length	27.5' (longest reach)	3	10' Telescoping	2	Telescoping	2
Dual or Single Engine	Single	1	Single	1	Either	1
Vac & Water engagement	1 outside switch	3	In Cab Process	1	In Cab Process	1
Multi Water Functions	Run All At Once	3	1 At A Time	1	1 At A Time	1
Pros and Cons	No engaging T-case, No computers, Vac while driving, Simple operation and repairs, Reel can't reach outside of truck	3	Water pump can run 50gal up to 70gal, Need to engage T-case every time	2	Reel can reach outside of truck, Need to engage T-case every time, Haven't been happy with service last few years	1
<b>Total Score:</b>		<b>48</b>		<b>35</b>		<b>33</b>

# **Sewer Equipment Co. of America**

## **(SECA)**

### **End User Reference Checks**

City of Ridgefield / Ryan Thamert – They've had the truck for one year and have run Vectors in the past. First thing Ryan said was that they love the truck. He also said it's really easy to operate, it has one switch to activate all functions of the truck, what few repairs they've had to make they were able to get the parts at a local auto parts store, and the customer service from SWS is really good. Ryan told me a story about a spot that they couldn't get into with another piece of equipment, but they were able to use the SECA truck and drive while they vac'ed, no other truck can do that.

Cowlitz County / Larry Higgins – They really like the truck. Not many problems with good service. They use it a lot for excavating and it has really strong vacuum.

City of Newberg / Carl – Truck is two years old also have Vactor truck. Carl said the truck is very easy to use and fix. Overall good truck. Their problem is with the customer service from SWS. They had a problem with the suction boom freezing in cold weather and broke apart. (After talking to Carl Joe called Blake at SWS. From what Blake knows is that Newberg bought a demo truck with a shorter warranty and the issue happened after the warranty period which Newberg thought it should still be covered. Since that incident SWS has replaced the local sales person and moved a service shop to Wilsonville.)

Orevac (Contractor) Jeff Fanning – Jeff is the owner of Orevac and he has 4 Vactor trucks and a newer SECA truck. Jeff really likes that it is easy to train new employees and it's easy for them to fix. He said the water pump is smooth. He would buy another one. Jeff said switching from fan vacuum to a PD pump will be a game changer.(I think this reference says the most. Downtime for repairs is a big deal to contractors. Him switch from a vender they've used for years says a lot.)

City of Salem / Jerry Smith – Salem runs 4 SECA trucks. Jerry said they really like the this brand. They've only had the normal wear and tear things going bad as expected. Jerry said SWS has provided really good service and the turn around time is fast. He also mentioned the hydraulic line design is very good making it easy to make repairs. He also said they are easily able to vacuum out 30' deep wet wells no problem.



A Division of BridgeTower Media  
P.O Box 745929  
Atlanta, GA 30374-5929

Invoice # 745624818  
Invoice Date 07/12/2023  
Customer City of McMinnville, ID:  
Payment Terms Net 30  
Due Date 08/11/2023

**BILLING ADDRESS**

Leland Koester  
City of McMinnville  
230 NE 2Nd St  
Mcminnville OR 971284831

**ADVERTISER**

City of McMinnville, ID: 26795  
230 NE 2Nd St  
Mcminnville OR 971284831

INVOICE REF	MEDIA	DATE	PO	EDITION	QTY	AD SIZE
1007111927	Daily Journal of Commerce - OR - Public	07/12/23		Legal - Bids	1	Legal - Bids
<b>Subtotal</b>						\$166.98
<b>Tax</b>						\$0.00
<b>Credits</b>						\$0.00
<b>BALANCE DUE</b>						\$166.98

Thank you for your business!  
IOID: 2520191  
Index: Bids - Other  
Category: Goods and Services  
Affidavit Reference: COMBINATION SEWER/STORM CLEANER VACUUM TRUCK

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REMITTANCE STUB TO BridgeTower Media

<b>Invoice #</b>	745624818 Daily Journal of Commerce - OR - Public Notice	<b>Date</b>	08/11/2023	<b>Customer ID</b>	ID: 26795, City of McMinnville
<b>Amount Enclosed:</b>					

## Acceptable Payment Methods

<b>PREFERRED METHOD</b> <b>To Pay by ACH Transfer:</b> Bank: Bank of America Send ACH remittance email to ar@bridgetowermedia.com Account Number: 237025443017 Routing: 053000196	<b>OTHER METHODS</b> <b>To Pay by Check use the following address:</b> Please include invoice number on check BridgeTower OpCo, LLC P.O Box 745929 Atlanta, GA 30374-5929	<b>To Pay by Credit Card:</b> Use the Click to Pay Online link located on the email you received or Contact Accounts Receivable: 866-802-8214 Please have your Invoice Number and Credit Card Number Ready	<b>To Pay by Wire Transfer:</b> Name: BridgeTower OpCo, LLC Bank: Bank of America Swift Code: BOFAUS3N Bank Address: 100 North Tryon Street Charlotte, NC 28255 Account Number: 237025443017 Routing: 053000196
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**CITY OF MCMINNVILLE  
PUBLIC NOTICE OF COOPERATIVE  
PROCUREMENT  
NOTICE OF INTENT**

Notice is hereby given that the City of McMinnville intends to enter into a contract with Solid Waste System (SWS) to purchase a Sewer Equipment Co. of America ECO-900 Combination Sewer/Storm Cleaner Vacuum Truck through an interstate cooperative procurement established by Sourcewell in accordance with ORS 279A.220. The aggregate purchase is \$569,836.55.

Sourcewell issued a public solicitation for sewer vacuum, hydro-excavation, and municipal pumping equipment which was awarded a contract, solicitation Number 101221, between Sourcewell and Sewer Equipment Co. of America. The competitive bid process used by Sourcewell meets Oregon Revised Statutes for procurement of goods and services, and members are able to use this procurement option. The City of McMinnville is registered Sourcewell member #41616.

Using a comparison matrix, trucks from three manufacturers were demoed and evaluated and scored by Conveyance System staff. In addition, references were checked from similar end users relating to reliability, dealer service, ease of operation, and performance related questions. The Sewer Equipment Co. of America (SECA) ranked highest in score and received positive responses from end users.

The purpose of this notice is to provide information to the public and to invite interested persons an opportunity to submit written comments. Any person may submit comments specific to this notice within seven days of the date of this public notice. Written comments shall provide a detailed statement of the legal and factual grounds to support such comments. The comments shall demonstrate how the procurement process is contrary to law, and the relief requested. Comments received shall be handled pursuant to OAR 137-046-0470; ORS 279A.225, and ORS 279B.400 through 279B.425.

Written comments must be delivered to Leland Koester 3500 NE Clearwater Drive McMinnville, OR 97128, no later than 1:00 p.m., July 20, 2023. Comments received after the closing date and time will not be considered.

This notice is given in accordance with provisions of the Oregon Revised Statutes, 279A.220, and Oregon Administrative Rules, 137-046-0400 to 137-046-0470.

DATED THIS 12TH DAY OF JULY 2023  
LELAND KOESTER  
WASTEWATER SERVICES MANAGER  
CITY OF MCMINNVILLE  
Published Jul. 12, 2023. 2520191

231 NE Fifth Street  
McMinnville, OR 97128  
(503) 434-7312  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

# STAFF REPORT

**DATE:** August 1, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Jeff Gooden, Project Manager  
Jody Christensen, Project Manager  
**SUBJECT:** Contract Award – 30% Design for Third Street Improvement

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## **Report in Brief:**

This action is the consideration of a resolution to request an additional \$111,174.17 in ARPA funds and to award a Professional Services Agreement in the amount of \$896,174.17 to BKF Engineers for the 30% design of the Third Street Improvement, Project 2023-4.

## **Background:**

The Third Street Improvement Project is a nine-block street improvement project on McMinnville's nationally award-winning Main Street. The project will entail street and sidewalk reconstruction, underground infrastructure improvements, above-ground street furnishings and landscaping. The City has been planning for this project from as early as 2000, and has been working on the vision, goals, objectives, and a concept block design for the past four years in a comprehensive public process.

The need for an improvement project on Third Street has been discussed in McMinnville since at least 2000 with the adoption of the [Downtown Improvement Plan](#) and subsequently in 2005 with the [Third Street Streetscape Plan](#), and in 2013 with the inclusion of a Third Street Improvement Project in the [McMinnville Urban Renewal Plan](#).

Initially, the project was conceived as a streetscape and furnishings project. However, over time with the degradation of the Third Street sidewalks and the poor functionality of the downtown stormwater conveyance system, the project has evolved into a street improvement project to replace the sidewalks, reconstruct the streets to better convey the stormwater, and to re-evaluate how the public spaces and right-of-way serve the businesses and the community.

In 2018, a Project Advisory Committee was appointed to work on the project and several meetings occurred over 2018 and 2019 to develop the project vision, goals, and design principles.

In 2021, the City elected to move forward with the Phase D project design development with the hope of producing 30% construction documents to be competitive for infrastructure bond funds through a variety of grants to help construct the project.

### Third Street Improvement (TSI) Project Milestones

Phase A – Vision, Goals, Design Principles – completed

Phase B – Initial Concept Design – completed

Phase C – Refined Concept Design – completed

**Phase D – Engineering 30% Construction Documents – if approved will launch August 2023**

Phase E – Engineering 100% Construction Documents

Phase F – Procurement and Construction - not before 2026

### Discussion:

On April 28<sup>th</sup>, 2023, three proposals were submitted for review to the selection committee. On Friday, May 12<sup>th</sup>, 2023, BKF Engineers was chosen by the selection committee, which was comprised of City Staff, MURAC, and the MDA, as the most qualified consultant to bring this project to 30% design. Through negotiation of the scope of work it was determined that the cost of the services provided by BKF Engineers is \$896,174.17. This is an increase to the budgeted amount of \$111,174.17. It is requested that additional funds come from the City's ARPA fund.

All of the proposals were complete and met the City's requirements. A detailed breakdown of the proposals is on file in the Engineering Department.

The proposal from BKF and Scope of Work in the amount of \$896,174.17, was deemed to be the most qualified proposer.

The project is expected to start on August 18<sup>th</sup>, 2023, and be complete by August 5<sup>th</sup>, 2024.

### Attachments:

1. Resolution 2023-50
2. Selection Committee Results
3. Scope of Work and Fee
4. Professional Services Agreement
5. Vicinity Map

### Fiscal Impact:

The Adopted FY24 budget includes \$600,000 in ARPA funds located in the General Fund (01) and \$185,000 in the Urban Renewal fund (58) for the completion of 30% design documents. With the Scope of work negotiations budget of \$896,174.17, with an additional \$111,174.17 of ARPA funds the project will be delivered within budget.

### Recommendation:

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to enter into a Professional Services Agreement with BKF Engineers for \$896,174.17 for the Third Street Improvement, Project 2023-4.

**RESOLUTION NO. 2023-50**

A Resolution awarding the Professional Services Contract for the 30% design of the Third Street Improvement Project, Project # 2023-4.

**RECITALS:**

**Whereas**, At 5:00 PM on April 28<sup>th</sup> the City received three proposals for 30% design; and

**Whereas**, On May 12<sup>th</sup> the City’s selection committee chose BKF Engineers to begin contract negotiations and define the Scope of Work when on July 21<sup>st</sup> those negotiations concluded; and

**Whereas**, The Project is funded by \$600,000 in ARPA funds located in the General Fund (01). Additionally, \$185,000 in the Urban Renewal fund (58); and

**Whereas**, A request for an additional \$111,174.17 in ARPA funds for the increased cost of 30% design. After these funds have been allocated to the Third Street Improvement Project there will be a total of \$689,123.83 ARPA funds remaining.

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

1. That entry into a Professional Services Agreement with BKF Engineers, in the amount of \$896,174.17, with a completion date of August 5<sup>th</sup>, 2024 for the 30% design of the Third Street Improvement Project 2023-4, is hereby approved.
2. That the City Manager is hereby authorized and directed to execute the Professional Services Agreement Contract.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 8<sup>th</sup> day of August, 2023 by the following votes:

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

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

Approved this 8<sup>th</sup> day of August 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

**Third Street Improvement Project - RFP Scoring**

<b>Company</b>	<b>Proposers Experience and Qualifications ( 0 - 30 points)</b>	<b>Project Approach ( 0 - 30 points)</b>	<b>Project Management ( 0 - 25 points)</b>	<b>Availability (0 - 15 points)</b>	<b>Total Points</b>
<b>BKF Engineers</b>	26	26	22	13	<b>87</b>
	Comments				
<b>David Evans And Associates Inc.</b>	21	20	19	14	74
	Comments				
<b>RS&amp;H</b>	25	24	19	11	79
	Comments				

**Results**

# Third Street Work Plan

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## STAGE 1: PROJECT MANAGEMENT, OUTREACH, AND FUNDING

### TASK 1: PROJECT MANAGEMENT

1. **General Project Management:** BKF will manage the design team as well as track progress, the consultant team schedule and deliverables, and the consultant team budget. BKF will be responsible for documenting all design decisions and maintaining an official record of all documents and communications associated with this contracted phase of the project. BKF will submit monthly progress reports identifying tasks completed, contracted budget status, and issues or out of scope items status.
  - a. **Schedule Control:** BKF will prepare and maintain a detailed delivery schedule in accordance with the City's desired timeline for design completion. The schedule will include key milestones and agency review periods and updated at a minimum on a monthly basis for distribution at the coordination meetings.
  - b. **Monthly Invoices and Progress Reports:** BKF will prepare monthly progress reports with our invoices. The report will include work accomplished during the reporting period, work anticipated during the next reporting period, issues, and progress schedule.
  - c. **Coordination:** BKF will lead the consultant and project management team throughout the duration of the Project, ensuring that work is well coordinated and progresses based on the Project Schedule and other agreed upon commitments. The project team, led by BKF, includes the following:
    - i. **BKF Engineers** – Civil Engineering, Land Surveying, Grant Funding, Project Management
    - ii. **SERA Architects** – Outreach, Urban Design, Landscape Design
    - iii. **Kittelson & Associates** – Traffic Engineering
    - iv. **Haley & Aldrich** – Geotechnical & Environmental
    - v. **Civilis Consultants** – Business Resiliency
    - vi. **The Pacific Resources Group** - Arborist
  - d. **Meetings:** BKF will facilitate project meetings as noted herein and will document each meeting with agendas and minutes. We will establish an ongoing action log to track open coordination items to ensure that all issues are addressed throughout the design process.
2. **Quality Control/Quality Assurance:** BKF will perform an independent quality control review of the team's documents prior to submittal.

#### **Deliverables:**

- Monthly Progress Reports
- Project Schedule
- Meeting Agendas and Minutes

### TASK 2: OUTREACH

1. **Technical Advisory:** BKF will facilitate Technical Advisory Committee (TAC) coordination. The TAC will be formed by the City and will consist of project stakeholders from affected agencies.
  - a. **Initial Agency Outreach:** The consultant team will contact agencies affected by the project to confirm their requirements as they pertain to the proposed improvements. BKF will meet with agencies to present options, obtain feedback, coordinate relocations and potential upgrades to their facilities. At a minimum, we will coordinate with the following agencies:

- i. ODOT
    - ii. ODEQ
    - iii. McMinnville Water & Light
    - iv. Comcast
    - v. Hunter Communications
    - vi. Zply Fiber
    - vii. Gas
    - viii. NW Natural
    - ix. Railroad Owner/Operator
  - b. **Technical Advisory Committee (TAC) Meetings:** The team, as required, will participate in up to seven (7) TAC meetings to review various deliverables and discuss technical issues related to the project.
2. **Community Engagement:** SERA will facilitate Project Advisory Committee (PAC) coordination. The PAC will be formed by the City and will consist of project stakeholders.
- a. **Project Advisory Committee (PAC) Meetings:** The team, as required, will participate in up to seven (7) PAC meetings to review and solicit feedback on various deliverables, design issues, and process questions over the course of the project.
  - b. **City Council Meetings:** The team, as required, will participate in up to three (3) City Council sessions to review and solicit feedback on milestone deliverables.
  - c. **Website Updates:** The team will provide content for project website updates in conjunction with milestone deliverables.
  - d. **Community Forums:** SERA will prepare for and facilitate up to three (3) forums with community members to coincide with project kick-off, the conclusion of 15% Design, and the conclusion of 30% Design. Team members will participate, as required.
3. **Business Resiliency:** Phase 1 business resiliency will focus on bringing tools to the table for the business owner, property owner and community stakeholder around: a) surviving and thriving during road construction; b) leveraging the street for maximum return upon completion; and c) informing how street design decisions can impact brand, visitation, and sales in the district. These toolkits will be provided in the format of in-person presentations to the group, because business and property owners that collaborate and work in concert during street improvement construction are more likely to survive and thrive during periods of restricted access. Deliverables will be in the form of video presentations (recording to be completed by the City), and slide decks, heavy on visual case studies, typically between 125 to 150 slides. Phase 1 will be focused on understanding and quantifying the consumer building blocks of the district, planning in advance for the impacts that road construction might have on various types of businesses, the fundamentals of operating in a lower sales environment, generating ideas for building sales per square foot during the project through the lens of an advanced Main Street toolkit they will be implementing after the project is completed. The field work and study completed during Phase 1 can be used to create an optional add-on memo for the City of McMinnville to identify the types of future phase assistance and grant programs that should be a part of later stage design and engineering to help businesses in areas such as improving conversion rate, inventory planning, omni-channeling, discussions with Landlords, etc. Phase 1 work will include:
- a. **Project Launch Workshop:** For the entire downtown community, provide an overview of the design process, the PAC, the timeline, and framework for tackling business and property owner resiliency downtown during construction. (As needed, Civilis can also add economic perspective/content to support any existing work around parking, role of the road, etc.) Project Launch content will include:
    - i. Timeline overview.
    - ii. Introduce shared vocabulary for how Main Street economics function. (Civilis)
    - iii. Overview of district economic stages, including how preliminary design work supports economics and district experience (Civilis)
    - iv. Introduction to Tools for Transition Districts (3<sup>rd</sup> St during construction) (Civilis)
    - v. Introduction to Tools for Mature Districts (3<sup>rd</sup> St before/after construction)
    - vi. What businesses and owners should be thinking about now (Civilis)

- b. **3rd Street/Downtown Quantification:**
- i. **Small Format Group Interviews:** Over two days, conduct a series of small group interviews (2-6 people per interview), working with the City and McMinnville Downtown Association (MDA) to select a mix of attendees by vertical market (restaurants, retailers, service, property owners, etc.), by geography (businesses near each other), and/or characteristics (long-time business, new business, serves locals, serves tourists, etc.). The team may also host a public sector meeting (an elected, public safety, development staffer, local non-profit, chamber of commerce) and a resident meeting (people who live nearby, and an age mix as well as long-time/new resident) as well. The team will need the City and the MDA's assistance to set up these meetings, identify appropriate groupings, and choose a venue. Generally, these are attended by only the Consultant and one other person from either the City or the MDA so that it is a relaxed conversation. Findings from this work relevant to road projects will be filtered back to the team by Civilis.
  - ii. **District/Street Assessment & Secret Shopper:** Consultant will review and document business mix, ground floor execution, property types, mix of uses, consumer patterns, and customer/shopping observations to identify opportunities for collaboration, for mitigation of sales loss during construction, and for improving customer traffic during closures. This assessment includes informal talks with business owners/staff while on the ground, as well as interviews with City staff and the downtown association. Consultant will review relevant marketing, press, economic development efforts provided by the City so assessment will not duplicate previous work.
- c. **3rd Street 30% Design Forum and Resiliency Toolkit:** This workshop will present the results of the PAC work, the design and engineering ideas to 30%, and the resiliency toolkit findings and recommendations for the owners of businesses and property on the street. Laying the groundwork for community support very early! This will be a team presentation. Content will include:
- i. 30% Design
  - ii. Process Overview for Design
  - iii. 3rd Street/Downtown Resiliency
    - Advance planning for business/property owners
    - Construction mitigation and how it relates to resiliency efforts
    - Tools During Construction (Focus on driving traffic and elevating sales per square foot)
    - Tools Post Construction (Focus on advanced commercial tools and balancing local/tourist economy)

**Deliverables:**

- Meeting Presentation Materials
- Website Content
- Business Resiliency Toolkit - Phase 1 Business Resiliency: Two Presentation Videos (filmed by City of McMinnville) and Slide Decks.

**TASK 3: FUNDING SUPPORT**

1. **Funding Support Prospecting:** BKF will prospect for funding opportunities for McMinnville. This includes finding all viable federal, state, and local funding opportunities. As grants are vetted and determine to be a strong fit, the Grant Team will assemble a funding matrix with clear deliverables such as the grant due date, match requirements, and all other relevant conditions and criteria for a successful application. Once a suitable grant or grants are found, the Team will reassess next steps to proceed with the chosen application.
2. **Funding Support - Grant Application Package:** The objective of this task is to support the City's efforts in acquiring grants to fund project construction. Our scope anticipates:



- a. **Coordination:** We will meet with staff to create a plan which includes all deliverables and due dates. The plan will call-out expectations of both parties, as required to submit a complete application package prior to the grant deadline. This step will set the City up for future applications that they can submit after the contractual relationship has ended and all materials will be the property of the McMinnville.
- b. **Grant Writing:** Through the prospecting process, BKF's Grant Team will assist the City in identifying one (1) grant for which to apply. We will write the application on the City's behalf with 3 to 4 revisions (back and forth between BKF and the City) to help ensure the most successful application possible.

## STAGE 2: PROJECT INITIATION/DATA COLLECTION

### TASK 1: SURVEYS

1. **Collect and Review Record Documents:** Collect and review plans, drawings, reports, and other documentation provided by the City. Additionally, the team will research and collect available records from the public utilities (McMinnville Water & Light, NW Natural, telephone, cable and fiber companies).
2. **Field Review:** Meet with the City and perform a site assessment of the entire project area to understand topographic, boundary, and utility constraints. We will develop a photographic inventory of the corridor to document constrained and opportunity areas.
3. **Utility Locating:** BKF's in-house utility locators will perform utility investigation services using standard industry acceptable methods to determine the approximate horizontal position and depth of detectable underground utility lines within the designated area (see attached Limits of Work). BKF's field crews will use a combination of water-based paint and pin flags to mark the results of our investigation on the ground surface. BKF crews may opt to use the Ground Penetrating Radar (GPR), if the soil conditions will return a good signal to attempt to locate utility lines with no tracer wires. Individual field conditions will dictate the thoroughness of our subsurface utility investigation. BKF will perform a reasonable effort to determine the location of the existing underground utility lines; however, due to technical limitations of today's most modern equipment, no guarantee (expressed or implied) can be made. Irrigation lines, empty conduits, and abandoned utilities will not be located.
4. **Topographic Survey:** BKF will establish project control on site. Project horizontal control will be based on the North American Datum of 1927 as referenced to local survey control. Vertical survey control will be based on the National Geodetic Vertical Datum of 1929 as referenced to local benchmarks in the area.

The established control system will be used to provide 3D laser scanning services of the project area. The limits of the scanning are within the right of way and up to the building face(s) along Third Street between NE Adams Street and NE Johnson street and the supplemental areas as shown on the attached survey limits exhibit. Scanning will be comprised of 50-foot cross sections of the roadway, identified visible site features, roadways, pavements, striping, evidence of significant traveled ways, trees 6" and greater at breast height, utility location markings, and visible utility infrastructure. Inverts of gravity flow utilities and pipe sizes and types will be gathered and added to the survey.

Field work will be performed during regular business hours with BKF having access to the building space as needed. If necessary, BKF will make reasonable accommodations with existing tenants to minimize business interruptions.

Mapping - BKF will produce the mapping in a reproducible hard copy and electronic format. The signed and stamped hardcopy topographic map will be an instrument of service. Electronic mapping will be completed in an AutoCAD format and can be transferred and used by other team consultants for their work, as a courtesy.

- d. The mapping is to be compiled at 1" = 20', and will also indicate individual spot elevations at various locations throughout the site. BKF will take a series of photographs of all topographic features and utility structures and paint for future reference and documentation of current field conditions encountered during the time of our survey.

5. **Right of Way Survey:** BKF will provide preliminary boundary research of Third street right of way between NE Adams Street and NE Johnson Street in McMinnville Oregon. Additional boundary efforts will include the supplementary areas shown on the attached survey limits exhibit. Research will include documents easily locatable in the public record. Preliminary title reports provided by the client will be reviewed and easements in the area will be mapped. BKF anticipates no more than 40 easements to be mapped in the project area.

A preliminary boundary model will be assembled from the documents uncovered during the boundary research process. The preliminary model will be used for field calculations to BKF field staff in locating boundary evidence on site.

BKF field staff will utilize the preliminary boundary documentation to locate evidence of the boundary in the field. Evidence may include survey monumentation, lines of occupation, and existing topographic features on site. Measurements will be taken of the evidence and placed on the project control system for analysis.

The preliminary model along with the measured field evidence will be combined to produce an evidence-based boundary of the right of way along Third Street. The boundary will be incorporated with topographic mapping to create an overall base map. We will research right of way information to prepare a right of way map for the project. Using the right of way map, our team will create a preliminary base map including topographic features, utility, and preliminary right of way information that will be based on existing as-builts, right of way and easement maps as provided by the City. Individual properties within the project area will be identified by tax assessor number only and located approximately for reference only. We will add addresses to the City as provided by the City.

6. **Geotechnical Background Study:** Consultant will review available documents and summarize findings in email format.
  - a. Review readily available geologic, groundwater, and soil survey maps that cover the project vicinity. Review pavement data collected by the City.
  - b. Conduct a reconnaissance of the project alignments.
7. **Opportunities & Constraints:** SERA will prepare a diagram for the project area to record potential design opportunities and associated constraints. A draft version of the diagram will include input from other members of the consultant team and will be reviewed with the PMT, TAC, and PAC before being finalized.
8. **Urban Forest Assessment:** Pacific Design Resources (PDR) will prepare an urban forest assessment including the following elements
  - a. Coordinate with the design team following documentation of existing conditions and development of conceptual design to provide preliminary recommendations of trees to remove and replace or retain.
  - b. Site assessment for all trees within the project area to identify trees recommended for removal or retention. Identify potential paving modifications to support tree health.
  - c. Research suitable replacement street trees and work with design team to design street improvements to best accommodate both existing and replacement trees.
  - d. Prepare a memorandum summarizing recommendations for tree removal or preservation based on existing and proposed conditions including:

- i. Evidence of sidewalk and pavement buckling.
  - ii. Age
  - iii. Health
  - iv. Proximity to existing and proposed improvements (e.g., utilities)
- 9. **Existing Streetscape Amenities Inventory:** BKF will prepare an inventory (mapped and photographed) of all existing streetscape amenities (e.g., public art, planters, commemorative plaques, etc.) and prepare a catalog of these features for discussion with the PAC, MDA, and community about potential repurposing.

**Deliverables:**

- BKF will generate an RCP [Recap File] containing the scan locations.
- An Autodesk .DWG file containing the topographic, boundary, and utility mapping.
- A .PDF file containing the base mapping stamped by an Oregon Licensed Land Surveyor.
- Draft and final preliminary geotechnical report
- Urban Forest Assessment
- Inventory of Existing Streetscape Amenities
- Opportunities & Constraints Diagram

## TASK 2: UTILITY AUDIT

1. **Utility Inventory:** Based on the records research and survey completed with Task 1, BKF will compile a comprehensive inventory of documented utilities present within the project area including:
  - a. Electric power
  - b. Natural gas
  - c. Water supply and distribution
  - d. Sewer and wastewater
  - e. Telecommunications (telephone, cable, internet)
  - f. Street lighting
  - g. Stormwater management
2. **Utility Coordination:** In conjunction with TAC activities, BKF will coordinate with outside utilities companies to ensure that all existing facilities, both underground and overhead, are identified accurately during the design phase. This includes:
  - a. Contacting local agencies companies informing them of the project and requesting their facility drawings if necessary.
  - b. Determining the disposition of existing improvements that may be impacted.
  - c. Working with the City to develop strategies as to the intent and cost sharing for any improvement or modification to existing systems
  - d. Coordinate with utility providers and relevant stakeholders to gather additional information and address any concerns or conflicts.
3. **Utility Condition & Capacity Assessment:** Through coordination with the utility agencies, we will assess concerns related to the condition of the existing utilities such as signs of deterioration, leaks, corrosion, or other potential issues that may require attention or replacement. Additionally, we will document concerns regarding the capacity and performance of the utilities to accommodate the existing and future needs of the downtown area. This is based on coordination with agencies only, we have not included scope to perform condition assessment, calculations, or modeling with this task.
4. **Integration and Coordination:** Assess the coordination and integration of different utility systems to identify potential conflicts, overlapping infrastructure, or inefficiencies. Evaluate the alignment of utility infrastructure with the existing roadway design and any planned future modifications.
5. **Documentation:** BKF will prepare a memorandum summarizing the findings of the utility audit. We will recommend further study options (e.g., CCTV, etc.) as appropriate.

**Deliverables:**

- Utility Audit Memorandum

### TASK 3: ENVIRONMENTAL

1. **Hazardous Materials Corridor Study:** Consultant shall prepare a Hazardous Materials Corridor Study (HMCS) of the Third Street Improvement Project. The HMCS will attempt to identify potential sources of contamination that could impact the Project. The HMCS will review the records listed below and make conclusions based on the data. Consultant's work conducted for the HMCS will be performed within the Project APE (Area of Potential Effect) and according to generally accepted environmental procedures as outlined in the American Association of State Highway and Transportation Officials (AASHTO) Special Committee on Environment, Archaeology and Historic Preservation's Hazardous Waste Guide for Project Development, dated 1990; the Oregon Department of Transportation (ODOT) Hazmat Program Manual, dated July 2020, and ODOT's Hazardous Materials Corridor Study report template.

While the scope of services for the HMCS is similar to a Phase I Environmental Site Assessment, the HMCS should not be considered compliant with American Society for Testing and Materials (ASTM) E1527-21 or the All Appropriate Inquiries rule. The planned scope of services for the HMCS is as follows:

- a. Review available federal and state environmental databases to identify sites that could potentially impact the project, using the minimum search radii established in ASTM E1527-21.
  - b. Review physical setting sources for the Project including a current U.S. Geological Survey (USGS) 7.5-minute topographic map (as available) and readily available geologic, hydrologic, and soil information.
  - c. Review historical information for information regarding land use in the APE to at least 1940 including one or more of the following resources: Sanborn Fire Insurance Maps, historical aerial photographs, reverse city directories, historic property ownership/occupancy records, and building permits.
  - d. Review regulatory file information for sites that may impact the APE, including previous environmental reports and federal and state environmental records for hazardous waste generators, documented leaking or permitted underground storage tanks (USTs), sites with known or suspected releases, landfill sites, as available.
  - e. Conduct a visual reconnaissance of the APE and adjoining properties from public rights-of-way and other areas accessible to the general public. Consultant will not enter private property or contact the property owners without a permit of entry supplied, signed, and approved by the City.
  - f. Prepare a draft HMCA report summarizing the information obtained through the scope of services defined above; the HMCA report will include a description of field observations, information from state and federal environmental databases, historic land use, a scaled map showing the location of identified potential sources of contamination, copies of historic data, copies of state and federal databases, and other relevant documentation. The HMCS report will include opinions and conclusions about the conditions observed in and adjacent to the APE, a completed Initial Site Assessment Checklist according to AASHTO and ODOT guidance; photographs documenting APE observations, and recommendations for additional studies or investigations, as appropriate. The report will also include conclusions that identify specific sources of contamination that could impact the APE or the proposed construction work. The final report will be developed based upon the Client's review comments.
2. **Geophysical Survey:** Consultant shall subcontract with a geophysical survey contractor to conduct a geophysical survey of select portions of the APE based on the results of the HMCS and additional preliminary research conducted by others (e.g., surveys, historical documentation provided by the City). The geophysical survey will include ground penetrating radar and magnetometer surveys to evaluate suspect locations for underground storage tanks (USTs), former UST cavities, and/or historical tunnels present within the effective range of the equipment used, which is typically 5 to 7 feet below ground

surface. Specific locations of suspect USTs, former UST cavities, and/or historical tunnels have not been determined. Therefore, we have assumed up to 5 days of subcontracted geophysical survey services. We have also assumed that the City will issue a street use permit, if needed, at no cost to the Consultant. We have also assumed that traffic control will not be required during the geophysical survey, and that the City will coordinate and provide access to the survey areas.

- 3. Natural Resources:** We understand that the Third Street Improvement project will include possible removal of mature trees along Third Street. Consultant will conduct an initial site visit and desktop review of existing databases to identify federally listed rare, threatened, and endangered species within the Project Area using the United States Fish and Wildlife Service (USFWS) Information, Planning, and Consultation (IPaC) online tool. Based upon migratory birds identified as potentially seasonally present in the area, and an evaluation of existing habitat conditions, Consultant will prepare a memorandum that outlines the various identified species, and whether the species would be expected to be present.

Under NEPA, transportation projects that do not individually or cumulatively have significant environmental effects are classified as categorical exclusions (CEs). Consultant will complete a NEPA evaluation of the project to review for significant environmental impacts. Consultant will subcontract to Archaeological Services, LLC to prepare an analysis and reporting of significant cultural resources impact under Section 106. Consultant's services will be to review existing mapping for environmental and natural resources within the limits of the project, review stormwater and other improvements as a result of the project that may result in net effects. Consultant anticipates the performance of the NEPA work will result in No Effect for natural resources, and possibly cultural resources (depending on the results of the cultural resources survey). Consultant will prepare a finding of No Effect Letter, complete a NEPA checklist, conduct a site visit and coordinate with agencies for review.

- 4. Cultural Resources:** The project is still in its early design stages and funding sources have not been fully secured. It is possible that funding may come at least in part from a federal grant or other federal sources, which would trigger the project's review under Section 106 of the National Historic Preservation Act of 1966. Section 106 requires federal agencies to consider the effects of their undertakings on historic properties, including archaeological sites, that are listed on, or are eligible for listing on the National Register of Historic Places (NRHP).

Essential to the Section 106 process is an inventory effort to document any historic properties that may be affected by the proposed project. The following scope is intended to carry out the cultural resource inventory of the proposed project's APE.

Preliminary background research indicated that nearly the entirety of the project area falls within the NRHP-listed McMinnville Downtown Historic District, which was listed in 1987 and is centered on Third Street between Adams Street and the railroad tracks that cross Third Street in the eastern end of the project area. In addition, an extensive historic resource inventory was carried out in 1981, and updated in 1984, which evaluated most of the buildings within the study area and determined there were 58 contributing buildings to the historic district and 8 that were non-contributing.

In addition to the built environment, the project has the potential to affect below ground, archaeological resources. Over time several historic artifacts have been found on frontage and in the ROW of the downtown representing historic businesses and populations from the late 19th and early 20th centuries. In addition, there are community stories of underground tunnels intersecting throughout the downtown that were used for both infrastructure and human navigation. Lastly, the town's location on the South Yamhill River just upstream from its confluence with the North Yamhill River also makes the city an area of high probability for pre-contact Indigenous archaeology.

Oregon state law prohibits archaeological excavation on non-federal municipal land without a permit granted by the Oregon SHPO. This estimate includes the cost of applying for and obtaining an archaeological excavation permit from SHPO.

Consultant will conduct a cultural resources survey, including the following:

- a. Consultation as needed with the Client, the Oregon State Historic Preservation Office (SHPO), and interested Tribes.
- b. Background research and literature review. This research will examine the historical development of the project area, the archaeological data for the region, and any previous cultural resource investigations within a 0.5-mile radius of the project area. Focus will be paid to the potential for the presence of underground tunnels in the downtown area and any cultural resources associated with them. Sources for the background research will include but not be limited to files held by the City, SHPO, historic maps, materials available from libraries, historical museums and other local resources provided by the City as well as online materials.
- c. Prepare an Oregon SHPO permit application, if needed by the project.
- d. Conduct a cultural resources survey of the project area. The survey will consist of:
  - i. A systematic surface investigation of the entire APE. This pedestrian survey will focus on documenting the built environment, assessing the potential for archaeological remains and determining if and where subsurface investigations may be carried out, given the largely paved nature of the project APE.
  - ii. If an Oregon SHPO permit is obtained, then the project will also include a subsurface investigation within the APE. Subsurface testing will entail the excavation of up to twenty (20) shovel test probes (STPs), at the discretion of the Field Director. STPs are circular holes measuring approximately 40 cm (16 inches) in diameter and taken to a minimum depth of 60 cm (24 inches) below the ground surface, barring an impasse. All excavated site matrix will be screened through nested ¼" and ⅛" mesh over a tarp and the STP will be patched in accordance with City standards upon completion. Any artifacts identified during fieldwork will be re-buried at the project area. Selective auger testing may be used to sample deeper soils. If shovel test probing is unfeasible due to the impervious nature of the project area, ASCC may monitor geo-technical borings to assess the soils and their potential for containing archaeological remains.
- e. In-field analysis, GIS mapping, and documentation of any cultural resources identified during the survey.
- f. Complete any necessary archaeological site inventory forms.
- g. Provide recommendations regarding the project's potential to adversely impact cultural resources, particularly those that are listed on, or considered eligible for listing on the National Register of Historic Places (NRHP), or those that that are on the McMinnville Historic Resources Inventory.

**Deliverables:**

- Draft and Final HMCS report.
- Final geophysical survey.
- Draft and Final MTBA memorandum.
- Draft and Final letter and NEPA checklist
- Draft and Final cultural resources survey report

## TASK 4: MEETINGS

1. **Kickoff Meeting:** BKF and the subconsultant team will meet with City Staff at City offices to review the project schedule, review project goals, and identify critical path items.
2. **Progress Meetings:** BKF and subconsultants, as necessary, will meet with the City in-person and/or virtually to update on project progress and answer questions. Progress meetings will be held bi-weekly during this phase. At least two of the progress meetings shall be utility Coordination Meetings and one shall be an Emergency Services Meeting. We anticipate six (6) progress meetings during this phase.
3. **Weekly Meetings:** BKF's Project Manager will meet with the City weekly to provide status updates and coordinate project details. We anticipate these meetings will be approximately 30 minutes, conducted virtually. We anticipate twelve (12) weekly meetings during this phase .

## STAGE 3: 15% DESIGN

### TASK 1: CONCEPT DESIGN VALIDATION

1. **Plan Line:** Based on the surveys, BKF will prepare a plan line study “strip map” of the entire project corridor based on the concept plan geometrics. While the concept plan evaluated a typical block, we will apply the concept design to each block within the project area. We will identify constraints and conflicts of the concept plan based on the existing topography and underground infrastructure. We will prepare a high-level assessment of opportunities to mitigate challenges to the implementation of the concept plan.
2. **Draft 15% Design Layouts:** In coordination with BKF and the consultant team, SERA will prepare a design layout package to encompass each of the nine blocks in the project area. These layouts will graphically illustrate the location of key landscape / streetscape elements as well as supporting text and precedent images to convey design intent.
3. **Turning Movements:** BKF will perform a circulation analysis using digital automated software (AutoTURN) to confirm that the proposed layout can accommodate the required vehicles.
4. **Parking Management Support:** Kittelson shall support the Team with the parking strategy for the Project. Kittelson completed a preliminary parking assessment for the City in 2022 with the purpose of identifying existing parallel parking inefficiencies and provide planning-level strategies to increase on-street parking supply. The team will continue to build on the strategies provided within the context of the 3rd Street project, to help mitigate potential loss of on-street parking due to the streetscape improvements both during (construction-related) and after construction (permanent).
  - a. Construction parking mitigation – Kittelson will coordinate with the Team during development of the construction staging/phasing plans to understand impacts to existing parking during construction. Kittelson will work with the Team and City to identify feasible off-site parking opportunities (i.e. surface parking lots and/or other under-utilized street parking) and develop suggestions for wayfinding and signage for those parking areas. Kittelson assumes that the City or others will coordinate with owners of private parking lots to assess feasibility and any necessary agreements.
  - b. Permanent parking impacts – Kittelson will work with the Team to identify appropriate dimensions for on-street parking and apply to the design of each block face to maximize on-street parking opportunities. Kittelson will explore specific mitigation strategies building on the strategies developed in 2022 where loss of on-street parking cannot be avoided.

Kittelson will prepare exhibits as needed to inform opportunities and strategy discussions, and coordinate with the Team through meetings and correspondence. A brief memorandum expanding on the 2022 study will be prepared by Kittelson, if needed for documentation purposes.

5. **Street Lighting Evaluation:** Kittelson shall complete a computerized photometric analysis and preliminary light pole layout using AGi32 analysis software. A summary memorandum with supporting street lighting layout figures and AGi32 analysis files will be provided in electronic format to Agency for review. We assume the Project will include new street lighting on NE Third Street from NE Adams Street to NE Johnson Street. The street lighting evaluation will rely on the previously completed concept design and

input from Agency staff to identify specific pole and luminaire types to be used. The lighting evaluation will include and summarize each of the following steps, if applicable:

- a. Summarize and confirm target lighting levels for segments, intersections, and pedestrian crossings with Agency.
- b. Confirm the street light pole type and luminaire type to be used for design. Based on the type, Kittelson will identify a range of specific manufacturers and models through coordination with lighting vendors.
- c. Develop a photometric analysis and preliminary light pole layout that meets the target lighting levels and summarize results.
- d. Summarize findings in a draft memorandum and provide AGI analysis files to Agency for review.
- e. Update analysis and findings to address any comments provided by Agency and submit final memorandum.

Analysis will be performed and summarized for the following areas:

- f. Horizontal illuminance calculations at all intersections in the study area on NE 3rd Street between NE Adams Street and NE Johnson Street.
    - i. Assume horizontal illuminance analysis for up to ten (10) intersections.
  - g. Horizontal illuminance calculations along all road segments between intersections.
  - h. Vertical illuminance calculations at existing and proposed marked crosswalks at uncontrolled intersections or midblock locations.
    - i. Agency will confirm the locations of crosswalks at NTP.
  - i. For scoping purposes, we assume vertical illuminance calculations at up to eighteen (18) crosswalk locations.
6. **Alternatives Analysis:** Prior to preparing the 15% design documents, we will evaluate key alternatives related to:
- a. **Street Tree Preservation:** Based on their prior work along the corridor, the consulting arborist will advise the team regarding potential impacts of the streetscape project on street trees, including proposed modifications, construction activities, and changes to utilities.
  - b. **Pavement Surface Options:** We will evaluate different pavement surface options, considering factors such as durability, aesthetics, cost, and sustainability. We will assess the suitability of various materials, including asphalt, concrete, permeable pavers, standard pavers, or other potential surface treatments.
  - c. **Raised vs. Not Raised Crosswalks:** The team will analyze the need for raised crosswalks within the streetscape project area, considering pedestrian safety, traffic volume, and design speed. We will consider factors such as accessibility, drainage, maintenance, and integration with surrounding design elements.
  - d. **Stormwater Management:** Recommend appropriate stormwater management practices and design elements to ensure compliance with regulatory standards and minimize environmental impact.

**Deliverables:**

- Parking Management Memorandum
- Street Lighting Memorandum
- Alternatives Analysis Summary

## TASK 2: 15% DESIGN PLANS

1. **Update Plan Line:** Based on the alternatives analysis, stakeholder feedback, and City comments, BKF will prepare a final base plan for the team's use in preparing the 15% plans.



2. **Final 15% Design Layouts:** The Draft 15% Design Layouts will be reviewed with the PMT, TAC, PAC, City Council, MURAC, and broader community (Community Forum #2) and will then be finalized based on input.
3. **15% Plans:** Based on the results of the validation phase, our team will work to refine the preliminary design. We will provide the following documents:
  - a. Title Sheet
  - b. General Notes, Key Map, etc.
  - c. Survey Control Sheet
  - d. Existing and Proposed Right-of-Way and Easements,
  - e. Typical Sections
  - f. Existing Conditions
  - g. Street Layout and Plan
  - h. Grading & Drainage
  - i. Utility Relocation
  - j. Stormwater Management
  - k. Signing and Striping
  - l. Street Lighting (pole locations only)
  - m. Traffic Signals (basic pole and equipment layout only)
4. **15% Cost Estimate:** The team will develop a rough order of magnitude opinion of probable cost that can be used in soliciting funding opportunities for the corridor improvements. The estimate will be based on the plans using 2021 Oregon Standard for Specifications and Construction. The estimate will account for escalation and allow for adjustments to the escalation rate and construction timeline.

**Deliverables:**

- 15% Plans
- 15% Cost Estimate

### TASK 3: MEETINGS

1. **Progress Meetings:** BKF and subconsultants, as necessary, will meet with the City in-person and/or virtually to update on project progress and answer questions. Progress meetings will be held monthly during this phase. We anticipate seven (7) progress meetings during this phase.
2. **Weekly Meetings:** BKF's Principal-in-Charge will meet with the City weekly to provide status updates and coordinate project details. We anticipate these meetings will be approximately 30 minutes, conducted virtually. We anticipate fourteen (14) weekly meetings during this phase.

## STAGE 3: 30% DESIGN

### TASK 1: REPORTS

1. **Stormwater Hydrology/Hydraulics Report:** BKF will review potential changes to drainage patterns related to modifications to Third Street that could alter drainage or the rate of runoff. We will prepare preliminary calculations to size new storm drain piping and evaluate the locations and sizing of potential green infrastructure components.
2. **Basis of Design:** A basis of design memorandum will be prepared to document the design approach and identify areas where design exceptions to standards may be needed.
3. **Streetscape Plan (Report):** With input from the consultant team, SERA will prepare a Draft Streetscape Plan that records the key decisions and design features of the project through 30% Design. This document will build on that prepared for the Concept Plan in capturing the community's interest in the project. This

Report will be a summation of the 30% Design Plans that will include the illustratives, plan views, and renderings - and could include the technical work and cost forecast as appendices.

**Deliverables:**

- Reports, as noted

## TASK 2: 30% DESIGN PLANS

1. **30% Plans:** The objective of this task is to develop the design to a 30% level to establish a basis of design and cost estimate that will support the grant funding procurement. We will provide the following documents:
  - a. Title Sheet
  - b. General Notes, Key Map, etc.
  - c. Survey Control Sheet
  - d. Existing and Proposed Right-of-Way and Easements,
  - e. Typical Sections
  - f. Existing Conditions
  - g. Street Layout and Plan
  - h. Grading & Drainage
  - i. Utility Relocation
  - j. Stormwater Management
  - k. Illustrative Landscape Features and Plantings
  - l. Signing and Striping
  - m. Street Lighting
  - n. Traffic Signals (basic pole and equipment layout only)
  - o. Construction Staging Plans
  - p. Project Phasing Plans
2. **Streetscape Renderings:** SERA will prepare up to five (5) renderings of the streetscape to illustrate design intent, key elements, and/or specific locations within the project area.
3. **30% Cost Estimate:** The team will develop a rough order of magnitude opinion of probable cost that can be used in soliciting funding opportunities for the corridor improvements. The estimate will be based on the plans using 2021 Oregon Standard for Specifications and Construction.

**Deliverables:**

- 30% Plans
- 30% Cost Estimate

## TASK 3: MEETINGS

1. **Progress Meetings:** BKF and subconsultants, as necessary, will meet with the City in-person and/or virtually to update on project progress and answer questions. Progress meetings will be held monthly during this phase. We anticipate four (4) progress meetings during this phase.
2. **Contractors Round Table:** The team, as required, will participate in a discussion with invited contractors to discuss potential options for construction phasing and staging. SERA will document these options in a series of diagrams for review with the PMT, TAC, PAC, CC, MURAC, and the Community (at Community Forum #3).
3. **Weekly Meetings:** BKF's Project Manager will meet with the City weekly to provide status updates and coordinate project details. We anticipate these meetings will be approximately 30 minutes, conducted virtually. We anticipate eight (8) weekly meetings during this phase.

## OPTIONAL SERVICES

We propose to evaluate the following services after submittal of the 15% deliverables in coordination with the City and design team.

### OPTIONAL TASK 1: TRAFFIC ANALYSIS MEMORANDUM

1. **Draft Traffic Analysis Report:** Kittelson shall prepare a Traffic Analysis Report that summarizes available pertinent traffic information to use in preparing the Project design. Consultant shall collect two-hour weekday peak period traffic counts to include pedestrian counts and truck percentages.

Both morning (7am-9am) and afternoon (4pm-6pm) peak periods will be collected and analyzed for the following study intersections:

- a. NE Adams Street (OR99W) & NE Third Street
- b. NE Baker Street (OR99W) & NE Third Street
- c. NE Johnson and NE Third Street
- d. NE Adams Street (OR99W) & NE 2<sup>nd</sup> Street
- e. NE Baker Street (OR99W) & NE 2<sup>nd</sup> Street
- f. NE Three Mile Lane & SE 1<sup>st</sup> Street
- g. NE Adams Street (OR99W) & NE 5<sup>th</sup> Street
- h. NE Baker Street (OR99W) & NE 5<sup>th</sup> Street
- i. NE Lafayette Avenue & NE 5<sup>th</sup> Street

Afternoon (4pm-6pm) peak period only will be collected and analyzed for the following intersections:

- c. NE Cows Street & NE Third Street
- d. NE Davis Street & NE Third Street
- e. NE Evans Street & NE Third Street
- f. NE Ford Street & NE Third Street
- g. NE Galloway Street & NE Third Street
- h. NE Irvine Street & NE Third Street

Consultant shall obtain, review and summarize crash data from ODOT for the study intersections listed above on Third Street only and the roadway segments between intersections.

Consultant shall develop anticipated year of opening and design year (twenty (20) years after opening) traffic volume forecasts using the current travel demand model for the region. Estimates will be prepared for expected traffic diversions from Third Street to the other study intersections (i.e., 2<sup>nd</sup> Street and 5<sup>th</sup> Street) due to reductions in throughput capacity on Third Street.

Using existing and future traffic volumes, Consultant shall evaluate levels of service during the PM peak hour at the fifteen (15) intersections listed, and during the AM peak hour for the nine (9) intersections listed. Recommendations will be made for intersection control, signal phasing, and any lane configuration changes needed to meet City of McMinnville and/or ODOT level of service standards.

Vehicle queuing shall also be evaluated to determine appropriate storage for turn lanes, where applicable, and potential impacts on adjacent crosswalks and intersections. Left turn phasing analysis will be conducted per Agency guidelines to determine the most appropriate phasing type at each signalized intersection. Results of the analysis will be used to support any necessary signal approval requests.

Twenty-four (24) hour vehicular tube counts will be obtained on each of the four legs of the NE Third Avenue & NE Evans Street intersection. Traffic signal warrants will be evaluated for the intersection to inform the appropriate recommendation for intersection control to optimize traffic design for the Third Street corridor. Signal warrant analysis will be performed for the other existing signalized and unsignalized intersections on Third Street utilizing the peak hour traffic counts and extrapolating to develop 24-hour volume profiles based on the tube count data collected for Third Street.

Consultant shall prepare a draft Traffic Analysis Report summarizing the results of the findings. Consultant shall prepare a final Traffic Analysis Report based on draft review comments from Agency.

The Traffic Analysis Report will include the following elements:

- a. Project Purpose
  - b. Analysis of the most recent five (5) year crash history along the corridor
  - c. Crash rate for the entire Project section
  - d. Identification of the top 10% Safety Priority Index System (“SPIS”) sites
  - e. Identification of the Functional Classification of the project area roadways in accordance with the McMinnville Transportation System Plan (for City-owned intersections) and/or Oregon Highway Plan and Highway Design Manual (for ODOT-owned intersections).
  - f. Provide the posted speed
  - g. Provide the Annual Average Daily Traffic Volume (“AADT”) for Current Year and Design Year
  - h. Provide the truck percentage
  - i. Summary of existing, opening year, and 20-year traffic volumes at the study intersections.
  - j. Summary of levels of service at the study intersections under existing, opening year, and 20-year traffic volume scenarios at the study intersections.
  - k. Intersection control and lane configuration recommendations, along with vehicle queue storage and left-turn phasing requirements. Summary of signal warrants at the study area intersections on Third Street.
2. **Final Traffic Analysis Report:** Kittelson will update the draft report as required and prepare the Final Traffic Analysis Report.

## OPTIONAL TASK 2: ODOT APPROVAL REQUESTS

1. **ODOT Approval Requests:** Kittelson shall prepare documentation of various Project traffic elements at the NE Adams Street and NE Baker Street (OR99W) & NE Third Street intersections for review and approval by ODOT, including:
  - a. Preliminary Signal Operations Design (PSOD) forms for signals with modifications requiring ODOT approval will be submitted with the 30% submittal. PSOD forms are anticipated for the following intersection:
    - i. NE Baker Street (OR99W) & NE Third Street
  - b. State Traffic-Roadway Engineer (STRE) or Region Traffic Engineer (RTE) approval requests will be required for any of the following:
    - i. Textured/colored crosswalks
    - ii. New/modified signals
    - iii. Roadway illumination
    - iv. Bike lane markings
  - c. Up to four (4) STRE or RTE approval requests with associated documentation will be prepared by Kittelson for submittal by ODOT for approval.

## OPTIONAL TASK 3: PRELIMINARY GEOTECHNICAL ENGINEERING

1. **Preliminary Geotechnical Engineering:** Consultant will conduct a preliminary geotechnical investigation focusing on evaluating pavement conditions, general infiltration characteristics, and subsurface soil conditions along NE Third Street between NE Adams Street and NE Johnson Street. Consultant will evaluate the subsurface and pavement conditions at the site and provide preliminary geotechnical design recommendations and support the 30 percent design effort for the projects. Additional geotechnical work will be completed to provide recommendations for signal pole foundations and more detailed infiltration recommendations once the 30 percent design approach has been approved. The work will be conducted in general conformance with City standards and Oregon Department of Transportation's (ODOT's) Geotechnical and Pavement design manuals. Specifically, Consultant will provide the following services.
  - a. Review readily available geologic, groundwater, and soil survey maps that cover the project vicinity. Review pavement data collected by the City.
  - b. Conduct a reconnaissance of the project alignments.
  - c. Mark the proposed exploration locations in the field and notify the "One Call" service for public utility locates.
  - d. Prepare traffic control plans for and provide traffic control during completion of field explorations.
  - e. Work with project team and the City project manager to obtain permits for geotechnical work in the ROW.
  - f. Complete the following exploratory work to characterize as-built pavement and subsurface soil and groundwater conditions.
    - i. Complete up to 15 pavement cores at approximately 150 to 250 feet on center. Conduct dynamic cone penetrometer (DCP) testing at eight to ten core locations through the underlying base rock and soil subgrade to depths up to 3 feet below grade to evaluate pavement subgrade strength. Advance up to six borings to 10 feet below grade adjacent to select cores to characterize subsurface soils. Complete two infiltration tests in borings along the alignment at a depth of 2 to 3 feet below the existing grade.
    - ii. Maintain a log of the materials encountered in the explorations and collect select soil samples for laboratory testing.
    - iii. Patch the pavement at the coring and boring locations with ready-mixed concrete or cold-mix asphalt patches.
    - iv. **(Optional Service)** Complete up to 10 additional pavement cores as noted above.
  - g. Conduct a program of laboratory testing on select soil samples. The actual quantity and type of tests run will be based on the materials collected, though for budgeting purposes include up to:
    - i. 8 percent fines determinations (percent passing the No. 200 sieve),
    - ii. 30 moisture content and/or density determinations, and
    - iii. 2 Atterberg Limits determinations.
  - h. Conduct preliminary engineering analyses to evaluate possible pavement design and rehabilitation options and infiltration characteristics at the site.
  - i. Prepare a geotechnical report summarizing the results of the subsurface exploration and laboratory testing programs, and presenting our preliminary recommendations and conclusions.
  - j. Provide project management and support for our work, including coordination of Haley & Aldrich staff and subcontractors, invoicing, email and telephone communications with the project team, other incidental administrative services required for the project, and attendance at up to 2 project meetings.

#### OPTIONAL TASK 4: BUSINESS RESILIENCY SUPPLEMENTAL MEMORANDUM

1. **Resiliency Strategies & Sample Tactical Approaches:** Civilis will prepare a writeup summarizing broad strategies to support 3rd St during construction, with a range of tactical ideas to help the private sector. Actionable tactics will include ideas that can be implemented right away, through to tactics that should be

implemented just before or during construction. It will include ideas for both the private and public sector to help mitigate the impacts of construction on property and business owners. The intent is to give the City a range of options they can begin prioritizing and implementing together with their business community, as well as options for the private sector to begin working on individually. The memo is meant to help foster a next step collaboration that elevates the projects and efforts of most interest to the private sector, so projects get done and positive relationships are built.

## OPTIONAL TASK 5: ONGOING GRANT FUNDING SUPPORT

1. **Grant Compliance and Management:** From start to finish, BKF will maintain regular and consistent communication with the City, keeping them informed on the status of their application and the decision-making process. When grants require post-award compliance, the Grant Team will provide continued reporting, administration, close out report, and/or management on our client's behalf.

## OPTIONAL TASK 6: POTHOLING

1. **Pothole Support:** BKF will coordinate utility potholing efforts as follows:
  - a. **Utility Potholing:** For utilities identified as being in close proximity to future improvements, we will employ potholing to attempt to identify their location. BKF will retain a licensed general engineering contractor to identify the utility type, material composition, and depth of existing utilities that may be affected by the proposed improvements. The contractor shall pothole the area as identified by BKF to determine the type of utility and its precise horizontal location and depth. Within hardscape areas the pothole will be backfilled with a slurry mixture and topped with hot mix asphalt patch or repaired with a new concrete surface per the City of McMinnville standard requirements. We have estimated a total of 30 potholes as part of this project. This number is subject to change based on the conditions uncovered during the utility location and mapping process.
  - b. **Administration and Monitoring:** BKF will prepare an exhibit that shows the approximate location of each pothole (up to a total of 30), and coordinate with the potholing contractor as necessary. We will meet the potholing contractor on-site to confirm the locations of each pothole, and help monitor the progress of the potholing activities throughout each day. We have budgeted for ten (10) half days of monitoring pothole activities. We have assumed that the contractor will complete three (3) potholes per day.
  - c. **Field Survey:** BKF field crew will verify the locations of each of the 30 pothole locations as noted by the contractor's surface markings.

## OPTIONAL TASK 7: GEOPHYSICAL SURVEY (SUPPLEMENTAL ACCESS AREAS)

1. **Geophysical Survey:** Consultant shall subcontract with a geophysical survey contractor to conduct a geophysical survey of select portions of the additional APE in the supplemental access areas (alleys)

## DESIGN ASSUMPTIONS AND SCOPE QUALIFICATIONS

BKF Engineers' services are limited to those expressly set forth in the scope. We understand that BKF will have no other obligations or responsibilities for the project except as provided in this proposal letter, or as otherwise agreed to in writing. BKF will provide the scope of services consistent with, and limited to, the standard of care applicable to such services. Any participation in non-adversarial procedures, or other right to repair items, is considered as additional services. For the scope of work identified, we have assumed the following:

1. **City Provided Information:** City will provide the following services:
  - a. City will make available any existing record drawings (as-built) of the existing project area.
  - b. Right of Way Maps/Title Reports: A current title report(S) or right of way maps for the roadway will be provided by the City.
2. **Existing Utilities:** Unless otherwise indicated or provided by others, any existing utilities identified on BKF's drawings/plans are based on information obtained by BKF, or provided to BKF, and may not be accurately documented in their horizontal location or vertical profile. Other utilities may be present that were not disclosed.
3. **Postponements:** If the execution of the scope of work is delayed more than one year BKF reserves the right to adjust our billing rates to be consistent with our normal schedule of charges in the year work actually commences. Rates to be evaluated yearly after notice to proceed.
4. **Private Improvements:** we have not included scope for improvements outside of public right of way.
5. **Survey Limitations:**
  - a. Traffic control is not included as part of this task order.
  - b. Client will provide access to project areas.
  - c. No more than 20 easements are anticipated to be mapped.
  - d. Alley Ways not included in the mapping of this project.
6. **Mapping:** We have not included time to prepare additional items not contained in the mapping scope of work. Additional mapping services such as the following are not included:
  - a. Surveys of individual properties (topo/boundary)
  - b. Acquisition plat and legal descriptions;
  - c. Right of entry plats
  - d. Temporary construction easement plats and legal descriptions
  - e. Record of survey to delineate right of way and monuments either prior to or post construction
  - f. Monument preservation survey
  - g. Private easement documents,
  - h. Quit claims,
  - i. Right of way dedications
  - j. Other items not specifically listed in this proposal
7. **Construction Support:** This project includes preliminary design only, we can prepare a separate scope for final design as well as bidding and construction support services once a scope of work and schedule is determined.
8. **Meetings:** Meeting time requested beyond what we have budgeted is not included in this proposal.
9. **Drawings:** All drawings will be prepared in AutoCAD format. We will submit copies of all drawings in both electronic and paper format.
10. **Building Information Modeling (BIM):** We have not included time to convert civil 3D design or existing conditions AutoCAD files into BIM model files.
11. **Civilis Work Product:** Civilis Consultants contributions to this Agreement contain original business resiliency content, frameworks, and case studies that will be used in service to work for the City of McMinnville. As such, all work products of the Consultant which result from this Agreement (collectively, the "Work Products") are the exclusive property of the Consultant, which retains all common law, statutory, and other reserved rights, including copyrights, in and to Work Products. Work Products include, but are not limited to all data, information in any form, documents, drawings, photographs, recordings, research, analysis and any other work subject to intellectual property laws and doctrines. Consultant grants to City of McMinnville non-exclusive right to use, reproduce and distribute Work Products for the intended uses and purposes contained in this Agreement. Presentation content recorded by the City of McMinnville will not be made publicly available, but may be used for the purposes contained in this Agreement as well as for future education and training for downtown business owners.
12. **Geotechnical:**
  - a. Field work will be performed during normal business hours.

- b. If contaminated soils are encountered, then additional charges will be incurred for equipment decontamination, testing, and soil disposal.
  - c. If needed, the City will issue a street use permit at no cost to the Consultant.
  - d. City to provide traffic estimates and heavy truck distribution and percentages for each road segment.
- 13. Environmental:** Work scope was developed based on the assumption that a NEPA categorical exclusion would apply for this project. If initial research indicates a greater level of survey (such as an Environmental Assessment) is needed to determine a No Effect finding, a separate work scope and budget would be provided to the Client.
- 14. Cultural Resources:** The level of effort for curation preparation and the number of boxes required for transfer depends on the volume of artifacts that may be collected, which cannot be ascertained prior to conducting fieldwork. Therefore, we have assumed 40 hours for this task.





**CITY OF McMinnville**  
**PROFESSIONAL SERVICES AGREEMENT**  
**THIRD STREET IMPROVEMENT PROJECT**  
**PROJECT # 2023-4**

This Professional Services Agreement (“Agreement”) for the \_Third Street Improvement Project (“Project”) is made and entered into on this **16th day of August 2023** (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **BKF Engineers a California Corporation**. (hereinafter referred to as “Consultant”).

**RECITALS**

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

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

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

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

**AGREEMENT**

**Section 1. Scope of Work**

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

**Section 2. Term**

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than **August 5<sup>th</sup>, 2024**, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

**Section 3. Consultant’s Services**

3.1. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager. Any documents submitted by Consultant that do not bear the signature, stamp, or initials of Consultant’s authorized Project Manager, will not be relied upon by the City. Interpretation of

plans and answers to questions regarding the Services or Scope of Work given by Consultant's Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

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

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

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

#### **Section 4. Compensation**

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant a not-to-exceed amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 18**.

4.3. Payment will be made within thirty (30) days of completion of the Services. The Services shall be deemed completed when accepted by the City, in writing.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

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

pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

## **Section 5. Prevailing Wages**

This is a contract for a Public Works Project subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this Project are those published by the Bureau of Labor and Industries (BOLI), effective July 1, 2021, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: [http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx). Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Services, either by Consultant, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Services, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Consultant must comply with all public contracting wages required by law. Consultant and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Consultant an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the contract for breach. Consultant shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Consultant shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

## **Section 6. City's Rights and Responsibilities**

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

6.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2023-24 and Fiscal Year 2024-25. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 16**.

## **Section 7. City's Project Manager**

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

## **Section 8. Consultant's Project Manager**

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

## **Section 9. Project Information**

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

## **Section 10. Duty to Inform**

If at any time during the performance of this Agreement or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults, or defects in the Project or Scope of Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Consultant has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of the City's rights.

## **Section 11. Subcontractors and Assignments**

11.1. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant, provided Consultant advises the City of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. The City hereby agrees that Consultant will contract with SERA Architects Inc, Civilis Consultants, The Pacific Resources Group Kittleson and Associates Inc, and Haley & Aldrich to provide there services, which is a critical part of this Agreement. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

11.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers

or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

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

## **Section 12. Consultant Is Independent Contractor**

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

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

12.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 12** and meet the same insurance requirements of Consultant under this Agreement.

## **Section 13. Consultant Responsibilities**

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

13.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment

of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

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

#### **Section 14. Indemnity**

14.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 14.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) and reimburse the City against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant upon finding and allocation of Consultant's fault, in proportion to the determined fault of Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

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

#### **Section 15. Insurance**

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

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

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

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

15.1.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the



assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

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

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

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

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

## **Section 16. Early Termination; Default**

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

16.1.1. By mutual written consent of the parties;

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

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

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

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

16.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 20**, for which Consultant has received payment or the City has made payment.

## **Section 17. Suspension of Services**

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

## **Section 18. Modification/Addendum**

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document,

contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

### **Section 19. Access to Records**

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

### **Section 20. Property of the City**

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

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

### **Section 21. Notices**

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

To City: City of McMinnville  
Attn: \_\_\_\_\_  
230 NE Second Street  
McMinnville, OR 97128

To Consultant: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 22. Miscellaneous Provisions**

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

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

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

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

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

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

22.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to

enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

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

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

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

22.11. Not Used

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

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

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

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

22.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to

provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

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

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

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

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

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

**CONSULTANT:**

**CITY:**

\_\_\_\_\_ CITY OF McMINNVILLE

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

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

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

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

APPROVED AS TO FORM:

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



- MAIN PROJECT LIMITS
- SUPPLEMENTAL ACCESS LIMITS

**BKF ENGINEERS**  
 1125 NW COUCH STREET  
 SUITE 420  
 PORTLAND, OR 97209  
 (503) 553-5731  
 www.bkf.com



**3RD STREET IMPROVEMENT PROJECT**  
 MCMINNVILLE, OR

**SURVEY LIMITS EXHIBIT**

Revisions	
No.	Description

Date: JUNE 2023  
 Scale: N.T.S.  
 Design:  
 Drawn: GSM  
 Approved: GSM  
 Job No: 221310

Drawing Number: 1 OF 1



## STAFF REPORT

**DATE:** July 24, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Willy Williamson, Airport Administrator  
**SUBJECT:** McMinnville Municipal Airport – Airport Master Plan Grant Acceptance

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### **Report in Brief:**

This action is for the consideration to accept Federal Aviation Administration (FAA) and Oregon Department of Aviation (ODA) Grant Offers for the Airport Master Plan, Project No. 2022-10. **The City of McMinnville (Sponsor) must accept the FAA Grant Offer on or before August 15, 2023 to retain funding.**

### **Background:**

The City of McMinnville owns and operates the McMinnville Municipal Airport. The Federal Aviation Administration (FAA) and Oregon Department of Aviation (ODA) provides grant funding for airport improvements and airport infrastructure maintenance. A current Airport Master Plan (AMP) with an Airport Layout Plan (ALP) is necessary to ensure viability of the Airport and to meet the needs of the community and the flying public. It is also a requirement to obtain FAA and ODA grants. It is preferred that the AMP has been accomplished within the past 10 years. The most recent airport master plan for the McMinnville Municipal Airport was accomplished in 2004, nearly 19 years ago.

On May 23, 2023 City Council Approved, by Resolution 2023-31, a contract with Century West Engineering, Corp. to perform consulting services for the Airport Master Plan Update, Project 2022 – 10. City Staff submitted Grant applications and has received grant offers from the FAA and ODA for a combined amount covering approximately 95% (\$480,000) of the project cost.

### **Discussion:**

The Airport Master Plan project will cost approximately \$506,000. The FAA has approved and forwarded a Grant Offer for 90% (\$450,000) of the project cost. ODA has also approved and forwarded a Grant Offer sharing that will cover approximately 5% of the remaining cost, with the Airport covering the final approximate 5% (\$28,000).

Both the FAA and ODA require acceptance of Grant Assurances, which have been in place and accepted by the City of McMinnville for all previous FAA and ODA grants.

It financially beneficial for the Airport FAA and ODA Grant offers.

**Attachments:**

1. Resolution 2023- 51
2. Airport Master Plan Federal Aviation Administration Grant Agreement
3. Airport Master Plan Oregon Department of Aviation (COAR) Grant Award

**Fiscal Impact:**

The estimated total cost of the Airport Master Plan will be approximately \$506,000. The estimated city share will be approximately \$28,000.

The grants are reimbursements that are issued upon submission of actual costs by the City. This is typically done every month.

**Recommendation:**

Staff recommends that the City Council adopt the attached resolution approving the acceptance of the FAA and ODA Grant offers to reimburse costs of the Airport Master Plan project.

**RESOLUTION NO. 2023 - 51**

A Resolution approving the acceptance of an FAA and Oregon Department of Aviation (COAR) Grants for the Airport Master Plan Update, Project 2022 - 10.

**RECITALS:**

**Whereas,** On May 23, 2023, City Council Approved by Resolution 2023-31 a contract with Century West Engineering, Corp. to perform consulting services for the Airport Master Plan Update, Project 2022 – 10; and

**Whereas,** The estimated cost of the Airport Master Plan scope of work is \$506,000, and

**Whereas,** The Federal Aviation Administration and Oregon Department of Aviation have approved Grant Funds to the City of McMinnville reimbursing approximately 95% (\$480,000) of the estimated project costs, and

**Whereas,** The Federal Aviation Administration and Oregon Department of Aviation have provided Grant offers for the Airport Master Plan Update for the combined sum of approximately 95% (\$480,000) of the project costs.

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

1. The City of McMinnville hereby accepts the Federal Aviation Administration and Oregon Department of Aviation Grants totaling a combined sum of approximately \$480,000 for reimbursement of the Airport Master Plan Update project costs.
2. The City Manager is hereby authorized and directed to accept and execute the Federal Aviation Administration and Oregon Department of Aviation Grant Agreements attached hereto as Exhibit A.
3. 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 **8<sup>th</sup> day of August, 2023** by the following votes:

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

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

Approved this 8th day of August 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Airports Division  
Northwest Mountain Region  
Oregon, Washington

Seattle Airports District  
Office:  
2200 S 216th St  
Des Moines, WA 98198

July 15, 2023

Mr. Jeff Towery  
City Manager  
City of McMinnville  
230 NE Second St  
McMinnville, OR 97128

Dear Mr. Towery:

The Grant Offer for Airport Improvement Program (AIP) Project No. 3-41-0036-024-2023 at McMinnville Municipal Airport is attached for execution. This letter outlines the steps you must take to properly enter into this agreement and provides other useful information. Please read the conditions, special conditions, and assurances that comprise the grant offer carefully.

**You may not make any modification to the text, terms or conditions of the grant offer.**

***Steps You Must Take to Enter Into Agreement.***

To properly enter into this agreement, you must do the following:

1. The governing body must give authority to execute the grant to the individual(s) signing the grant, i.e., the person signing the document must be the sponsor's authorized representative(s) (hereinafter "authorized representative").
2. The authorized representative must execute the grant by adding their electronic signature to the appropriate certificate at the end of the agreement.
3. Once the authorized representative has electronically signed the grant, the sponsor's attorney(s) will automatically receive an email notification.
4. On the **same day or after** the authorized representative has signed the grant, the sponsor's attorney(s) will add their electronic signature to the appropriate certificate at the end of the agreement.
5. If there are co-sponsors, the authorized representative(s) and sponsor's attorney(s) must follow the above procedures to fully execute the grant and finalize the process. Signatures must be obtained and finalized no later than **August 15, 2023**.
6. The fully executed grant will then be automatically sent to all parties as an email attachment.

**Payment.** Subject to the requirements in 2 CFR § 200.305 (Federal Payment), each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

**Project Timing.** The terms and conditions of this agreement require you to complete the project without undue delay and no later than the Period of Performance end date (1,460 days from the grant execution

date). We will be monitoring your progress to ensure proper stewardship of these Federal funds. We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress. Your grant may be placed in “inactive” status if you do not make draws on a regular basis, which will affect your ability to receive future grant offers. Costs incurred after the Period of Performance ends are generally not allowable and will be rejected unless authorized by the FAA in advance.

**Reporting.** Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- For all grants, you must submit by December 31st of each year this grant is open:
  1. A signed/dated SF-270 (Request for Advance or Reimbursement for non-construction projects) or SF-271 or equivalent (Outlay Report and Request for Reimbursement for Construction Programs), and
  2. An SF-425 (Federal Financial Report).
- For non-construction projects, you must submit [FAA Form 5100-140, Performance Report](#) within 30 days of the end of the Federal fiscal year.
- For construction projects, you must submit [FAA Form 5370-1, Construction Progress and Inspection Report](#), within 30 days of the end of each Federal fiscal quarter.

**Audit Requirements.** As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR Part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to ensure your organization will comply with applicable audit requirements and standards.

**Closeout.** Once the project(s) is completed and all costs are determined, we ask that you work with your FAA contact indicated below to close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

**FAA Contact Information.** Tim House, (206) 231-4248, [timothy.a.house@faa.gov](mailto:timothy.a.house@faa.gov) is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,



Warren D. Ferrell  
Manager



U.S. Department  
of Transportation  
Federal Aviation  
Administration

## FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM

### FY 2023 Airport Improvement Program (AIP)

#### GRANT AGREEMENT

##### Part I - Offer

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Federal Award Offer Date	July 15, 2023
Airport/Planning Area	McMinnville Municipal Airport, Oregon
FY2023 AIP Grant Number	3-41-0036-024-2023 (Contract Number: DOT-FA23NM-0106)
Unique Entity Identifier	L4TTZMFBD3H7

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TO: City of McMinnville  
(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

**WHEREAS**, the Sponsor has submitted to the FAA a Project Application dated April 5, 2023, for a grant of Federal funds for a project at or associated with the McMinnville Municipal Airport, which is included as part of this Grant Agreement; and

**WHEREAS**, the FAA has approved a project for the McMinnville Municipal Airport (herein called the "Project") consisting of the following:

Update Airport Master Plan;

which is more fully described in the Project Application.

**NOW THEREFORE**, Pursuant to and for the purpose of carrying out the Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (Public Law Number 115-254); the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L); the Consolidated Appropriations Act, 2022 (Public Law 117-103); Consolidated Appropriations Act, 2023 (Public Law 117-328); and the representations contained in the Project

Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto; (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

**THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety (90) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.**

**Assistance Listings Number (Formerly CFDA Number): 20.106**

**This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

### **CONDITIONS**

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$450,000.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):  
 \$ 450,000 for planning;  
 \$ 0 airport development or noise program implementation; and,  
 \$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:
  - a. **Period of Performance:**
    1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
    2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).
  - b. **Budget Period:**
    1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the Period of Performance provided in paragraph (2)(a)(1). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
    2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to 2 CFR § 200.308.
  - c. **Close Out and Termination**

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the Period of Performance end date with the information available at the end of 120 days. (2 CFR § 200.344).
2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"), and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
5. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, the regulations, and the Secretary's policies and procedures. Per 2 CFR § 200.308, the Sponsor agrees to report and request prior FAA approval for any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
6. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
7. **Offer Expiration Date.** This offer will expire, and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before August 15, 2023, or such subsequent date as may be prescribed in writing by the FAA.
8. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.



9. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
10. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**
- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
  - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/content/entity-registration>.
11. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
12. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
- The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1, Maximum Obligation.
- The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.
- An informal letter amendment has the same force and effect as a formal grant amendment.
13. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
14. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
15. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this Grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.

16. **Build America, Buy America.** The Sponsor must comply with the requirements under the Build America, Buy America Act (Public Law 117-58).
17. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1, Maximum Obligation, of this Grant Offer:
- a. May not be increased for a planning project;
  - b. May be increased by not more than 15 percent for development projects if funds are available;
  - c. May be increased by not more than the greater of the following for a land project, if funds are available:
    1. 15 percent; or
    2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the Sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

18. **Audits for Sponsors.**

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than \$750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.

19. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
    1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
    2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
    3. Adding a clause or condition to covered transactions attesting the individual or firm are not excluded or disqualified from participating.
  - b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions with their contractors and sub-contractors.

- c. Immediately disclose in writing to the FAA whenever (1) the Sponsor learns they have entered into a covered transaction with an ineligible entity or (2) the Public Sponsor suspends or debar a contractor, person, or entity.

**20. Ban on Texting While Driving.**

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
  - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
  - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
    - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

**21. Trafficking in Persons.**

- a. *Posting of contact information.*
  - 1. The Sponsor must post the contact information of the national human trafficking hotline (including options to reach out to the hotline such as through phone, text, or TTY) in all public airport restrooms.
- b. *Provisions applicable to a recipient that is a private entity.*
  - 1. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not:
    - i. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
    - ii. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
    - iii. Use forced labor in the performance of the Grant or any subgrants under this Grant.
  - 2. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
    - i. Is determined to have violated a prohibition in paragraph (a) of this Grant Condition; or
    - ii. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph (a) of this Grant Condition through conduct that is either –

- a) Associated with performance under this Grant; or
  - b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- c. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this Grant, without penalty, if a subrecipient that is a private entity –
- 1. Is determined to have violated an applicable prohibition in paragraph (a) of this Grant Condition; or
  - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated an applicable prohibition in paragraph (a) of this Grant Condition through conduct that is either –
    - i. Associated with performance under this Grant; or
    - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- d. *Provisions applicable to any recipient.*
- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a) of this Grant Condition.
  - 2. Our right to terminate unilaterally that is described in paragraph (a) or (b) of this Grant Condition:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended [22 U.S.C. § 7104(g)], and
    - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant.
  - 3. You must include the requirements of paragraph (a) of this Grant Condition in any subgrant you make to a private entity.
- e. *Definitions.* For purposes of this Grant Condition:
- 1. “Employee” means either:
    - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Grant; or
    - ii. Another person engaged in the performance of the project or program under this Grant and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Force labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  3. "Private entity":
    - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.
    - ii. Includes:
      - a) A nonprofit organization, including any nonprofit institute of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
      - b) A for-profit organization.
  4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).
22. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated May 2, 2011, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.
23. **Employee Protection from Reprisal.**
- a. Prohibition of Reprisals
    1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) below, information that the employee reasonably believes is evidence of:
      - i. Gross mismanagement of a Federal grant;
      - ii. Gross waste of Federal funds;
      - iii. An abuse of authority relating to implementation or use of Federal funds;
      - iv. A substantial and specific danger to public health or safety; or
      - v. A violation of law, rule, or regulation related to a Federal grant.
    2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
      - i. A member of Congress or a representative of a committee of Congress;
      - ii. An Inspector General;
      - iii. The Government Accountability Office;
      - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
      - v. A court or grand jury;
      - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or

- vii. An authorized official of the Department of Justice or other law enforcement agency.
- b. Investigation of Complaints.
  - 1. Submission of Complaint. A person who believes that they have been subjected to a reprisal prohibited by paragraph (a) of this Condition may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
  - 2. Time Limitation for Submittal of a Complaint. A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
  - 3. Required Actions of the Inspector General. Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
- c. Remedy and Enforcement Authority.
  - 1. Assumption of Rights to Civil Remedy. Upon receipt of an explanation of a decision not to conduct or continue an investigation by the OIG, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c)(2).
- 24. **Prohibited Telecommunications and Video Surveillance Services and Equipment.** The Sponsor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)] and 2 CFR § 200.216.
- 25. **Critical Infrastructure Security and Resilience.** The Sponsor acknowledges that it has considered and addressed physical and cybersecurity and resilience in their project planning, design, and oversight, as determined by the DOT and the Department of Homeland Security (DHS). For airports that do not have specific DOT or DHS cybersecurity requirements, the FAA encourages the voluntary adoption of the cybersecurity requirements from the Transportation Security Administration and Federal Security Director identified for security risk Category X airports.

### SPECIAL CONDITIONS

- 26. **Master Plan Coordination.** The Sponsor agrees to coordinate this master planning study with metropolitan planning organizations, other local planning agencies, and with the State Airport System Plan prepared by the State's Department of Transportation and consider any pertinent information, data, projections, and forecasts which are currently available or as will become available. The Sponsor agrees to consider any State Clearinghouse comments and to furnish a copy of the final report to the State's Department of Transportation.
- 27. **Airports Geographic Information System (GIS) Survey.** If the Airport's GIS survey is not reflected on an updated Airport Layout Plan (ALP) that meets FAA requirements within four (4) years from the date of the Phase 1 grant (regardless of whether it is generated using the AGIS/eALP system or through some other computer-aided design platform), then the Sponsor may be required to repay that portion of this Grant that relates to the survey work.
- 28. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

29. **Grant Approval Based Upon Certification.** The FAA and the Sponsor agree that the FAA approval of this grant is based on the Sponsor's certification to carry out the project in accordance **with** policies, standards, and specifications approved by the FAA. The Sponsor Certifications received from the Sponsor for the work included in this grant are hereby incorporated into this grant agreement. The Sponsor understands that:

- a. The Sponsor's certification does not relieve the Sponsor of the requirement to obtain prior FAA approval for modifications to any AIP standards or to notify the FAA of any limitations to competition within the project;
- b. The FAA's acceptance of a Sponsor's certification does not limit the FAA from reviewing appropriate project documentation for the purpose of validating the certification statements;

If the FAA determines that the Sponsor has not complied with their certification statements, the FAA will review the associated project costs to determine whether such costs are allowable under AIP.

The Sponsor’s acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor’s acceptance of this Offer.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>1</sup>

**UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION**



*(Signature)*

Warren Ferrell

*Warren D. Ferrell*

Manager, Seattle Airports District Office

*Manager, Seattle Airports District Office*

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<sup>1</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.



### Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>2</sup>

Dated July 17, 2023

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City of McMinnville

*(Name of Sponsor)*

*Jeff Towery*

Jeff Towery (Jul 17, 2023 08:58 PDT)

*(Signature of Sponsor's Authorized Official)*

**By:** Jeff Towery

*(Typed Name of Sponsor's Authorized Official)*

**Title:** City Manager

*(Title of Sponsor's Authorized Official)*

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<sup>2</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

**CERTIFICATE OF SPONSOR’S ATTORNEY**

I, \_\_\_\_\_, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Oregon. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor’s official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; and Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (Public Law Number 115-254); the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L); the Consolidated Appropriations Act, 2022 (Public Law 117-103); Consolidated Appropriations Act, 2023 (Public Law 117-328); and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

**Please read the following information:** By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.<sup>3</sup>

Dated at \_\_\_\_\_

By: \_\_\_\_\_  
*(Signature of Sponsor’s Attorney)*

\_\_\_\_\_

<sup>3</sup> Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

## ASSURANCES

### AIRPORT SPONSORS

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#### A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

#### B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the

duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

**C. Sponsor Certification.**

The sponsor hereby assures and certifies, with respect to this grant that:

**1. General Federal Requirements**

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

**FEDERAL LEGISLATION**

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- a. 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- d. Hatch Act – 5 U.S.C. § 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.<sup>1, 2</sup>
- f. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108.1.<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. § 312501, et seq.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section § 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended - 42 U.S.C. § 7401, et seq.
- j. Coastal Zone Management Act, P.L. 92-583, as amended - 16 U.S.C. § 1451, et seq.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.<sup>1</sup>
- l. 49 U.S.C. § 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 - 29 U.S.C. § 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. § 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968, as amended - 42 U.S.C. § 4151, et seq.<sup>1</sup>
- s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 - 42 U.S.C. § 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. § 874.<sup>1</sup>
- v. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321, et seq.<sup>1</sup>

- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. § 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. §§ 8101 through 8105.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (P.L. 109-282, as amended by section 6202 of P.L. 110-252).
- aa. Civil Rights Restoration Act of 1987, P.L. 100-259.
- bb. Build America, Buy America Act, P.L. 117-58, Title IX.

#### **EXECUTIVE ORDERS**

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- a. Executive Order 11246 – Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

#### **FEDERAL REGULATIONS**

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- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.<sup>4, 5</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice For Federally-Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport Noise Compatibility Planning.
- g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.

- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.<sup>1</sup>
- j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.<sup>1</sup>
- k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).<sup>1</sup>
- m. 49 CFR Part 20 – New Restrictions on Lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.<sup>1 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- x. 49 CFR Part 41 – Seismic Safety.

#### ***FOOTNOTES TO ASSURANCE (C)(1)***

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<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

<sup>4</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

<sup>5</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

## **SPECIFIC ASSURANCES**

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Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

### **2. Responsibility and Authority of the Sponsor.**

#### **a. Public Agency Sponsor:**

It has legal authority to apply for this Grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

#### **b. Private Sponsor:**

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

### **3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

### **4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

### **5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such

performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of



residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance-Management.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security

equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, State and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere

with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

1. Operating the airport's aeronautical facilities whenever required;
  2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  3. Promptly notifying pilots of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

#### **20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

#### **21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

#### **22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
  - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
  - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
  - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
  - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
  - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the

providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

#### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

#### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all

revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95
  - b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
  - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of 49 U.S.C. § 47107.

## 26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

#### **27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

#### **28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

#### **29. Airport Layout Plan.**

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
  - 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;



2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:
  1. eliminate such adverse effect in a manner approved by the Secretary; or
  2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### **30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
  1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
  3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
  2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The (**City of McMinnville**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award."

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
  - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project;
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
  1. Reinvestment in an approved noise compatibility project;
  2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
  3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117
  4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
  5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport

purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

### **32. Engineering and Design Services.**

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

### **33. Foreign Market Restrictions.**

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

### **34. Policies, Standards, and Specifications.**

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (<https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf>) for AIP projects as of April 5, 2023.

### **35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

**36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

**39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
  1. Describes the requests;
  2. Provides an explanation as to why the requests could not be accommodated; and
  3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

## ASSURANCES PLANNING AGENCY SPONSORS

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### A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

### B. Duration and Applicability.

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect during the life of the project.

### C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

#### 1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

### FEDERAL LEGISLATION

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- a. 49, U.S.C., subtitle VII, as amended.
- b. Federal Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- c. Hatch Act – 5 U.S.C. § 1501, et seq.<sup>1</sup>
- d. Rehabilitation Act of 1973 – 29 U.S.C. § 794
- e. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- f. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- g. Age Discrimination Act of 1975 - 42 U.S.C. § 6101, et seq.
- h. Single Audit Act of 1984 - 31 U.S.C. § 7501, et seq.<sup>1</sup>
- i. Drug-Free Workplace Act of 1988 - 41 U.S.C. § 8101 through 8105.

- j. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Public Law 110-252).
- k. Build America, Buy America Act, P.L. 117-58, Title IX.

#### **EXECUTIVE ORDERS**

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- a. Executive Order 12372 - Intergovernmental Review of Federal Programs
- b. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- c. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- d. Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- e. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- f. Executive Order 14008 - Tackling the Climate Crisis at Home and Abroad

#### **FEDERAL REGULATIONS**

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- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.<sup>3,4</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.
- f. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 49 CFR Part 20 – New Restrictions on Lobbying.
- i. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964.
- j. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- k. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- l. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- m. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)



## FOOTNOTES TO ASSURANCE C.1.

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- <sup>1</sup> These laws do not apply to private sponsors.
- <sup>2</sup> 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- <sup>3</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- <sup>4</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

## SPECIFIC ASSURANCES

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Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this Grant Agreement.

### 2. Responsibility and Authority of the Sponsor.

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

### 3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

### 4. Preserving Rights and Powers

It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary

### 5. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies in the planning area.

### 6. Accounting System, Audit, and Record Keeping Requirements

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the

recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

## **7. Planning Projects**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the Sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not mean constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

## **8. Reports and Inspections.**

It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request.

## **9. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4; creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with

Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
  1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
  3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language.

It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(City of McMinnville)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be

discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.”

- e. Required Contract Provisions.
1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
  2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
  3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
  4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
    - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
  - f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
  - g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

#### **10. Engineering and Design Services.**

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services,

preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

**11. Foreign Market Restrictions.**

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**12. Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary.

**13. Disadvantaged Business Enterprises.**

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).



# Oregon

Tina Kotek, Governor

Oregon Department of Aviation

3040 25<sup>th</sup> Street SE  
Salem, OR 97302-1125  
Office: 503-378-4880  
Fax: 503-373-1688



February 3, 2023

Willy Williamson  
McMinnville Municipal Airport

Dear Willy Williamson,

Congratulations! Your project application COAR-2023-MMV-00017, McMinnville Airport Master Plan Update and AGIS, has been selected by the State Aviation Board to receive a 2022-2023 COAR grant.

Throughout the grant process, you will be using the same [www.odae-grants.com](http://www.odae-grants.com) software that you used to submit your grant application. This will make it easier to you and for us to track the grant progress and reports and to get reimbursements to you in a timely manner.

If you log in now, you may see your grant status set to "pre-agreement preparation." This will remain until you contact ODAV Program Coordinators stating that you are ready to execute your grant agreement. A Pre-Agreement Checklist is available to help you confirm you have the appropriate documentation to execute your COAR grant.

Once the ODAV receives notification from you, you may login to e-Grants to complete the next steps in the software:

- a. Upload a copy of your fully executed Agreement with any parties providing match funding (federal, city, county, other) and a copy of your contract with the parties completing the project into the "Miscellaneous Uploads" form of the grant application if you have not already provided these documents during the application process.
- b. Determine the remaining project costs and project milestones of the project. Enter the remaining project costs and milestones into the "Grant Agreement/Amendment" form. The project milestones entered must match the milestones within the scope of work in the contract. Update grant status to forward to Program Coordinators for review.
- c. Once reviewed you will receive notification signatures are required. Program Coordinators will send the grant agreement electronically. Visit the "Grant Agreement/Amendment" form and complete the following steps:
  - The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
  - You may not make any modification to the text, terms or conditions of the grant offer.
  - After you properly sign the grant agreement, upload a signed copy into e-Grants.
  - ODA Program Staff will upload the fully executed agreement. Retain a copy for your records.

Until the grant is completed and closed you are responsible for submitting monthly progress reports, as well as submitting requests for reimbursement in accordance with the project progress.

Once the project is completed and all costs are determined, we ask that you close the project without delay and submit the final closeout report documentation as required by ODAV.

Andria Abrahamson (503-378-4881) and Alex Thomas (971-375-2357) are the assigned Program Coordinators for this grant and are readily available to assist you.

Congratulations on your grant award. We look forward to working with you.

Sincerely,

ODAV COAR Program Coordinators



**City of McMinnville**  
**City Attorney's Office**  
230 NE Second Street  
McMinnville, OR 97128  
(503) 434-7303

[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** August 8, 2023  
**TO:** Jeff Towery, City Manager  
**FROM:** Walt Gowell, City Attorney  
**SUBJECT:** Resolution No. 2023-52, A Resolution Approving a Third Amendment to Personal Services Contract with Erskine Law Practice, LLC to Provide City Prosecutorial Services



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

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### **Report in Brief:**

Resolution No. 2023-52 will authorize the continuation of City Prosecutor services with Erskine Law Practice LLC for fiscal year 2023-24.

### **Background and Discussion:**

Beginning in FY17-18, City Prosecutor services were provided by an in-house Deputy City Attorney. When the prior incumbent resigned to take another position in the spring of 2019, the City filled the service need through a contract with Erskine Law Practice LLC.

On December 8, 2020, the City Council passed Resolution 2020-69, which approved a new contract with Erskine Law Practice LLC to provide city prosecutor services through December 31, 2021.

Sam and Shannon Erskine have been providing prosecutorial services for the City on a contract basis since May 2019. They began their legal careers as judicial clerks in the Multnomah County Circuit Court. In addition, Shannon worked for the Multnomah County District Attorney's Office and both have provided services to the St. Helens Municipal Court. They have since formed Erskine Law Practice which provides cities with full scale prosecutorial services.



Staff recommends extending the current contract through the end of the fiscal year at the monthly cost of \$8,957.61 and \$131.72 per hour for non-standard services. The rate represents an increase of 3.5% relative the prior two year's rate based on June 2023 annual CPI-W figures.

Retaining the current City Prosecutor at the present time, subject to existing contract provisions for early termination of the Contract at the discretion of the City, will provide stability and consistency within the municipal court. Since the cost of the contract amendment exceeds 25% of the original contract amount, Council approval is necessary.

**Attachments:**

Resolution No. 2023-52

Exhibit 1 to Resolution – Third Amendment to Personal Services Contract

**Fiscal Impact:**

The cost of the contracted services from July 1, 2023, through June 30, 2024, is a total of \$107,491.32. At the time the FY24 budget was put together, the contract amount was not established and the line item for City Prosecutor Services is \$104,000. If the total appropriation for the General Fund's Administration department is not able to assume this additional cost of \$3,491.32, a supplemental budget will be requested later in the fiscal year.

**Recommendation:**

Approve the Consent Agenda.

**RESOLUTION NO. 2023 – 52**

A Resolution of the City of McMinnville Approving the Second Amendment to Personal Services Contract with Erskine Law Practice LLC to Provide City Prosecutorial Services.

**RECITALS:**

**WHEREAS**, on December 8, 2020, the City passed Resolution 2020-69, approving a Personal Services Contract (“Contract”) between the City and Erskine Law Practice LLC (“Contractor”) to provide City Prosecutor services for the 2021 calendar year; and

**WHEREAS**, the City desires to continue to contract with Contractor to provide City Prosecutor services through the end of the fiscal year (June 30, 2024); and

**WHEREAS**, the Contract, if extended, will have an increase of 3.5% of the previous year’s monthly fee based on the June 2023 CPI-West of \$8,957.61 and \$131.72 per hour for non-standard services.

**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 a Third Amendment to Personal Services Contract with Erskine Law Practice LLC to provide City prosecutorial services from July 1, 2023, through June 30, 2024, which Third Amendment is substantially similar to Exhibit 1 attached hereto.
3. This Resolution takes effect immediately upon passage and will be applied retroactively to fees due as of July 1, 2023.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 8th day of August 2023 by the following votes:

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

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

Approved this 8<sup>th</sup> day of August 2023.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

**EXHIBITS:**

1. Third Amendment to Personal Services Contract with Erskine Law Practice, LLC

**CITY OF McMinnville**  
**THIRD AMENDMENT TO PERSONAL SERVICES CONTRACT**

**City Prosecutorial Services**

This Third Amendment to Personal Services Contract (“First 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 **Erskine Law Practice LLC**, an Oregon domestic limited liability company (“Contractor”), upon the terms and conditions set forth below.

**RECITALS**

WHEREAS, the City entered into a Personal Services Contract (“Contract”) with Contractor on December 9, 2020 relating to City Prosecutorial Services; and

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

WHEREAS, Contractor is prepared to provide such Services as the City does hereinafter require;

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

**AGREEMENT**

The Contract is amended as follows:

**Section 1. Term**

The term of the Contract is hereby extended through June 30, 2024.

**Section 2. Compensation**

The City will ~~continue~~ to pay the monthly fee of Eight Thousand Nine Hundred Fifty-Seven and 61/100 (\$8,957.61) for “Standard Prosecutor Services” and “Administrative Duties of the City Prosecutor”. The City will pay Contractor for ‘Non-Standard Prosecution Services’ at the rate of \$131.72 per hour as stated in Paragraph 3(a) of the Personal Service Contract.

**Section 3. All Other Terms**

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

[Reminder of Page Intentionally Left Blank]

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

**CONTRACTOR:**

**CITY:**

ERSKINE LAW PRACTICE LLC

CITY OF McMinnville

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

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

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Walter R. Gowell, Interim City Attorney  
City of McMinnville, Oregon

# STAFF REPORT

**DATE:** August 8, 2023  
**TO:** McMinnville City Council  
**FROM:** Nic Miles, Code Compliance Officer  
**SUBJECT:** Ordinance No. 5137 – Amending Chapter 2.50, “Code Compliance” and Chapter 8.10, “Public Nuisances” of the McMinnville Municipal Code

## STRATEGIC PRIORITY & GOAL:



**OBJECTIVE/S:** Build a community culture of safety (consider safety best practices)

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### Report in Brief:

This is the consideration of Ordinance No. 5137, approving code amendments to Chapter 2.50, “Code Compliance” and 8.10, “Public Nuisances” of the McMinnville Municipal Code.

### Background:

In October 2019, City Council voted to approve amendments to Title 2 and Title 8 of the McMinnville Municipal Code. Those updates provided code compliance staff with more efficient tools for addressing property maintenance and health and safety concerns in an expeditious time frame.

### Discussion:

#### *Proposed Amendments to Chapter 2.50, Code Compliance*

There are some properties that are reported to code compliance at a higher frequency than average. The neighbors of these habitual nuisance properties have expressed frustration that staff cannot take swifter action, considering the number of times an owner or resident has been issued Notices of Code Violation or Civil Penalties for issues in the past. These amendments would provide staff with the ability to issue Civil Penalties more immediately for repeated and ongoing code violations at habitual nuisance properties.

Per section 2.50.120(A), code compliance staff must issue a Notice of Code Violation at the time that it is determined that a violation exists. Per section 2.50.310(A), staff may then issue a Civil Penalty if the code violation was not corrected within 10 days. In most cases, code violations are voluntarily corrected within that time frame and don’t get reported again in the future. The remaining cases are either remedied after issuing a Civil Penalty or by the City taking corrective action with a court order.

The challenge that staff faces in providing timely and effective action against violators is when properties are found to be in violation for the same or similar issues every few months but correct them within the 10 day period and avoid a Civil Penalty. Neighbors see this as the code violator “gaming the system”, while staff is spending extra resources notifying a property that has received formal communications in the past about the issues.

The code amendments being presented in Ordinance No. 5137 create a metric that would allow staff to address these habitual nuisance properties more immediately. If approved, MMC 2.50.310(B) would read as follows:

*“If any person in charge of the premises and the owner of the premises (or registered agent) has previously been issued a notice of violation twice or more within a 12-month period for a specified violation of Chapter 8.10 then the city manager or designee may immediately impose a civil penalty.”*

Some example scenarios where this would be a helpful tool:

- A complaint is received about ongoing junk and debris accumulation at a rental property, with absentee owners who do not live locally. The property does not have garbage service, so debris piles up regularly and the residents often burn their household waste in the backyard. Each time a violation is identified, and the property is issued a Notice of Violation, the debris is cleaned up within 10 days and the burning ceases. Within another 4-6 weeks, there is new junk and debris, so staff must restart the process.
- A complaint is received that a resident has discarded vehicles in their driveway, and the complainant thinks they are running an automotive repair business from their home. Staff investigates and confirms the discarded vehicle violation and issues a Notice of Violation to the property, and the vehicles are either removed or altered to no longer be considered discarded within the 10-day timeline. Four weeks later, a similar complaint is received at the same address for different vehicles and staff completes the same process with the same outcome. This pattern of repairing vehicles continues for months, but because the property continues to gain compliance then civil penalties are never issued.
- A complaint is received dogs are left outside to bark all night at a property, and the complainant has taken the time to make audio/video records to document the violation. The issue happens regularly, so the complainant has a continued burden to make recordings to submit to staff. Each time staff issues a Notice of Violation, the dog owners temporarily keep the dogs inside long enough for the 10-day timeline to pass and the issue starts again the following month.

The goal of the code compliance program is always to achieve voluntary compliance. In cases where that is not occurring, or the current system is being taken advantage of, then the issuance of a civil penalty is used as a tool to effect more long-term change at a property.

These proposed code amendments would still allow the recipient of a Civil Penalty to file an appeal of the decision per section 2.50.510(A)(1).

#### *Proposed Amendments to Chapter 8.10, Public Nuisances*

The proposed amendments to Chapter 8.10 reflect housekeeping updates to existing code language and violation types in an effort to better respond to and address complaints.

The proposed code amendments would expand definitions of code violations related to construction dust and debris, noise, graffiti, hazardous and noxious vegetation, sidewalk obstructions, and hazardous trees. Below are general descriptions of each amendment:

- Expansion of attractive nuisance definition to include undeveloped property that is being trespassed upon or used without the authority of the owner
- Expansion of construction dust and debris definition to include dirt and rocks, and include excavation as a type of construction activity
- Refining of graffiti nuisance property definition to remove a 10-day period that the graffiti has remained on a property
- Expansion of hazardous and noxious vegetation definition to require that any vegetation overhanging a public street, sidewalk or private street provide the required overhead clearance
- Refining of conflicting noise language regarding the use of gas-powered blowers, fans or tools
- Expansion of sidewalk maintenance and obstruction language (obstructions originating from private property, such as a vehicle parked in a driveway and partially hanging out in sidewalk)
- Expansion of tree-related language that addresses dead/dying/detached branches

**Attachments:**

- Ordinance No. 5137
- Exhibit A to Ordinance No. 5137, Proposed Code Amendments

**Fiscal Impact:**

N/A

**Recommendation:**

Staff recommends adoption of Ordinance No. 5137

**ORDINANCE NO. 5137**

**AN ORDINANCE AMENDING TITLES 2.50, CODE COMPLIANCE, AND 8.10, PUBLIC NUISANCES, OF THE MCMINNVILLE MUNICIPAL CODE.**

**RECITALS:**

**WHEREAS**, the City of McMinnville in an effort to provide for the welfare, safety and health of the citizens of the City of McMinnville established a public nuisance code; and

**WHEREAS**, the City of McMinnville in order to ensure timely and uniform enforcement of the code established a procedure wherein the ordinances of the City is enforced; and

**WHEREAS**, in 2018, the City of McMinnville elected to amend and update the public nuisance code and code compliance procedures in order to maintain transparency and efficiency; and

**WHEREAS**, since 2018, the City of McMinnville has encountered some property owners who habitually have code violations on their property; and

**WHEREAS**, to maintain efficiency, the City of McMinnville would like to enact a provision in the code in Chapter 2.50, Code Compliance, for habitual code offenders; and

**WHEREAS**, since 2018, staff has identified several housekeeping amendments necessary for further transparency and efficiency in enforcing the code; and

**WHEREAS**, the City of McMinnville would like to amend Chapter 8.10, Public Nuisances, to address the housekeeping code issues; and

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

1. That Chapter 2.50, Code Compliance, and Chapter 8.10, Public Nuisance, of the McMinnville Municipal Code are amended as provided in Exhibit A to this Ordinance.
2. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 8<sup>th</sup> day of August, 2023 by the following votes:

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

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

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

**EXHIBITS:**

- A. Amendments to Chapter 2.50 and 8.10 of the McMinnville Municipal Code



## EXHIBIT A

### PROPOSED AMENDMENTS TO THE MCMINNVILLE MUNICIPAL CITY CODE

New proposed language is represented by **bold font**, deleted language is represented by ~~strikethrough font~~.

## Chapter 2.50 CODE COMPLIANCE

[...]

### 2.50.120. Notice of code violation.

- A. If the city manager or designee is satisfied that a code violation exists, the compliance officer will cause a notice of code violation to be posted on the premises, or at the site of the code violation, directing the responsible person to correct the code violation.
- B. At the time of posting, the compliance officer must also cause a copy of the notice of code violation to be forwarded by certified mail, postage prepaid, to any person in charge of the premises and to the owner of the premises (or registered agent) at the last known address of such person(s) as shown on the tax rolls of Yamhill County. If the mailed notice of code violation is returned as undeliverable or is unclaimed by the property owner, it will not preclude the city from taking enforcement or corrective actions as described in this chapter.
- C. The notice of code violation must contain:
  - 1. A description of the real property, by street address or otherwise, on which the code violation exists.
  - 2. A description of the code violation found to exist by the compliance officer.
  - 3. A determination of whether the code violation presents an immediate threat to the public health, welfare or safety.
  - 4. A direction to correct the code violation within 10 days from the date of notice.
  - 5. If the code violation is for a public nuisance described in Chapter [8.10](#), a statement that unless the code violation is corrected by the deadline, the city may correct the code violation and assess the full cost of corrective action, including administrative charges, against all responsible persons and that such corrective action costs will become a lien on the property if not paid in full within 30 days of invoicing.
  - 6. A statement that failure to correct a code violation may warrant imposition of a civil penalty upon all persons responsible for the code violation.
  - 7. A statement that the owner or any responsible person may protest the notice of code violation by giving written notice to the city manager within 10 days from the date of the notice, together with a written statement as to why a code violation does not exist.
- D. Upon completion of the posting and mailing of the notice of code violation, the compliance officer must execute and place on file with the city manager or designee a certificate stating the date and place of the mailing and posting.
- E. If the compliance officer meets all requirements for posting and mailing the notice of code violation set forth in this section, then the failure of any person to receive actual notice will not void any code compliance process set forth in this chapter.

F. If the owner or other responsible person fails to appeal the notice of code violation in compliance with the procedures set forth at Section [2.50.510\(A\)](#), then the violation will be deemed proved and no further appeal of the notice of code violation will be allowed. (Ord. 5078 §1 (Exh. 1 (part)), 2019).

**G. If any person in charge of the premises and the owner of the premises (or registered agent) has previously been issued a notice of violation twice or more within a 12-month period of a specified violation of Chapter 8.10, then the mailing and posting requirements may be omitted for the issuance of a civil penalty.**

[...]

#### **2.50.310. Notice of civil penalty.**

A. Upon finding that a code violation exists and has not been voluntarily corrected within 10 days of the date of the notice of code violation or the final order issued upon appeal of the notice, the city manager or designee may impose a civil penalty.

**B. If any person in charge of the premises and the owner of the premises (or registered agent) has previously been issued a notice of violation twice or more within a 12-month period for a specified violation of Chapter 8.10, then the city manager or designee may immediately impose a civil penalty.**

C. Each day that a code violation continues to exist will constitute a separate violation and a new civil penalty may be assessed for each consecutive day the violation continues without correction.

D. The compliance officer shall cause the notice of civil penalty to be posted on the premises and forwarded by certified mail, postage prepaid, to any person in charge of the premises and the owner of the premises (or registered agent) at the last known address of such person(s) as shown on the tax rolls of Yamhill County.

E. If the certified notice of civil penalty is returned as undeliverable or is unclaimed by any person, it will not preclude the city from imposing a civil penalty as described in this chapter.

F. The notice of civil penalty must contain the following:

1. A description of the real property, by street address or otherwise, on which the code violation exists.
2. A description of the code violation found to exist by the compliance officer.
3. A copy of the notice of code violation and any final orders issued in the matter.
4. A statement indicating whether the code violation has been corrected or is considered a continuing violation subject to the imposition of a daily civil penalty.
5. A calculation of the total amount of the civil penalty or, in the case of a continuing violation, the amount of civil penalty that has accrued as of the date of the notice.
6. A statement that the amount of the civil penalty may become a lien on the premises if not paid in full within 30 days of invoicing.
7. A statement that the owner or any responsible person may protest the notice of civil penalty by giving written notice to the city manager within 10 days from the date of the notice, together with a written statement as to why the civil penalty should be modified or not assessed.

**G.** If the compliance officer meets all requirements for posting and mailing the notice of civil penalty set forth in this section, then the failure of any person to receive actual notice will not void the assessment of any civil penalty.

**H.** If the owner or other responsible person fails to appeal the notice of civil penalty in compliance with the procedures set forth at Section [2.50.510\(A\)](#), the amount of the civil penalty will be deemed final and no further appeal of the notice of civil penalty will be allowed. (Ord. 5078 §1 (Exh. 1 (part)), 2019).

## **Chapter 8.10 PUBLIC NUISANCES**

[...]

### **8.10.140. Attractive nuisances.**

- A. A person in charge of a premises must not permit, allow or cause to exist any attractive nuisance that could cause injury or death to children playing on the premises.
- B. For the purposes of this section, “attractive nuisance” includes but is not limited to the following substances, conditions or acts:
1. Unguarded machinery, equipment or other devices attractive, dangerous and accessible to children.
  2. Lumber, logs or piling placed or stored in a manner as to be attractive, dangerous and accessible to children, except for materials that are stored in conjunction with authorized construction projects that have employed reasonable safeguards to prevent injury or death to playing children.
  3. Vacant or unoccupied buildings or structures that are open, unlocked, or otherwise accessible **or undeveloped property that is being trespassed upon, vandalized, or otherwise being used for unlawful activities or without authorization from the Owner.**
  4. Containers accessible to children with a capacity of more than one cubic foot and a door or lid that locks or fastens when closed and that cannot be easily opened from the inside, unless said containers are securely locked shut.
- C. 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 6 code violation. (Ord. 5079 §1 (Exh. 1 (part)), 2019).

[...]

### **8.10.180. Construction dust and debris.**

- A. A person in charge of a premises that is being developed for construction or where construction is in progress must not permit, allow or cause to exist any construction **dust and** debris of any kind to blow, spread, or otherwise disseminate from the premises onto nearby properties or public ways.
- B. For the purposes of this section, “construction **dust and** debris” includes, but is not limited to, lumber, roofing materials, cans, glass, bottles, garbage, trash, **dirt, rocks** and any other materials brought onto the property or created by or through construction, remodeling, **excavation** or demolition activities.

- C. 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).

[...]

#### 8.10.210. Fences.

- A. A person in charge of a premises must not permit, allow or cause to exist:
1. A fence located in a required front yard of the premises that exceeds three feet in height, as measured from grade, unless the fence either:
    - a. Conforms to the front yard setback requirements set forth in Title [17](#) of this code; or
    - b. Is set back to the front building line of the existing building.
  2. A fence located in a required exterior side yard of a corner lot premises that exceeds three feet in height, as measured from grade, unless the fence:
    - a. **Is compliant with clear vision requirements per Section 17.54.080;**
    - b. Is not more than six feet in height, as measured from grade; and
    - c. The planning director or designee has authorized construction of the fence.
  3. A fence located in a required interior side or rear yard of the premises that exceeds seven feet in height, as measured from grade.
  4. A fence on any portion of the premises that exceeds seven feet in height, as measured from grade, unless the fence is authorized by a building permit issued by the city.
  5. A fence located in a sloped property that exceeds 10 feet in height, as measured from the downhill side of the fence.
- B. The height restrictions set forth in subsection [A](#) of this section do not apply to public utility fences or to chain link fences enclosing schools and public playgrounds.
- C. A person in charge of a premises must not permit, allow or cause to exist an electric fence:
1. Along any sidewalk or public way abutting the premises; or
  2. Along the boundary of any real property abutting the premises.
- D. A person in charge of a premises must not permit, allow or cause to exist barbed wire on any fence:
1. Along any sidewalk or public way abutting the premises in a residential or commercial zone; or
  2. Unless placed on top of a fence that is not less than six feet, six inches in height, as measured from grade, on a premises used for public utilities or located in an industrial zone.
- E. A person in charge of a premises must not permit, allow or cause to exist a fence on the premises that is structurally unstable, or otherwise determined by the city manager or designee to be injurious or detrimental to the public health, welfare or safety.
- 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).

#### 8.10.220. Graffiti.

- A. A person in charge of a premises must not permit, allow or cause the premises to be a graffiti nuisance property.
- B. For the purposes of this section, the following definitions apply:
  - 1. "Graffiti" means any inscription, word, figure, design painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted, or otherwise applied to property without the prior authorization of the owner of the property, and/or is not allowed per the McMinnville City Code, regardless of the graffiti content, or nature of the material used in the commission of the act, or the material of the property.
  - 2. "Graffiti nuisance property" means property to which graffiti has been applied, if the graffiti is visible from any public right-of-way, from any other public or private property or from any premises open to the public, ~~and if the graffiti has remained for at least 10 days.~~
- C. 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).

#### 8.10.230. Hazardous and noxious vegetation.

- A. A person in charge of a premises that abuts a public way must not permit, allow or cause to exist vegetation on the premises that:
  - 1. Is a hazard to pedestrian use of a public sidewalk or is a hazard to bicycle or vehicular use of a public or private street by impeding passage or vision per Sections [17.54.080](#) and [17.58.120\(D\)](#), **including street trees, private trees and all other landscaping and vegetation;**
  - 2. Obstructs drainage facilities in the public way, including but not limited to roadside ditches, street curbs and gutters, catch basins or culverts;
  - 3. Has roots that have cracked or displaced a sidewalk, curb or street; or
  - 4. Is a weed, grass or dead plant more than 10 inches high and is located the area between the property line and the back edge of curb or the edge of an improved roadway or right-of-way.
- B. A person in charge of a premises must not permit, allow or cause to exist vegetation on the premises that is a weed or grass more than 10 inches high at any time during the year.
- C. The prohibition described in subsection [B](#) of this section does not apply to the following types of vegetation unless the vegetation obstructs, blocks, or impedes any visual sight lines or signs required to ensure safe and efficient vehicular and pedestrian movement upon city streets, or the vegetation creates a safety hazard as determined by the city manager or designee:
  - 1. Agricultural grasses that are not a fire hazard and are actively used for grazing livestock;
  - 2. Crops that are being commercially grown;
  - 3. Areas identified by the McMinnville zoning ordinance as open space or natural resource areas;
  - 4. Portions of lots used for flower or vegetation gardens, or shrubbery;
  - 5. Naturally wooded or native forest remnant area;
  - 6. Wetlands;
  - 7. Lands within a designated 100-year floodplain;
  - 8. Lands encumbered by conservation easements;

- 9. Public parks or private or municipal golf courses;
  - 10. Drainage ponds or ditches designed to meet city stormwater conveyance requirements;
  - 11. Any vegetation that the city manager or designee determines would not create a public hazard or otherwise be detrimental to the public safety, health or welfare of the public. In making this determination, the city manager may seek input from the fire chief, fire marshal, or other appropriate staff. The city manager may also place appropriate conditions upon such approval.
- D. A person in charge of a premises must not permit, allow or cause to exist vegetation on the premises that the city manager or designee has declared to be a fire hazard or potential fire hazard to other properties.
  - E. A person in charge of a premises must not permit, allow or cause to exist the growth of noxious vegetation on the premises. As used in this section, “noxious vegetation” means all plants identified by the city manager or designee on an official list of noxious vegetation maintained by the city’s code compliance office, which may incorporate by reference all or part of any existing list developed by any state or county entity, including the plant varieties listed in Oregon Department of Agriculture Noxious Weed Policy and Classification System.
  - 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).

[...]

**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).

[...]

### **8.10.300. Sidewalks.**

- A. A person in charge of a premises must maintain all sidewalks adjacent to that premises in good repair and safe condition.
- B. A person in charge of a premises must not permit, allow or cause to exist on a public sidewalk adjoining the premises any defective or dangerous condition that impedes the public use of the sidewalk, including but not limited to the following:
  - 1. Any accumulations of snow and/or ice on sidewalks on commercial property.
  - 2. Sand or cinders (except when temporarily used to cover ice), rocks, leaves, **moss** or other debris.
  - 3. Cracks, holes, unevenness that impairs pedestrian traffic per the Americans with Disability Act (ADA) standards.
  - 4. Drainage, drainpipes or a drainage system that permits, allows or causes water accumulating on the premises to flow or be carried across the sidewalk.
  - 5. Property, debris, **parking of motor vehicles or trailers**, or any other accumulation or activity.
- C. A person in charge of a premises must not permit, allow or cause to exist on a public sidewalk adjoining the premises any substance, condition or act that the city manager or designee deems injurious or detrimental to the public health, welfare or safety.
- D. A person in charge of a premises must not permit, allow or cause to exist any dumping or storage of dirt, sand, rocks, gravel, bark dust, or other similar material on any sidewalk adjacent to the premises.
- E. A person in charge of a premises must not permit, allow or cause to exist any ice or snow to fall onto any public way adjacent to the premises from any building or structure located on the premises.
- F. The city is not liable to any person for loss or injury to a person or property suffered or sustained by reason of any accident on sidewalks caused by ice, snow, encumbrances, obstructions, cracks, chipping, weeds, settling, holes covered by dirt or other similar conditions.
- G. All sidewalk repairs made by any person must be performed in accordance with all requirements of the city.
- H. 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).

[...]

#### **8.10.320. Trees.**

- A. A person in charge of a premises must not permit, allow or cause to exist a dead or decaying tree to stand on the premises that is a hazard to the public or to persons or property on or near the premises.
- B. A person in charge of a premises must not permit, allow or cause to exist a tree that is diseased or insect infested, if the disease or infestation:
  - 1. Compromises the tree's health or longevity;
  - 2. Is capable of being transmitted to other trees; and
  - 3. Is a hazard to persons, trees or property located on any public way or real property adjacent to the premises.
- C. A person in charge of a premises must not permit, allow or cause to exist a tree with broken or detached branches on the premises that are a hazard to the public or to persons or property on or near the premises. Any action regarding the tree must be in compliance with City tree regulations, including Chapter 17.58.**
- D. 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).