



**City Council Meeting Agenda
Tuesday, April 23, 2024
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, April 22nd** to CityRecorderTeam@mcminnvilleoregon.gov
- If appearing via telephone only please sign up prior by **12 p.m. on Monday, April 22nd** by emailing the City Recorder at CityRecorderTeam@mcminnvilleoregon.gov as the chat function is not available when calling in zoom;
- Join the zoom meeting use the raise hand feature in zoom to request to speak, once your turn is up we will announce your name and unmute your mic. **You will need to provide your First and Last name, Address, and contact information (email or phone) to the City.**

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

mcm11.org/live

CITY COUNCIL REGULAR MEETING:

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/89722562784?pwd=On7lHa3mKqA8mhZii3aabkHKF88qIa.1>

Zoom ID: 897 2256 2784

Zoom Password: 686299

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

ID: 897 2256 2784

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

1. CALL TO ORDER & ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS

- a. Arbor Day Proclamation
- b. Historic Preservation Month Proclamation
- c. National Economic Development Week 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
- c. February 2024 Cash and Investment Report (in packet)

6. CONSENT AGENDA

- a. Consider the Minutes of the May 25, 2021, City Council Work Session & Regular Meeting.
- b. Consider the Minutes of the June 08, 2021, Joint City Council and MW&L Work Session & Regular Meeting.
- c. Consider the Minutes of the June 22, 2021, City Council Work Session & Regular Meeting.
- d. Consider **Resolution No. 2024-19**: A Resolution awarding the contract for the Chandlers Addition Sanitary Sewer Rehabilitation project, Project 2022-9, to Enterprises NW, Inc. dba Earth Works Excavation.
- e. Consider **Resolution No. 2024-20**: A Resolution awarding the contract for the 2024 Slurry Seal project, Project 2024-3, to Doolittle Construction LLC.
- f. Consider the request from Schone Tal Cellars LLC for Winery Primary Location, OLCC Liquor License located at 328 NE Davis Street.

7. ORDINANCES

- a. Consider the first reading with a possible second reading of **Ordinance No. 5144**: An ordinance amending McMinnville municipal code section 8.36.010 to adopt a local definition of the word “established” for purposes of camping; and section 8.36.030 adopting additional time, place, or manner regulations for camping and banning open flames.

8. ADJOURNMENT OF REGULAR MEETING



PROCLAMATION

Whereas, in 1872 Julius Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska and is now observed throughout the nation and world; and

Whereas, trees reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

Whereas, trees in our city increase property values, enhance the economic vitality of our business areas, and beautify our community; and

Whereas, the City of McMinnville is celebrating its 27th year as a certified Tree City USA as recognized by the Arbor Day Foundation; and

Whereas, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, I, Adam Garvin, Council President of the City of McMinnville, do hereby proclaim Friday, April 23, 2024 as

ARBOR DAY

in the City of McMinnville, and I urge all citizens to celebrate Arbor Day and support efforts to protect our trees and woodlands, and further, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

In Witness Whereof, I have hereunto set my hand and caused the Official Seal of the City of McMinnville to be affixed this 23rd day of April, 2024.

Adam Garvin, City Council President



PROCLAMATION

Whereas, the National Trust for Historic Preservation, a nonprofit dedicated to protecting America’s historic buildings, landscapes, and neighborhoods, established an annual celebration of historic preservation across the country; and

Whereas, this celebration, known as National Historic Preservation Month, was first established and observed by the National Trust for Historic Preservation in 1973; and

Whereas, National Historic Preservation Month is now observed in the month of May every year throughout the country; and

Whereas, the City of McMinnville has a rich history as the primary social and economic center of the Yamhill County region; and

Whereas, the McMinnville Downtown Historic District, the economic center of our city focused on Third Street, is listed on the National Register of Historic Places; and

Whereas, the City of McMinnville promotes and protects its historic buildings and sites through a locally adopted Historic Resources Inventory, managed by the Historic Landmarks Committee, which includes numerous buildings and sites dating back as far as 1853; and

Whereas, the protection of our historic resources enhances the economic vitality of our community, beautifies our built environments, and instills in our community members a sense of pride in the historic importance of the City of McMinnville.

NOW, THEREFORE, I, Adam Garvin, Council President of the City of McMinnville, do hereby proclaim **May 2024** as

HISTORIC PRESERVATION MONTH

in the City of McMinnville, and I urge all citizens to celebrate Historic Preservation Month and support efforts to protect our valued historic resources throughout the city.

In Witness Whereof, I have hereunto set my hand and caused the official Seal of the City of McMinnville to be affixed this 23rd day of April, 2024.

Adam Garvin, City Council President

PROCLAMATION

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, I, Remy Drabkin, Mayor of the City of McMinnville do hereby proclaim May 6-10, 2024, as

National Economic Development Week

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the OFFICIAL Seal of the City of McMinnville to be affixed this 23rd day of April 2024.

Adam Garvin, City Council President

ENTERED INTO THE RECORD

DATE RECEIVED: 04/23/2024

SUBMITTED BY: William Sykes

SUBJECT: Public Comment

From: [William Sykes](#)
To: [Claudia Cisneros](#)
Subject: Sykes - McMinnville Safer Streets Initiative - Noise
Date: Tuesday, April 23, 2024 6:21:14 PM
Attachments: [We sent you safe versions of your files.msg](#)
[McMinnville Safer Streets Initiative - Noise.pdf](#)

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

This message originated outside of the City of McMinnville.

Hello Claudia, I hope you are enjoying this awesome weather!

For the record, I would like to share this draft proposal with the council this evening.

Thanks!

-Will Sykes

214.213.1896

Hello City Council,

The purpose of this document is to provide an outline of steps needed to begin to address the ongoing issues with Loud Vehicles and Exhibition of Speed in McMinnville. This document is a subset of the McMinnville Safer Streets Initiative. The steps are designed to create an achievable solution in a timely manner.

Proposed Steps - Noise Reduction

1. Identify a **City Councilperson** to be the champion, and own this from a city leadership standpoint:
 - a. If applicable, Create a committee
 - b. Create a plan
 - c. Publish the plan
 - d. Follow up with the people of McMinnville
2. Identify a **Law Enforcement** contact who will help identify the following:
 - a. What specific laws, if any, are being broken?
 - b. If laws are being broken, then why are they not enforced?
 - c. If being broken, then what will it take to enforce the laws?
 - i. More Technology
 - ii. More Police Officers
 - d. What is the best way to inform Law Enforcement when violations are occurring?
3. Build a plan with all parties including the public where the goals are measurable and achievable in a timely manner.

end



City of McMinnville

February 2024

CASH AND INVESTMENT BY FUND

FUND #	FUND NAME	GENERAL OPERATING		
		CASH IN BANK	INVESTMENT	TOTAL
01	General	\$2,437,673.41	\$13,692,795.11	\$16,130,468.52
05	Grants & Special Assessment	\$599.41	\$425,057.52	\$425,656.93
07	Transient Lodging Tax	\$555.13	(\$7,000.00)	(\$6,444.87)
08	Affordable Housing	\$586.36	\$1,501,000.00	\$1,501,586.36
10	Telecommunications	\$57.47	\$2,030.00	\$2,087.47
15	Emergency Communications	\$640.14	\$157,094.81	\$157,734.95
20	Street (State Tax)	\$25.36	\$2,292,141.88	\$2,292,167.24
25	Airport Maintenance	\$989.19	\$1,033,749.03	\$1,034,738.22
45	Transportation	\$908.15	\$5,770,494.92	\$5,771,403.07
50	Park Development	\$640.55	\$2,550,441.49	\$2,551,082.04
58	Urban Renewal	\$135.64	\$51,000.00	\$51,135.64
59	Urban Renewal Debt Service	\$55.74	\$1,338,911.90	\$1,338,967.64
60	Debt Service	\$466.95	\$124,625.77	\$125,092.72
70	Building	\$72.89	\$2,296,240.37	\$2,296,313.26
75	Wastewater Services	\$521.73	\$1,841,835.34	\$1,842,357.07
77	Wastewater Capital	\$52.90	\$41,015,103.65	\$41,015,156.55
80	Information Systems & Services	\$205.41	\$187,742.38	\$187,947.79
85	Insurance Reserve	\$549.81	\$291,290.54	\$291,840.35
99	Fire District Transition Fund	\$490.33	\$658,000.00	\$658,490.33
CITY TOTALS		2,445,226.57	75,222,554.71	77,667,781.28

MATURITY				
DATE	INSTITUTION	TYPE OF INVESTMENT	INTEREST RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.85%	\$2,445,226.57
N/A	Key Bank of Oregon	Money Market Savings Account		\$0.00
N/A	State of Oregon	Local Government Investment Pool (LGIP)	5.20%	\$54,496,405.94
N/A	Umpqua Bank	Money Market Savings Account	5.45%	\$10,343,729.52
5/1/24	Umpqua Bank	Certificate of Deposit	5.39%	\$10,382,419.25
				<u>\$77,667,781.28</u>

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

Tuesday, May 25, 2021 at 5:30 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Claudia Cisneros

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Remy Drabkin, Council President	
	Adam Garvin	
	Kellie Menke	
	Sal Peralta	
	Chris Chenoweth	
	Zack Geary	

Also present were City Manager Jeff Towery, City Attorney Amanda Guile-Hinman, City Recorder Claudia Cisneros, Finance Director Jennifer Cuellar, Planning Director Heather Richards, Parks and Recreation Director Susan Muir, Fire Chief Rich Leipfert, Information Specialist Director Scott Burke, Human Resources Manager Kylie Bayer, Asst. Chief/Fire Marshal Debbie McDermott, Information Technology Specialist Megan Simmons, Operations Chief Amy Hanifan, and *members of the News Media Phil Guzzo, McMinnville Community Media.*

1. CALL TO ORDER: Mayor Hill called the meeting to order at 5:31 p.m. and welcomed all in attendance.
2. REVIEW CITY COUNCIL LEVEL 10 MONTHLY TEAM MEETING AGENDA:

Wendy Stassens, consultant, led a discussion on the homework exercise including identifying the purpose each person had for being on the Council. She then reviewed the last meeting's action items and staff gave updates on the progress of these items.

Ms. Stassens introduced the Issues List Identify, Discuss, Solve (IDS) process.

Mayor Hill discussed the first issue, which was a concern about an aspect of the City functioning to a third party in a way that potentially reduced trust within the team and did not empower the whole of the organization to address the concern in a proactive way.

The Council worked to identify the issues that should be addressed. They discussed the content of the email, the underlying issue of building trust, the way the email was received by staff was hurtful, the problem lying in the process and the need to follow the processes already in place, the balance of over-communication and under communication, creating Council unity, elements of a high functioning team, and lack of an onboarding process.

There was consensus that the process needed to be clarified and communicated for how to bring up issues the Council thought needed to be solved within the community or with the City Council, to address the lack of a shared code of conduct including respectful communication, and to clarify how to advocate for people to participate without diminishing the team and for constituents that were bringing issues to Council.

3. ADJOURNMENT: Mayor Hill adjourned the meeting at 7:01 p.m.

Claudia Cisneros, City Recorder

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

Tuesday, May 25, 2021 at 7:00 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Claudia Cisneros

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Remy Drabkin, Council President	
	Adam Garvin	
	Zack Geary	
	Kellie Menke	
	Chris Chenoweth	
	Sal Peralta	

Also present were City Manager Jeff Towery, City Attorney Amanda Guile-Hinman, City Recorder Claudia Cisneros, Finance Director Jennifer Cuellar, Planning Director Heather Richards, Human Resources Manager Kylie Bayer, Community Development Director Mike Bisset, Police Captain Ronda Jaasko, Fire Chief Rich Leipfert, Library Director Jenny Berg, and *members of the News Media Phil Guzzo, McMinnville Community Media.*

1. CALL TO ORDER: Mayor Hill called the meeting to order at 7:07 p.m. and welcomed all in attendance.

2. PLEDGE OF ALLEGIANCE

Councilor Peralta led the pledge of allegiance.

3. INVITATION TO CITIZENS FOR PUBLIC COMMENT

None

4. PRESENTATION

Visit McMinnville Annual Presentation

Jeff Knapp, Visit McMinnville, acknowledged the staff and board. He discussed visitor economy as a powerful state economic driver, visitor economy impact on Yamhill County, how McMinnville's visitor spending

had far outpaced the region in the last five years, and visitor economy impact on McMinnville.

Kitri McGuire, Director of Marketing, explained marketing included paid and unpaid opportunities. She discussed the challenges due to Covid and shared how they modified their social media strategy, kept in constant touch with the media, created a new video series called McMinnville Inspires, and supported destination projects in town.

Mr. Knapp explained the destination development projects that occurred, FY2021 current projects, FY2022 goals and objectives, FY2022 TLT comparison and projection, and FY2022 high level budget.

There was discussion regarding being nimble during Covid, destination development work, lessons learned from the pandemic, great staff, and partnership with the City on the rebranding project.

Councilor Geary MOVED to accept Visit McMinnville's budget and business plan for 2022; SECONDED by Councilor Menke. Motion PASSED unanimously 6-0.

5. ADVICE/ INFORMATION ITEMS

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

Councilor Garvin reported on YCOM's budget meeting and 25% reduction in police dues.

Councilor Peralta reported on the Rental Inspection Program meeting.

Councilor Chenoweth reported on the Economic Vitality Leadership Council meeting.

Councilor Menke reported on YCAP activities and housing projects.

Councilor President Drabkin reported on Edible Gardens of Yamhill County, the Affordable Housing Committee meeting, DEI Advisory Committee, and Fair Housing training.

Mayor Hill reported on the Water & Light Commission meeting and Bypass Committee meeting.

5.b. Department Head Reports

Library Director Berg announced new library hours starting next week.

6. CONSENT AGENDA
a. Consider the Minutes of the April 22, 2020, City Council Work Session Meeting.

Councilor Geary MOVED to adopt the consent agenda; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.

7. RESOLUTIONS

- 7.a. Consider **Resolution No. 2021-23**: A Resolution Appointing Members to the Affordable Housing Committee.

Planning Director Richards said the resolution would appoint four new members to the Committee. She listed the names of the new members.

Council President Drabkin said some of these people were long time attendees and worked in housing in the City. She was excited to bring their expertise to the Committee.

Councilor Peralta MOVED to adopt Resolution 2021-23; SECONDED by Councilor Menke. Motion PASSED unanimously 6-0.

- 7.b. Consider **Resolution No. 2021-28**: A Resolution Appointing Members to the Diversity, Equity, and Inclusion Advisory Committee.

Human Resources Manager Bayer said the Council approved an ordinance in October to establish the DEI Committee. In February they appointed members to the Committee, but the term length was not established at that time. Committee members had selected their term lengths and there was a new member as well.

Councilor Geary MOVED to adopt Resolution 2021-28; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.

- 7.c. Consider **Resolution No. 2021-29**: A Resolution approving a lease amendment with the McMinnville Airport Condominium Hangars Owners Association for hangar F at the airport.

Community Development Director Bisset said this was the first of three resolutions updating existing hanger leases to include the new lease renewal terms, which was to the end of the useful building life. The Airport Commission recommended approval.

Councilor Geary MOVED to adopt Resolution 2021-29; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.

- 7.d. Consider **Resolution No. 2021-30**: A Resolution approving a lease amendment with the McMinnville Aircraft Storage Condominium for hangar H at the airport.

Community Development Director Bisset said this was a lease amendment for hangar H. The Airport Commission recommended approval.

Councilor Peralta MOVED to adopt Resolution 2021-30; SECONDED by Councilor Geary. Motion PASSED unanimously 6-0.

- 7.e. Consider **Resolution No. 2021-31**: A Resolution approving a lease amendment with B&G Hangar LLC for the 4040 Cirrus hangar at the airport.

Community Development Director Bisset said this was a lease amendment for B&G Hanger LLC. The Airport Commission recommended approval. This was the last lease agreement for Council's approval. The term endings were different for all the leases. The tenants were responsible for notifying the City to engage in the five year renewal process.

Councilor Garvin MOVED to adopt Resolution 2021-31; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.

- 7.f Consider **Resolution No. 2021-32**: A Resolution approving entering into a contract with Merina & Company LLP.

Finance Director Cuellar said they went through the RFP process and four candidates applied. The Audit Committee interviewed the top two and recommended continuing with Merina and Company. It was a five year not to exceed contract.

There was discussion regarding why Merina and Company was chosen and next steps if the resolution was not approved.

Councilor Garvin was opposed as he thought they were too comfortable with Merina and Company as they had been the City's auditor for years. They missed the Water & Light error on paying the fee to the City and if another provider scored nearly the same, he thought they should give them the opportunity.

City Manager Towery clarified Merina and Company had never been tasked to audit Water & Light. He thought they had a particular ability to communicate information around audits.

Finance Director Cuellar was not concerned about getting a quality line of service from any of the audit firms that turned in a proposal. She was

comfortable going forward with Merina and Company. They had particular expertise in federal programs.

Councilor Peralta MOVED to adopt Resolution 2021-32; SECONDED by Councilor Menke. Motion PASSED 4-3 with Councilors Garvin, Chenoweth, and Geary opposed and Mayor Hill breaking the tie.

- 7.g. Consider **Resolution No. 2021-34**: A Resolution Amending the Planning Fee Schedule for Land Use Compatibility Statements for Marijuana Dispensaries, Producers and Wholesalers and Change in Business Name.

Planning Director Richards said in the new fee schedule that would go into effect July 1, 2021, there was one fee for land use compatibility statements for marijuana businesses that the Council had questioned. She explained the requirements for new marijuana businesses and change in business name. Staff reviewed the amount of time it took to process these statements and discovered both the producer, wholesaler, and co-locator took essentially the same amount of time. She recommended amending the fee schedule by adding two additional components and changing the fees associated with them. For the change of business name, they were required to do a compatibility statement per the state. It would require the state to change it.

Councilor Garvin MOVED to adopt Resolution 2021-34; SECONDED by Councilor Geary. Motion PASSED unanimously 6-0.

- 7.h. Consider **Resolution No. 2021-35**: A Resolution approving a Building Fee Schedule and repealing all previous resolutions adopting building fee schedules on the effective date of this fee schedule.

Planning Director Richards said the Council approved a resolution in March for the proposed fee schedule. Notice of these fees was sent to the state and there was a 45-day period for comments or appeals. It was now back to the Council for approval.

Councilor Menke MOVED to adopt Resolution 2021-35; SECONDED by Councilor Garvin. Motion PASSED unanimously 6-0.

8. ORDINANCE

- 8.a. Consider first reading with a possible second reading of **Ordinance No. 5103**: An Ordinance Amending Section 2.35.030 of the McMinnville Municipal Code Specific to Membership: Number of Members, Appointments, and Ex Officio Members.

Mayor Hill asked if any Councilor needed to declare a potential conflict of interest or recuse themselves. There was none.

City Attorney Guile-Hinman read by title only Ordinance No. 5103, amending Section 2.35.030 of the McMinnville Municipal Code specific to membership: number of members, appointments, and ex officio members.

Human Resources Manager Bayer said this would update the Municipal Code for the membership of the Diversity, Equity, and Inclusion Advisory Committee. It would give full voting rights to all committee members and increase the number of members from 7 to 9. Ex officio members could be appointed if the Council wished.

Councilor Geary MOVED to pass Ordinance No. 5103 to a second reading; SECONDED by Councilor Peralta. PASSED unanimously 6-0.

City Attorney Guile-Hinman read by title only for a second time Ordinance No. 5103.

Councilor Peralta MOVED to adopt Ordinance No. 5103 amending Section 2.35.030 of the McMinnville Municipal Code specific to membership: number of members, appointments, and ex officio members; SECONDED by Councilor Geary. PASSED by a unanimous roll-call vote of 6-0.

9. ADJOURNMENT: Mayor Hill adjourned the Regular City Council Meeting at 8:56 p.m.

Claudia Cisneros, City Recorder

CITY OF McMinnville
MINUTES OF CITY COUNCIL and McMinnville Water & Light Commission
JOINT WORK SESSION

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

Tuesday, June 8, 2021 at 5:30 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Claudia Cisneros

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Remy Drabkin, Council President	
	Adam Garvin	
	Zack Geary	
	Kellie Menke	
	Sal Peralta	
	Chris Chenoweth	

MW&L Commissioners:

Tom Tankersley, Chair	Ed Gormley
Jody Christensen	
Kathy Tate	

Also present were City Manager Jeff Towery, City Attorney Amanda Guile-Hinman, Police Chief Matt Scales, City Recorder Claudia Cisneros, Information Technology Specialist Megan Simmons, Finance Director Jennifer Cuellar, Planning Director Heather Richards, Senior Planner Chuck Darnell, Deputy Fire Chief Amy Hanifan, Court Clerk Abby Cohen, Court Clerk Freddy Vargas, Municipal Court Judge Cynthia Kaufman Noble, City Prosecutor Shannon Lee Erskine, Senior Court Clerk Suzanda Branson, and *members of the News Media Phil Guzzo, McMinnville Community Media.*

MW&L Staff: General Manager John Dietz, Commission Clerk & Utility Rate Analyst Trena McManus, Water Division Director James Burke, General Counsel Sam Justice, Electric Division Director Scott Rosenbaum,

1. CALL TO ORDER: Mayor Hill called the meeting to order at 5:30 p.m. and welcomed all in attendance.

2. MCMINNVILLE WATER & LIGHT COMMISSION UPDATES:

John Dietz, Operations Manager, discussed the electric system overview, Water & Light's rates, 2021 residential rate comparison monthly bill for the average residential customer, electric capital projects, water system overview, water system planning, Zone 2 construction, residential water bill comparison monthly bill average, Three Mile Lane Bridge replacement, and fuel station on Marsh Lane.

There was discussion regarding the contract with Lafayette for surplus water service, usage, and rate. There was further discussion regarding having enough capacity with Carlton using water for dredging the reservoir in summer, securing additional water rights, second source of water for resiliency, and abandoning the cast iron pipe under the river. Commissioner Tankersley noted Bonneville's conservation program and money invested in the community for more efficient homes and businesses. Mr. Dietz explained the programs since the 1980s and that \$30 million to \$40 million had been invested in efficiencies.

Mr. Dietz said energy consumption had not been growing due to the efficiencies, and their use was average in comparison with other utilities.

The Council discussed recouping from the ice storm, the need for better communication when service was out, redundancy, sustainability that failed in California and the differences in Oregon with wind and hydropower, retirement of employees and developing current employees, purchasing right-of-way for water lines, security of the water source, aging fleet and state requirements regarding diesel, watershed tours, wildfire plan, rate with BPA, rate impact from large users, water rate structure, and rural rates.

Water & Light staff and Commissioners introduced themselves. City staff then introduced themselves.

3. ADJOURNMENT: Mayor Hill adjourned the meeting at 6:40 pm.

Claudia Cisneros, City Recorder

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

Tuesday, June 8, 2021 at 7:00 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Claudia Cisneros

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Remy Drabkin, Council President	
	Adam Garvin	
	Zack Geary	
	Kellie Menke	
	Chris Chenoweth	
	Sal Peralta	

Also present were City Attorney Amanda Guile-Hinman, City Recorder Claudia Cisneros, Police Chief Matt Scales, Information Technology Director Scott Burke, Fire Chief Rich Leipfert, Community Center Manager Katie Noyd, Finance Director Jennifer Cuellar, Planning Director Heather Richards, Community Development Director Mike Bisset, Community Engagement Specialist Noelle Amaya, Children’s Room Librarian Samantha Geary, Parks and Recreation Director Susan Muir, and *members of the News Media Phil Guzzo, McMinnville Community Media.*

1. CALL TO ORDER: Mayor Hill called the meeting to order at 7:00 p.m. and welcomed all in attendance.

2. PLEDGE OF ALLEGIANCE
Mayor Hill led the pledge of allegiance.

3. PROCLAMATIONS

3.a. Parks and Recreation Month Proclamation and Summer Fun

Community Center Manager Noyd discussed collaboration with the library to bring summer fun to the community. She gave a summer fun overview including the guiding principles, how to participate, active living, kids, all ages, movies, and music activities. She acknowledged their sponsors and community partners.

Mayor Hill read the proclamation declaring July 2021 as Parks and Recreation Month.

3.b. LGBTQIA+ Pride Month Proclamation

Mayor Hill read the proclamation declaring June 2021 as LGBTQIA+ Pride Month.

4. INVITATION TO CITIZENS FOR PUBLIC COMMENT

None.

5. PRESENTATIONS

5.a. Infrastructure-Based Time Extension Request (IBTER) House Bill (HB) 2001 Presentation

Planning Director Richards introduced the topic. If there were areas of concern that needed updated infrastructure to accommodate missing middle housing development, they had to submit an application to the state by June 30, 2021.

Shad Roundy, consultant, gave a presentation on the State Housing Bill 2001 IBTER. He explained the evaluation that was done, gave a scenario overview, and discussed the pipelines that were at or near capacity, results of the analysis, other systems overview, and recommendations. They recommended not applying for the deferral as there would likely not be a significant impact by 2023 from middle housing for water, sewer, transportation, and storm infrastructure. The next steps would be to consider a UGB expansion within the context of the I/I reduction program and improvements and master plan updates for sewer, transportation, and storm to improve system capacity and to do planned improvements.

There was discussion regarding budget plans for the next year in updating the master plans, building infrastructure for Zone 2, capital funds and projects, creating funding for the stormwater utility, and addressing water temperature compliance.

6. ADVICE/INFORMATION ITEMS

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

Councilor Menke gave an update on YCAP's budget and Project Turnkey.

Councilor Geary reported on Mac Pac where financing options, potential facility locations, and tour of Hillsboro's facility were discussed.

Councilor Chenoweth reported on Historic Landmarks Committee applications and appointments of Chair and Vice Chair.

Council President Drabkin said there would be a DEI Committee meeting on Thursday and she explained the items they were working on. She then gave an update on Affordable Housing Committee work and training.

Councilor Garvin said YCOM was finalizing their budget and he met with the Fire Chief regarding the new fire district timeline. He had seen more activity on Marsh Lane and they had no funds to enforce the ordinance.

There was discussion regarding funding the moteling program and funding options for the enforcement. The Council would continue to discuss this through the budget process.

Councilor Peralta reported on Council of Governments' letter of support for funding the acquisition of a motel in Yamhill County.

Mayor Hill reported on funding for the Bypass and Project Turnkey.

6.b. Department Head Reports

Planning Director Richards said the Economic Vitality Leadership Council was meeting tomorrow with Business Oregon. The City received \$1.5 million for a navigation center. They would present to LCDC the City's long-range planning program.

Parks and Recreation Director Muir said senior centers were removed from the list of facilities that had to stay closed and they were working on opening the senior center after hiring some positions. They had gone out for a request for proposals for an after-school program provider. The Discovery Meadows splash pad was now open. Baseball and softball started on Saturday. There would also be trail clearing at Airport Park on Saturday.

Fire Chief Leipfert spoke about 4th of July fireworks and Fire District consolidation which would go on the May ballot.

Police Chief Scales said the park ranger program had begun for the summer. The crime response unit would begin in July. He discussed recent police cases.

Mayor Hill reviewed his role as Mayor at Council meetings and the importance of Council members working together.

7. PUBLIC HEARINGS

7.a. Proposed Fiscal Year 2021-2022 Budget as approved by the Budget Committee

Mayor Hill opened the public hearing.

Finance Director Cuellar presented the staff report. This hearing was for the FY 2021-22 budget as approved by the Budget Committee. A presentation of the budget would be given to Council on June 22 to appropriate the budget.

City Recorder Cisneros said one written comment had been received from Tyman Pierce.

Mark Davis, McMinnville community member, thought the City was on the right path for stabilizing General Fund reserves. He was confused about the federal government paying furloughed staff not to work, but on the other hand they were giving the City \$7 million, some of which could be used to pay for work the staff could have been doing while they were on furlough. He thought they should consider charging 6% payment in lieu of taxes franchise fees to everyone. He also suggested creating a Mac Town 2032 financial plan.

Mayor Hill closed the public hearing.

7.b. Proposed Uses of State Revenue Sharing for Fiscal Year 2021-2022 as approved by the Budget Committee.

Mayor Hill opened the public hearing. He read state revenue sharing law requirements.

Finance Director Cuellar estimated the City would receive \$456,000 in state-shared revenues which would be used for General Fund expenses.

There was no public testimony.

Mayor Hill closed the public hearing.

7.c. Public Hearing for the FY2021 Transient Lodging Tax (TLT) Supplemental Budget

Mayor Hill opened the public hearing.

Finance Director Cuellar said this was a supplemental budget for TLT as it was anticipated the City would receive \$150,000 more than was originally projected. The revenues would be disbursed as follows: 70% would go to Visit McMinnville and 30% would go to the City's General Fund.

There was no public testimony.

Mayor Hill closed the public hearing.

8. RESOLUTIONS

- 8.a. Consider **Resolution No. 2021-36**: A Resolution providing for and approving a form of contract by and between the City of McMinnville, Oregon and the McMinnville Rural Fire Protection District

Fire Chief Leipfert said this was a renewal of the current IGA with a 3% increase for a total allocation of \$410,446. He discussed increase options for next year's contract.

Council President Drabkin MOVED to adopt Resolution 2021-36; SECONDED by Councilor Geary. Motion PASSED unanimously 6-0.

- 8.b. Consider **Resolution No. 2021-37**: A Resolution providing for and approving a form of an Intergovernmental Agreement (IGA) by and between the City of McMinnville, Oregon and the Amity Fire Protection District.

Fire Chief Leipfert said this was a renewal of the annual contract with the Amity Fire District which increased by 1.3%.

Councilor Geary MOVED to adopt Resolution 2021-37; SECONDED by Councilor Garvin. Motion PASSED unanimously 6-0.

- 8.c. Consider **Resolution No. 2021-38**: A Resolution Adopting a Supplemental Budget for Fiscal Year 2020-2021 and Making Supplemental Appropriations (Related to Transient Lodging Tax).

Finance Director Cuellar said this resolution was related to the public hearing earlier tonight about the Transient Lodging Tax.

Councilor Menke MOVED to adopt Resolution 2021-38; SECONDED by Council President Drabkin. Motion PASSED unanimously 6-0.

- 8.d. Consider **Resolution No. 2021-39**: A Resolution Adopting a Supplemental Budget for Fiscal Year 2020-2021 and Making

Supplemental Appropriations (Related to General Fund and Information Services Fund).

Finance Director Cuellar said this supplemental budget was due to receipt of the Coronavirus Relief Fund Grant, special payments category for Water & Light, remote Court operations, and equipment needed for work at home.

Councilor Menke MOVED to adopt Resolution 2021-39; SECONDED by Council President Drabkin. Motion PASSED unanimously 6-0.

- 8.e. Consider **Resolution No. 2021-40**: A Resolution Adopting a Supplemental Budget for Fiscal Year 2020-2021 and Making Supplemental Appropriations (Related to Telecommunications Fund).

Finance Director Cuellar said this supplemental budget was due to franchise fees coming in slightly above projections for the Telecommunications Fund.

Councilor Peralta MOVED to adopt Resolution 2021-40; SECONDED by Councilor Menke. Motion PASSED unanimously 6-0.

- 8.f. Consider **Resolution No. 2021-41**: A Resolution for City of McMinnville, Oregon Ratifying the Declaration of State of Emergency signed by Mayor Scott Hill on May 27, 2021.

Finance Director Cuellar said this was a request to ratify an updated emergency declaration to extend funds to YCAP for the moteling program. She read the declaration that the Mayor signed on May 27.

Councilor Menke MOVED to adopt Resolution 2021-41; SECONDED by Council President Drabkin. Motion PASSED unanimously 6-0.

9. ORDINANCE

- 9.a. Consider first reading with a possible second reading of **Ordinance No. 5104**: An Ordinance Amending Title 17 (Zoning) of the McMinnville City Code, Specific to Multiple Chapters to Update Definitions for Child Care and Remove Regulatory Barriers for Child Care Opportunities.

Mayor Hill asked if any Councilor needed to declare a potential conflict of interest or recuse themselves. There was none.

City Attorney Guile-Hinman read by title only Ordinance No. 5104, amending Title 17 (Zoning) of the McMinnville City Code, specific to

multiple chapters to update definitions for childcare and remove regulatory barriers for childcare opportunities.

Planning Director Richards said this was a legislative code amendment to remove regulatory barriers to childcare opportunities. The Planning Commission voted unanimously to recommend approval of the amendment. She discussed childcare in Oregon, percentage of children with access to childcare in metropolitan and nonmetropolitan counties, how there was an inadequate regulated childcare supply especially for infants and toddlers, current permitted and conditional uses in the zoning ordinance, compliance with state regulations, proposed amendments, Planning Commission questions, notice/comments received, and residential vs. commercial childcare providers.

There was discussion regarding home occupation provisions, parking requirements and drop off/pick up, database of in-home facilities, and support for the amendment.

Councilor Menke MOVED to pass Ordinance No. 5104 to a second reading; SECONDED by Councilor Peralta. PASSED unanimously 6-0.

City Attorney Guile-Hinman read by title only for a second time Ordinance No. 5104.

Councilor Garvin MOVED to adopt Ordinance No. 5104 amending Title 17 (Zoning) of the McMinnville City Code, specific to multiple chapters to update definitions for childcare and remove regulatory barriers for childcare opportunities; SECONDED by Councilor Geary. PASSED by a unanimous roll-call vote of 6-0.

10. ADJOURNMENT: Mayor Hill adjourned the Regular City Council Meeting at 9:36 p.m.

Claudia Cisneros, City Recorder

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

Tuesday, June 22, 2021 at 5:30 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Claudia Cisneros

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Remy Drabkin, Council President	
	Adam Garvin	
	Kellie Menke	
	Sal Peralta	
	Chris Chenoweth	
	Zack Geary	

Also present were City Manager Jeff Towery, City Attorney Amanda Guile-Hinman, City Recorder Claudia Cisneros, Finance Director Jennifer Cuellar, Parks and Recreation Director Susan Muir, Planning Director Richards, Police Chief Matt Scales, and *members of the News Media Jerry Eichten, McMinnville Community Media and Kirby Neumann-Rea, News Register.*

1. CALL TO ORDER: Mayor Hill called the meeting to order at 5:31 p.m. and welcomed all in attendance.

2. REVIEW CITY COUNCIL LEVEL 10 MONTHLY TEAM MEETING AGENDA:

Wendy Stassens, consultant, led a discussion on the homework exercise answering the question what was the most useful and/or surprising takeaway from completing the personality test and teambuilding exercise that they thought would be important for the Council to know.

Ms. Stassens then discussed the last meeting's action items including internal Council focus on the strategic plan.

City Recorder Cisneros had already shared a spreadsheet of what staff had done to focus their work around the strategic plan.

Ms. Stassens discussed the status of the action items for completing the Vision Traction Organizer process including: one year goals to be approved this month and a why exercise that would contribute to drafting

the purpose for this team for approval at the July Council Leadership meeting. Once they had those two items, staff would draft a VTO and present it to the Council.

City Manager Towery discussed crafting a strategic planning lens tool similar to a core services analysis and an equity lens. He had a draft to present at a future Council meeting.

Ms. Stassens then reviewed the items for communication with citizens.

Regarding creating a mechanism for regular bite sized updates on the strategic plan process, Mayor Hill said it was critical for the Council to accept the goals and break them down to measurables that were within the Council's ability to do.

Ms. Stassens considered this item completed as they were going to track the goals related to the strategic plan and continue scorecard work.

Councilor Peralta suggested aligning the goals with each department's mission and goals. The goals needed to be flexible enough for multiple departments to take into account in the planning process.

Regarding a dashboard on the City's website to show accomplishments to monitor progress and forming a group to evaluate the implementation of the dashboard, they would not be moving on this now until they determined the City's fiscal ability.

Regarding putting MacTown 2032 on the City's web page to make it easily searchable, staff was working on the searchable aspect.

Ms. Stassens then moved to Identify/Discuss/Solve Issues and led a discussion about the role of the Level 10 meetings. It was an organizational development tool, not for accomplishing output goals. She then discussed overcoming the five dysfunctions of a team. The first item on the Issues List IDS was lack of a shared and universally practiced working agreement/code of conduct. She shared notes from the last meeting and discussed why this was an issue.

The Council thought there was a need for being respectful to each other, to have baseline rules that governed their interactions and communications, importance of an operating agreement and people needed to be aware of the comments made about staff and side conversations, need for trust and a code of conduct, how there were code of conduct violations made by Council, and how the real issue was how the code of conduct was internalized and applied. The Council identified which codes of conduct

were problematic. They wanted to simplify the language and make it shorter, more concise.

There was further discussion regarding code #1: I will individually support the collective decision-making of the Council. If I disagree with the decision made by the Council, I will exercise my convictions without personalizing the issue without eroding the collective reputation of the Council. Once the decision is made, I will respect that decision. They determined that “without personalizing the issue” was not being followed.

They also thought code #7 needed to be addressed: If I have a concern or issue with another council member or Mayor, I will go to that person first and in a positive, private, and timely manner, share that concern. I will present my feelings and how those feelings affect me.

The Council would look for redundancies and work next time to simplify and reduce the list. They also wanted to include coming up with an agreement as to how to hold each other accountable and internalize the principles.

3. ADJOURNMENT: Mayor Hill adjourned the meeting at 6:58 p.m.

Claudia Cisneros, City Recorder

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

Tuesday, June 22, 2021 at 7:00 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Claudia Cisneros

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Remy Drabkin, Council President	
	Adam Garvin	
	Zack Geary	
	Kellie Menke	
	Chris Chenoweth	
	Sal Peralta	

Also present were City Manager Jeff Towery, City Attorney Amanda Guile-Hinman, City Recorder Claudia Cisneros, Police Chief Matt Scales, Finance Director Jennifer Cuellar, Planning Director Heather Richards, Engineering Services Manager Larry Sherwood, Community Development Director Mike Bisset, and *members of the News Media Jerry Eichten, McMinnville Community Media and Kirby Neumann-Rea, News Register.*

1. CALL TO ORDER: Mayor Hill called the meeting to order at 7:02 p.m. and welcomed all in attendance.

2. PLEDGE OF ALLEGIANCE

Councilor Garvin led the pledge of allegiance.

3. INVITATION TO CITIZENS FOR PUBLIC COMMENT

Mark Davis, McMinnville community member, commented on the joint Work Session with McMinnville Water & Light and the renewable energy sources they discussed. He noted nuclear energy was not renewable.

Tynan Pierce, McMinnville community member, spoke about the budget. He was concerned about the timing of the process and public input. He thought more funding should be put into the affordable housing budget and climate change initiatives.

4. PRESENTATION

Stewardship Report on City insurance coverage from Gary Eastlund, Hagan Hamilton

Finance Director Cuellar introduced the topic.

Gary Eastlund, Hagan Hamilton, explained the report that had been submitted on the City's insurance coverage. He discussed City County Insurance, projected 15% increase, changing the Workers Comp coverage to be provided by SAIF, and Workers Comp options. Staff recommended going with the guaranteed cost option. He reviewed the liability policy and separate coverage for the airport and air show, cyber insurance, and employee resources.

There was discussion regarding the reasons for the change to SAIF and thanks to Mr. Eastlund for his support during the pandemic.

5. ADVICE/ INFORMATION ITEMS

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

Councilor Menke discussed the grants received for Project Turnkey.

Councilor Geary reported on the Landscape Review Committee meeting.

Councilor Chenoweth reported on the Economic Vitality Leadership Council meeting.

Councilor Garvin reported on YCOM's adoption of the budget.

Councilor Peralta reported on the Council of Governments meeting and upcoming stakeholder sessions.

Councilor President Drabkin reported on the DEI Advisory Committee and Affordable Housing Committee meetings.

Mayor Hill reported on the Water & Light Commission meeting and Bypass Committee meeting.

There was discussion regarding Air Liquide and Cascade Steel franchise fees, electric rate increase, and MWAC funding for the 219 intersection.

Mayor Hill asked for any discussion on the 2021 Council Goals. There was none.

Councilor Menke MOVED to adopt the 2021 City Council Goals; SECONDED by Council President Drabkin. Motion PASSED unanimously 6-0.

5.b. Department Head Reports

Planning Director Richards discussed grants for long-range planning programs. She announced Associate Planner Fleckenstein had given notice.

City Attorney Guile-Hinman discussed national opioid litigation. The request was that all counties and cities agree to forgo their potential right to sue in exchange for a settlement payout funneled through the appropriate entity that was a plaintiff in the litigation. For McMinnville, they would be negotiating an agreement with Yamhill County for distribution of settlement funds received from the defendants. She recommended authorizing the City Attorney to negotiate the agreement.

Councilor Chenoweth MOVED to authorize the City Attorney to negotiate an agreement with Yamhill County regarding distribution of any settlement funds from the national opioid litigation; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.

City Attorney Guile-Hinman discussed her legal memo regarding wireless communication facilities. This had to do with the County's approval of a 100-foot telecommunication monopole on EFU land within the City's Urban Growth Boundary and right next to the City limits. She recommended the Council approve the interpretation of the Municipal Code provisions as presented by the City Attorney's legal memorandum. She summarized the net effect of the change and the basis for the recommended action.

Councilor Chenoweth MOVED to approve the interpretation of the Municipal Code provisions presented in the June 10, 2021, legal memorandum provided in the Council packet; SECONDED by Councilor Garvin. Motion PASSED unanimously 6-0.

City Manager Towery said the Work Session with White Bird and the City of Eugene Police Department was rescheduled to August.

6. RESOLUTIONS

6.a. Consider **Resolution No. 2021-33**: A Resolution awarding the contract for the 2021 Slurry Seal project, Project 2021-7, to VSS International, Inc.

Engineering Services Manager Sherwood said the City used slurry seal as part of their pavement preservation program for many years. This year they had doubled the budget for slurry seal as there were not any overlay packages due to revenue and budget constraints.

There was discussion regarding how far this got the City in terms of road improvements and by not doing overlays how much did that put them behind.

Community Development Director Bisset explained the current pavement condition and gap in funding to be able to keep the street network at its current condition. The City's pavement was declining on an annual basis.

Councilor Geary MOVED to adopt Resolution 2021-33; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.

- 6.b. Consider **Resolution No. 2021-42**: A Resolution authorizing a name change for the Special Assessments Fund to the Grants and Special Assessments Fund.

Finance Director Cuellar said the Special Assessments Fund was used to account for funds received and disbursed from special assessments and for federal and state grants outside of normal operations. She requested changing the name to Grants and Special Assessments Fund for clarity.

Councilor Menke MOVED to adopt Resolution 2021-42; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.

- 6.c. Consider **Resolution No. 2021-43**: A Resolution declaring the City's election to receive certain state shared revenues.

Finance Director Cuellar said the next four resolutions were associated with moving forward with next fiscal year's budget. This one was required for the City to receive state-shared revenues to be used for General Fund public services.

Councilor Menke MOVED to adopt Resolution 2021-43; SECONDED by Councilor Chenoweth. Motion PASSED unanimously 6-0.

- 6.d. Consider **Resolution No. 2021-44**: A Resolution certifying provision of municipal services by the City of McMinnville as required by ORS 221.760.

Finance Director Cuellar said this certified they were a full-service city and provided more than four of the required activities.

Councilor Menke MOVED to adopt Resolution 2021-44; SECONDED by Councilor Peralta. Motion PASSED unanimously 6-0.

- 6.e. Consider **Resolution No. 2021-45**: A Resolution extending workers' compensation coverage to City of McMinnville volunteers.

Finance Director Cuellar said this resolution was needed for workers' compensation coverage for volunteers whose work was vital to the City.

Councilor Peralta MOVED to adopt Resolution 2021-45; SECONDED by Councilor Chenoweth. Motion PASSED unanimously 6-0.

- 6.f. Consider **Resolution No. 2021-46**: A Resolution adopting the budget for the fiscal year beginning July 1, 2021; making the appropriations; imposing the property taxes; and categorizing the property taxes.

Finance Director Cuellar said this would establish the budget for next fiscal year. It allowed the City to make appropriations and impose and categorize property taxes. She discussed the changes to the budget since the Budget Committee approval. These had to do with projects that had to be extended to the next fiscal year. They also received the final numbers for the Yamhill Communications Agency that the cost would be lower than what was projected. The net impact of the changes resulted in an increase in the unappropriated ending fund balance in the General Fund by \$94,000.

There was discussion regarding the projects that needed to be extended, changes to the budget process, bringing up maintenance levels, discussions that would be future Work Session topics, and putting \$25,000 in the Police Department budget to enforce the camping ordinance.

Police Chief Scales said he was confident that there was enough funding in their budget already to enforce the ordinance. There was consensus that no changes to the Police Department budget needed to be made.

Councilor Chenoweth MOVED to adopt Resolution 2021-46; SECONDED by Councilor Garvin. Motion PASSED unanimously 6-0.

7. ADJOURNMENT: Mayor Hill adjourned the Regular City Council Meeting at 8:57 p.m.

Claudia Cisneros, City Recorder

STAFF REPORT

DATE: April 11, 2024
TO: Jeff Towery, City Manager
CC: Geoffrey Hunsaker, Public Works Director
CC: David Ligtenberg, City Attorney
CC: James Lofton, City Engineer
CC: Leland Koester, Wastewater Services Manager
CC: Bill Howard, Earth Works Excavation
FROM: Matt Bernards, Engineering Technician
SUBJECT: Chandlers Addition Sanitary Sewer Rehabilitation Contract Award

Report in Brief:

This action is the consideration of a resolution to award a public improvement contract in the amount of \$1,837,385.80 to Enterprises NW, Inc. dba Earth Works Excavation for the construction of the Chandlers Addition Sanitary Sewer Rehabilitation Project 2022-9.

Background:

The Chandlers Addition Sanitary Sewer Project will rehabilitate approximately 5,300 feet of sanitary sewer mainline. The lines will be repaired using pipe bursting, pipe lining, and dig and replace techniques. The attached project vicinity map reflects the work areas covered by the contract.

The sanitary sewer work will be paid for using the Wastewater Capital Fund (77).

The project work is expected to start in June 2024 and be completed by October 31, 2024.

Discussion:

On Wednesday, March 27, 2024, two bids were received, opened, and publicly read for the construction of the Chandlers Addition Sanitary Sewer Rehabilitation Project 2022-9. The bid results are as follows:

- Landis & Landis Construction \$2,472,931.00
- Earth Works Excavation \$1,837,385.80

The construction estimate for this work was \$2,091,932.00.

The bids were checked for completeness, including a review of the following:

- Was the bid submitted, on time, in a properly sealed and labeled envelope?
- Was the Bid Form properly filled out and executed?
- Was a Bid Bond included?
- Were the project addenda acknowledged?
- Was the First Tier Subcontractor Form turned in on time?

After Legal review, both bids were determined to be responsive. A detailed breakdown of the received bids is on file in the Engineering Department.

As Enterprises NW, Inc. dba Earth Works Excavation has not performed work for or within the City before, a background check was performed to determine qualifications and workmanship met City requirements under ORS 279C.375(3)(b).

The bid from Enterprises NW, Inc. dba Earth Works Excavation, in the amount of \$1,837,385.80, was deemed to be the lowest responsible and responsive bid.

Attachments:

1. Resolution 2024-19
2. Project Vicinity Map
3. Project Bid Tabs
4. Public Improvement Contract

Fiscal Impact:

The project is included in the adopted FY23-24 and FY24-25 Wastewater Capital Fund (77) budget.

Recommendation:

Staff recommends that the City Council adopt the attached resolution awarding the public improvement contract for the construction of the Chandlers Addition Sanitary Sewer Rehabilitation Project 2022-9, in the amount of \$1,837,385.80, to Enterprises NW, Inc. dba Earth Works Excavation.

RESOLUTION NO. 2024 - 19

A Resolution awarding the contract for the Chandlers Addition Sanitary Sewer Rehabilitation project, Project 2022-9, to Enterprises NW, Inc. dba Earth Works Excavation.

RECITALS:

Whereas, In a continuing effort to minimize infiltration and inflow (I&I) into the City’s sanitary sewer conveyance system, this project will rehabilitate approximately 5,300 feet of sanitary sewer mainlines and 2,100 feet of service laterals.

Whereas, At 2:00pm on March 27, 2024, two bids for the Chandlers Addition Sanitary Sewer Rehabilitation project, Project 2022-9, were publicly opened and read aloud. The bid from Earth Works Excavation, in the amount of \$1,837,385.80, met all of the bid requirements and should be considered the lowest responsible and responsive bid.

Whereas, Project funding is included in the adopted FY23-24 and proposed FY24-25 Wastewater Capital Fund (77) budgets for the sanitary sewer work.

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

1. That entry into a public improvement contract with Enterprises NW, Inc. dba Earth Works Excavation, in the amount of \$1,837,385.80, with a substantial completion date of October 31, 2024 for the Chandlers Addition Sanitary Sewer Rehabilitation project, Project 2022-9, is hereby approved.
2. That the City Manager is hereby authorized and directed to execute the public improvement contract.
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 23rd day of April 2024 by the following votes:

Ayes: _____

Nays: _____

Approved this 23rd day of April 2024.

City Council President

Approved as to form:

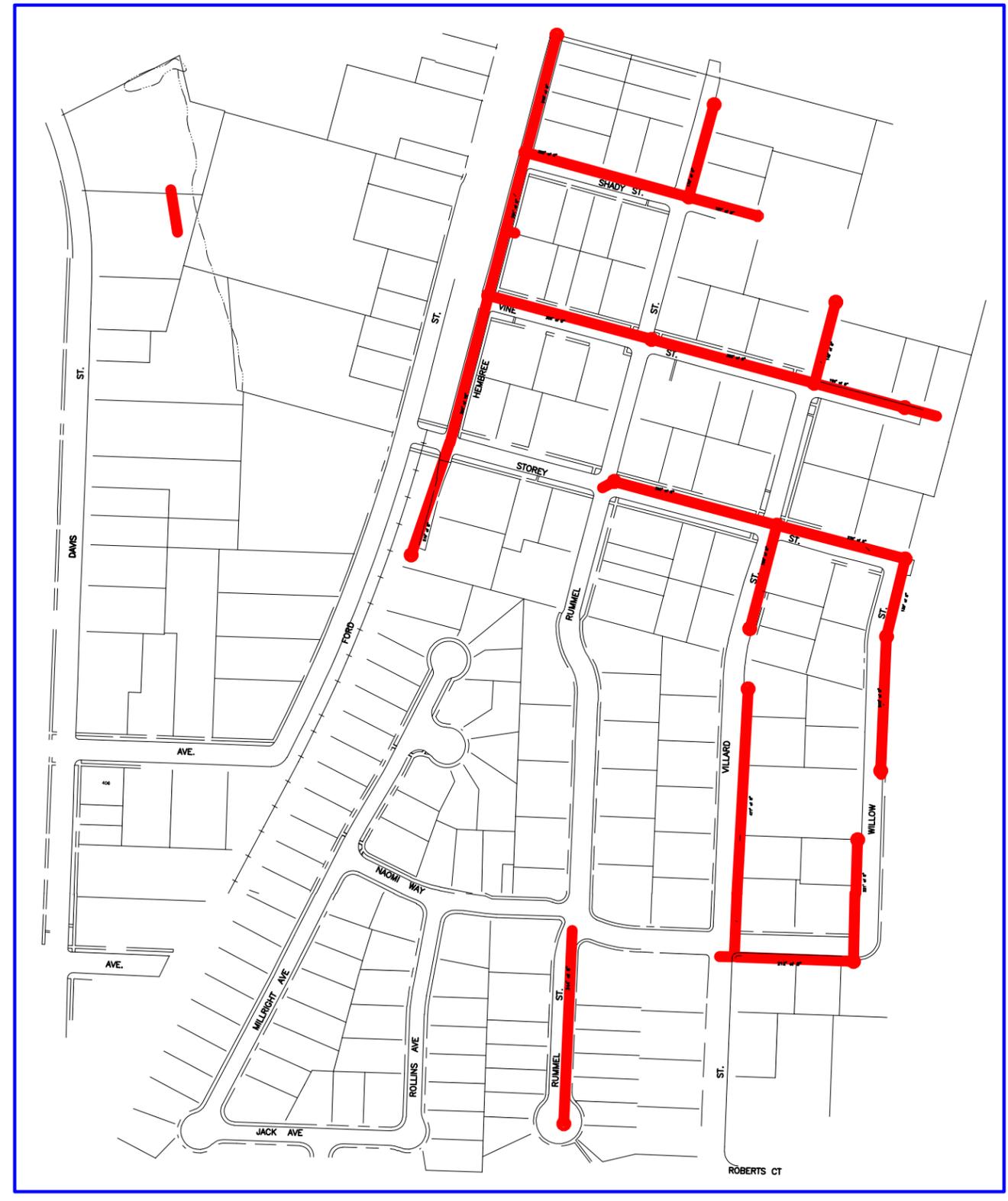
Attest:

City Attorney

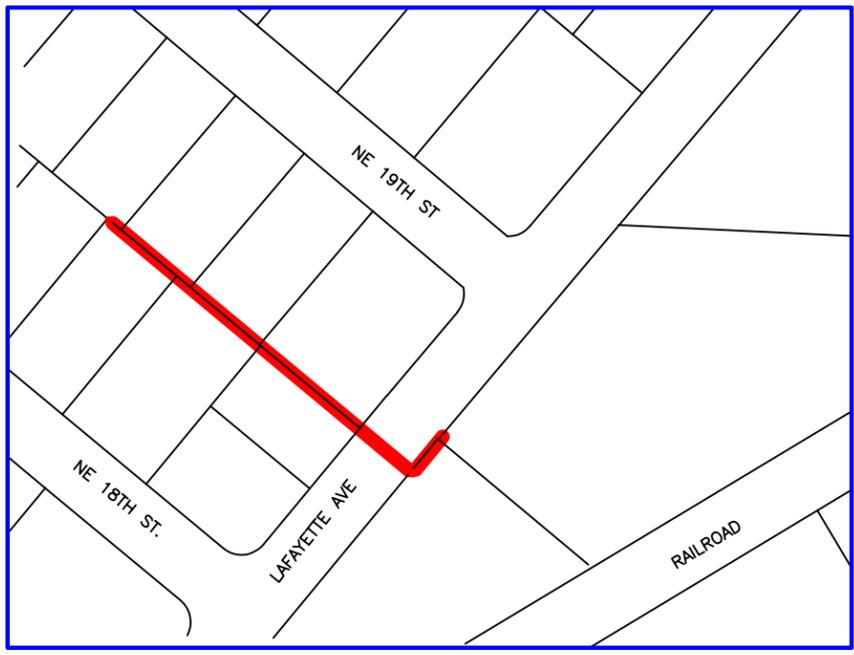
City Recorder



SE PORTION OF PROJECT



NE PORTION OF PROJECT



MAINLINE PIPE TO BE REHABILITATED 

CHANDLERS ADDITION SANITARY SEWER REHAB

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	Engineers Estimate		Landis & Landis		Enterprises NW Inc dba Earth Works Excavation	
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
TEMPORARY FEATURES AND APPURTENANCES (00200)									
1	Mobilization (00210)	LS	ALL		\$ 220,000.00		\$ 120,000.00		\$ 30,180.00
2	Temporary Protection and Direction of Traffic (00221)	LS	ALL		\$ 70,000.00		\$ 45,000.00		\$ 103,050.00
3	Erosion Control (00280)	LS	ALL		\$ 25,000.00		\$ 15,000.00		\$ 4,982.00
4	Pollution Control Plan (00290)	LS	ALL		\$ 3,000.00		\$ 3,500.00		\$ 917.00
				Subtotal	\$ 318,000.00	Subtotal	\$ 183,500.00	Subtotal	\$ 139,129.00
DRAINAGE AND SEWERS (00400)									
5	Rock Excavation (if needed) (00405)	CY	150	\$ 200.00	\$ 30,000.00	\$ 25.00	\$ 3,750.00	\$ 89.00	\$ 13,350.00
6	Boulder Excavation (if needed) (00405)	CY	150	\$ 200.00	\$ 30,000.00	\$ 25.00	\$ 3,750.00	\$ 89.00	\$ 13,350.00
7	Trench Foundation (if needed) (00405)	CY	260	\$ 80.00	\$ 20,800.00	\$ 35.00	\$ 9,100.00	\$ 67.60	\$ 17,576.00
8	Pipe Bursting, 6 Inch (00411)	LF	42	\$ 150.00	\$ 6,300.00	\$ 135.00	\$ 5,670.00	\$ 642.00	\$ 26,964.00
9	Pipe Bursting, 8 Inch (00411)	LF	2,109	\$ 100.00	\$ 210,900.00	\$ 135.00	\$ 284,715.00	\$ 84.00	\$ 177,156.00
10	Pipe Bursting, 6 Inch to 8 Inch Upsize (00411)	LF	341	\$ 130.00	\$ 44,330.00	\$ 110.00	\$ 37,510.00	\$ 130.50	\$ 44,500.50
11	Slip Lining, 4 Inch (00411)	LF	250	\$ 65.00	\$ 16,250.00	\$ 75.00	\$ 18,750.00	\$ 65.00	\$ 16,250.00
12	Service Line Reconnections, HDPE Main (00411)	EA	42	\$ 3,000.00	\$ 126,000.00	\$ 6,000.00	\$ 252,000.00	\$ 1,313.00	\$ 55,146.00
13	Post Construction Mainline Video Inspection (00415)	LF	5,248	\$ 4.00	\$ 20,992.00	\$ 5.25	\$ 27,552.00	\$ 6.20	\$ 32,537.60
14	Post Construction Service Line Lateral Video Inspection (00415)	EA	107	\$ 150.00	\$ 16,050.00	\$ 300.00	\$ 32,100.00	\$ 58.50	\$ 6,259.50
15	CLSM (00442)	CY	40	\$ 300.00	\$ 12,000.00	\$ 650.00	\$ 26,000.00	\$ 815.00	\$ 32,600.00
16	3 Inch PVC Sanitary Sewer Force Main, Type B Backfill (00445)	LF	61	\$ 85.00	\$ 5,185.00	\$ 110.00	\$ 6,710.00	\$ 94.00	\$ 5,734.00
17	4 Inch PVC Sanitary Sewer Pipe, Type B Backfill (00445)	LF	2,101	\$ 85.00	\$ 178,585.00	\$ 93.00	\$ 195,393.00	\$ 94.30	\$ 198,124.30
18	8 Inch PVC Sanitary Sewer Pipe, Type B Backfill (00445)	LF	2,756	\$ 140.00	\$ 385,840.00	\$ 191.00	\$ 526,396.00	\$ 139.70	\$ 385,013.20
19	8 Inch PVC Storm Sewer Pipe, Type B Backfill (00445)	LF	51	\$ 170.00	\$ 8,670.00	\$ 195.00	\$ 9,945.00	\$ 62.40	\$ 3,182.40
20	8 Inch DI Storm Sewer Pipe, Type B Backfill (00445)	LF	20	\$ 190.00	\$ 3,800.00	\$ 325.00	\$ 6,500.00	\$ 152.00	\$ 3,040.00
21	Service Line Reconnections, PVC Main (00445)	EA	45	\$ 900.00	\$ 40,500.00	\$ 2550.00	\$ 114,750.00	\$ 574.00	\$ 25,830.00
22	4 Inch Sanitary Sewer Two-Way Cleanout - In Line (00445)	EA	71	\$ 500.00	\$ 35,500.00	\$ 800.00	\$ 56,800.00	\$ 324.00	\$ 23,004.00
23	6 Inch Sanitary Sewer Two-Way Cleanout - In Line (00445)	EA	1	\$ 750.00	\$ 750.00	\$ 900.00	\$ 900.00	\$ 721.00	\$ 721.00
24	4 Inch Sanitary Sewer Two-Way Cleanout - Cut In (00445)	EA	5	\$ 1,000.00	\$ 5,000.00	\$ 1,300.00	\$ 6,500.00	\$ 332.00	\$ 1,660.00
25	6 Inch Sanitary Sewer Mainline Cleanout (00445)	EA	1	\$ 2,000.00	\$ 2,000.00	\$ 1,250.00	\$ 1,250.00	\$ 580.00	\$ 580.00
26	Concrete Sanitary Sewer Manholes (00470)	EA	11	\$ 6,500.00	\$ 71,500.00	\$ 8,200.00	\$ 90,200.00	\$ 9,705.00	\$ 106,755.00
27	Concrete Storm Sewer Manholes (00470)	EA	2	\$ 6,500.00	\$ 13,000.00	\$ 7,100.00	\$ 14,200.00	\$ 3,125.00	\$ 6,250.00
28	Remove and Replace Concrete Sanitary Sewer Manholes (00470)	EA	15	\$ 8,000.00	\$ 120,000.00	\$ 9,300.00	\$ 139,500.00	\$ 7,925.00	\$ 118,875.00
29	Concrete Monument Boxes (00470)	EA	3	\$ 1,000.00	\$ 3,000.00	\$ 1,100.00	\$ 3,300.00	\$ 709.00	\$ 2,127.00
30	Remove and Replace Catch Basins (00470)	EA	2	\$ 3,000.00	\$ 6,000.00	\$ 4,000.00	\$ 8,000.00	\$ 5,754.00	\$ 11,508.00
31	Major Adjustment of Manholes (00490)	EA	1	\$ 3,000.00	\$ 3,000.00	\$ 3,500.00	\$ 3,500.00	\$ 628.00	\$ 628.00
32	Minor Adjustment of Manholes (00490)	EA	1	\$ 2,000.00	\$ 2,000.00	\$ 1,200.00	\$ 1,200.00	\$ 213.00	\$ 213.00
33	Connection to Existing Structures (00490)	EA	5	\$ 2,000.00	\$ 10,000.00	\$ 3,200.00	\$ 16,000.00	\$ 2,541.00	\$ 12,705.00
34	Manhole Epoxy Lining (00490)	VF	8	\$ 1,000.00	\$ 8,000.00	\$ 900.00	\$ 7,200.00	\$ 1,189.00	\$ 9,512.00
35	Trench Resurfacing (00495)	SY	2,590	\$ 60.00	\$ 155,400.00	\$ 90.00	\$ 233,100.00	\$ 103.00	\$ 266,770.00
				Subtotal	\$ 1,591,352.00	Subtotal	\$ 2,142,241.00	Subtotal	\$ 1,617,921.50
WEARING SURFACES (00700)									
36	Concrete Curbs, Curb and Gutter (00759)	LF	351	\$ 70.00	\$ 24,570.00	\$ 10.00	\$ 3,510.00	\$ 66.30	\$ 23,271.30
37	Concrete Walks (00759)	SF	1,980	\$ 17.00	\$ 33,660.00	\$ 20.00	\$ 39,600.00	\$ 13.25	\$ 26,235.00
38	Concrete Driveways (00759)	SF	545	\$ 30.00	\$ 16,350.00	\$ 24.00	\$ 13,080.00	\$ 19.00	\$ 10,355.00
39	Retrofit Concrete Sidewalk Ramp (00759)	EA	1	\$ 8,000.00	\$ 8,000.00	\$ 5,000.00	\$ 5,000.00	\$ 3,377.00	\$ 3,377.00
				Subtotal	\$ 82,580.00	Subtotal	\$ 61,190.00	Subtotal	\$ 63,238.30
RIGHT OF WAY DEVELOPMENT AND CONTROL (01000)									
40	Landscape Restoration, Complete (01020)	LS	1		\$ 80,000.00		\$ 72,000.00		\$ 15,397.00
41	Remove and Rebuild Fencing (01050)	LF	200		\$ 20,000.00	\$ 70.00	\$ 14,000.00	\$ 8.50	\$ 1,700.00
				Subtotal	\$ 100,000.00	Subtotal	\$ 86,000.00	Subtotal	\$ 17,097.00
				TOTAL	\$ 2,091,932.00	TOTAL	\$ 2,472,931.00	TOTAL	\$ 1,837,385.80

Bid Complete & Signed?
 Addendum Acknowledged?
 Bid Bond & Power of Attorney?
 1st Tier Submitted?

X
X
X
X

X
2 OF 3
X
X

3rd Addendum acknowledged
 per OAR 137-047-0470(2)(a)(C)

CITY OF McMinnville

CHANDLERS ADDITION SANITARY SEWER REHABILITATION

Project No. 2022-9

PUBLIC IMPROVEMENTS CONTRACT

This Public Improvements Contract (“Contract”) for the Chandlers Addition Sanitary Sewer Rehabilitation Project (“Project”) is made and entered into on this ____ day of _____ 2024 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Enterprises NW dba Earth Works Excavation**, an Oregon corporation (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

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

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing Recitals and all of the following additional “Contract Documents”: bid documents, Oregon Department of Transportation 2021 Oregon Standard Specifications for Construction, Contractor’s Bid submitted in response thereto, and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than October 31, 2024, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Final Completion by no later than October 31, 2024. See **Section 23** for the definition of Final Completion

Section 3. Contractor’s Work

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Project.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor’s Project Manager will provide such written documentation.

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

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

Section 4. Contract Sum, Retainage, and Payment

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor a not to exceed unit price of ONE MILLION EIGHT HUNDRED THIRTY-SEVEN THOUSAND THREE HUNDRED EIGHTY-FIVE DOLLARS AND EIGHTY CENTS (\$1,837,385.80) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor. Contractor’s unit pricing is set forth in **Exhibit B**, attached hereto and incorporated by reference herein.

4.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill

the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 24**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 23**.

4.4. Except as provided in **Section 8.2**, the Contract Sum includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees required to perform the Work on the Project.

4.5. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

4.6. Contractor's unit prices and Contract Sum are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

4.7. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in Oregon Department of Transportation 2021 Oregon Standard Specifications for Construction and in ORS 279C.570.

Section 5. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this project are those published by the Bureau of Labor and Industries (BOLI), effective January 5, 2024, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages

actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 6. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

Section 7. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

Section 8. City's Rights and Responsibilities

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

8.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one-tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

8.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the

Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

8.5. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2023 – 24 and 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 21**.

Section 9. City’s Project Manager

The City’s Project Manager is Matt Bernards. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 10. Contractor’s Project Manager

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

Section 11. Project Information

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

Section 12. Duty to Inform

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City’s Project Manager. Any delay or failure on the part of the City to

provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

Section 13. Subcontractors and Assignments

13.1. Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 14. Contractor's Responsibilities

In addition to the Contractor's Responsibilities set forth in the General Conditions and Supplementary Conditions included in the Contract Documents, Contractor also agrees to the following, some of which may also be set forth in the General Conditions:

14.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

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

14.3. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with

Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to “subcontractor” in this Contract mean a subcontractor at any tier.

14.4. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor’s use of such subcontractor(s) and subcontractor’s negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor’s subcontractors also comply with, and be subject to, the provisions of this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

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

14.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor’s responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

14.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and

ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

14.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.9. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

14.10. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

14.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

14.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.13. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

14.14. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under

ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

14.15. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

14.16. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

14.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

14.17.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

14.17.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

14.17.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

14.18. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

14.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.17.1, 14.17.2, and 14.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

14.20. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

14.21. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

14.22. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

14.23. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

14.24. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

14.25. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

14.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

Section 15. Subcontractor Requirements

15.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

15.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in **Subsection 15.1.1** above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

15.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 15.1.1 and 15.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

15.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

15.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

Section 16. Environmental Laws

16.1. Contractor shall perform all Work in compliance with permits for the Project issued by the US Army Corp of Engineers, Oregon Department of State Lands, and Oregon Department of Environmental Quality, and shall maintain a copy of these permits on the job site at all times.

16.2. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

Forest Service	Agriculture, Department of
Defense, Department of	Soil Conservation Service
Environmental Protection Agency	Army Corps of Engineers
Bureau of Sport Fisheries and Wildlife	Interior, Department of
Bureau of Land Management	Bureau of Outdoor Recreation
Bureau of Reclamation	Bureau of Indian Affairs
Occupational Safety and Health Administration	Labor, Department of
Coast Guard	Transportation, Department of
	Federal Highway Administration

STATE AGENCIES:
Environmental Quality, Department of
Forestry, Department of
Human Resources, Department of
Soil and Water Conservation Commission
State Land Board

Agriculture, Department of
Fish and Wildlife, Department of
Geology and Mineral Industries, Department of
Land Conservation and Development Commission
National Marine Fisheries Service (NMFS)
State Engineer
Water Resources Board

LOCAL AGENCIES:
County Courts
Port Districts
County Service Districts
Water Districts

City Council
County Commissioners, Board of
Metropolitan Service Districts
Sanitary Districts
Fire Protection Districts

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

16.3. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

16.4. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

16.5. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

Section 17. Indemnity

17.1. Refer to the City of McMinnville standard 00100 General Conditions section 00170.72 – Indemnity/Hold Harmless attached with the Bid / Contract Documents.

Section 18. Insurance

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

18.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an “occurrence” form policy. This

coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

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

18.1.3. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality (“DEQ”) and Federal Environmental Protection Agency (“EPA”) clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

18.1.4. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

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

18.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor’s liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor’s Commercial General Liability, Automobile Liability, Pollution Liability and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and

completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: “The City of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

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

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

Section 19. Bonding Requirements

19.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

19.2. Maintenance/Warranty Bond. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

19.3. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety’s liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction

Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

19.4. **Bond Claims.** Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 20. Warranty

20.1. Contractor shall provide a full warranty for manhole Work for a period of three (3) years and all other Work for a period of one (1) year from the date of Final Acceptance of all Work.

20.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all manhole Work for a period of three (3) years and all other Work for a period of one (1) year from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within three (3) years for manholes and one (1) year for all other Work following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The warranty period shall, with relation to such required repair, start over from the date of completion of such repair.

20.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

20.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

Section 21. Early Termination; Default

21.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

21.1.1. By mutual written consent of the parties;

21.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

21.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

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

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

21.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 27**, for which Contractor has received payment or the City has made payment.

Section 22. Suspension of Work

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

Section 23. Final Completion and Liquidated Damages

23.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is complete, and create a project corrections list ("punch list") of any remaining items to be completed before the Final Completion date of October 31, 2024. All punch list items must be fully addressed and corrected on or before the Final Completion date.

23.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if all Work is not fully completed by October 31, 2024, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the

actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount of ONE THOUSAND SEVEN HUNDRED EIGHTY-SIX DOLLARS AND EIGHTY-TWO CENTS (\$1,786.82) [*amount calculated per General Conditions 00180.85(b)(1)*] per day for each and every day that expires after October 31, 2024. Retainage will not be released before Final Completion is established.

23.3. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Final Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Completion. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

23.4. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to circumstances beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that would preclude any reasonable Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 24. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

Section 25. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Yamhill County Circuit Court. In the alternative, at the City’s election, the parties may follow the dispute resolution procedures found in the Special Provisions.

Section 26. Access to Records

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

Section 27. As-Builts

Contractor must provide redlined as-builts prior to Final Acceptance. As-builts should be provided in electronic format.

Section 28. Notices

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

To City: City of McMinnville
Attn: Matt Bernards
230 NE Second Street
McMinnville, OR 97128

To Contractor: _____
Attn: _____

Section 29. Miscellaneous Provisions

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

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

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

29.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

29.5. 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.

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

29.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

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

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

29.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

29.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

29.12. 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 Contract, the first day from which the designated period of time begins to run shall not be included.

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

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

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

29.16. 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 Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

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

29.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

29.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

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

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

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

CITY OF McMinnville

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

David Ligtenberg, City Attorney
City of McMinnville, Oregon



City of McMinnville
Community Development Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7312
www.mcminnvilleoregon.gov

STAFF REPORT

DATE: April 10, 2024
TO: Jeff Towery, City Manager
CC: Geoffrey Hunsaker, Public Works Director
CC: James Lofton, City Engineer
CC: David Renshaw, Public Works Superintendent
CC: Bill Howard, Earth Works Excavation
FROM: Matt Bernards, Engineering Technician
SUBJECT: 2024 Slurry Seal Contract Award

Report in Brief:

This action is the consideration of a resolution to award a public improvement contract in the amount of \$316,316.00 to Doolittle Construction LLC for the construction of the 2024 Slurry Seal project, Project 2024-3.

Background:

In a continuing effort to improve the quality and service life of McMinnville’s streets, this project will slurry seal approximately 148,803 SY of residential street surfaces. The paving work is broken into 9 areas: Morgan Lane, NE 17th St, Horizon Dr, West Hills Dr, NE 27th St, SE Cowlis St, NE 24th St, Goucher St, and Greenbriar Place. The project vicinity map (attachment 2) reflects the work areas covered by the contract.

Discussion:

On Monday, April 1, 2024, five bids were received, opened, and publicly read for the construction of the 2023 Slurry Seal project. The bid results are as follows:

- | | |
|-------------------------------|--------------|
| • Pave Northwest, Inc. | \$337,450.39 |
| • One Way Trigger, LLC | \$322,725.70 |
| • VSS International, Inc. | \$394,325.00 |
| • Blackline, Inc | \$329,570.09 |
| • Doolittle Construction, LLC | \$316,316.00 |

The bids were checked for completeness, including a review of the following:

- Was the bid submitted, on time, in a properly sealed and labeled envelope?
- Was the Bid Form properly filled out and executed?
- Was a Bid Bond included?
- Were the project addenda acknowledged?
- Was the First Tier Subcontractor Form turned in on time?

All five of the bids were complete and met the City's requirements. A detailed breakdown of the received bids is on file in the Engineering Department. A comprehensive copy of the bid tabs is shown in attachment 3.

The bid from Doolittle Construction, LLC, in the amount of \$316,316.00, was deemed to be the lowest responsible and responsive bid.

The project work is expected to start no earlier than July 1, 2024 and be completed by August 16, 2024.

Attachments:

1. Resolution 2024-20
2. Project Vicinity Map
3. Project Bid Results
4. Construction Contract

Fiscal Impact:

Project funding is included in the proposed FY24-25 Transportation Fund (45) budget for the project work.

Recommendation:

Staff recommends that the City Council adopt the attached resolution awarding the public improvement contract for the construction of the 2024 Slurry Seal project, Project 2024-3, in the amount of \$316,316.00, to Doolittle Construction, LLC

RESOLUTION NO. 2024 - 20

A Resolution awarding the contract for the 2024 Slurry Seal project, Project 2024-3, to Doolittle Construction LLC

RECITALS:

Whereas, In a continuing effort to improve the quality and service life of McMinnville’s streets, this project will slurry seal approximately 148,803 SY of residential street surfaces. The paving work is broken into 9 areas: Morgan Lane, NE 17th St, Horizon Dr, West Hills Dr, NE 27th St, SE Cowlis St, NE 24th St, Goucher St, and Greenbriar Place.

Whereas, At 2:00pm on April 1, 2024, 5 bids for the 2024 Slurry Seal project, Project 2024-3, were publicly opened and read aloud. The bid from Doolittle Construction LLC., in the amount of \$316,316.00, met all the bid requirements and should be considered the lowest responsible and responsive bid.

Whereas, Project funding is included in the proposed FY24-25 Transportation Fund (45) budget for the slurry seal work.

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

1. That entry into a public improvement contract with Doolittle Construction LLC, in the amount of \$316,316.00, with a substantial completion date of August 16, 2024 for the 2024 Slurry Seal project, Project 2024-3, is hereby approved.
2. That the City Manager is hereby authorized and directed to execute the public improvement contract.
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 23rd day of April 2024 by the following votes:

Ayes: _____

Nays: _____

Approved this 23rd day of April 2024.

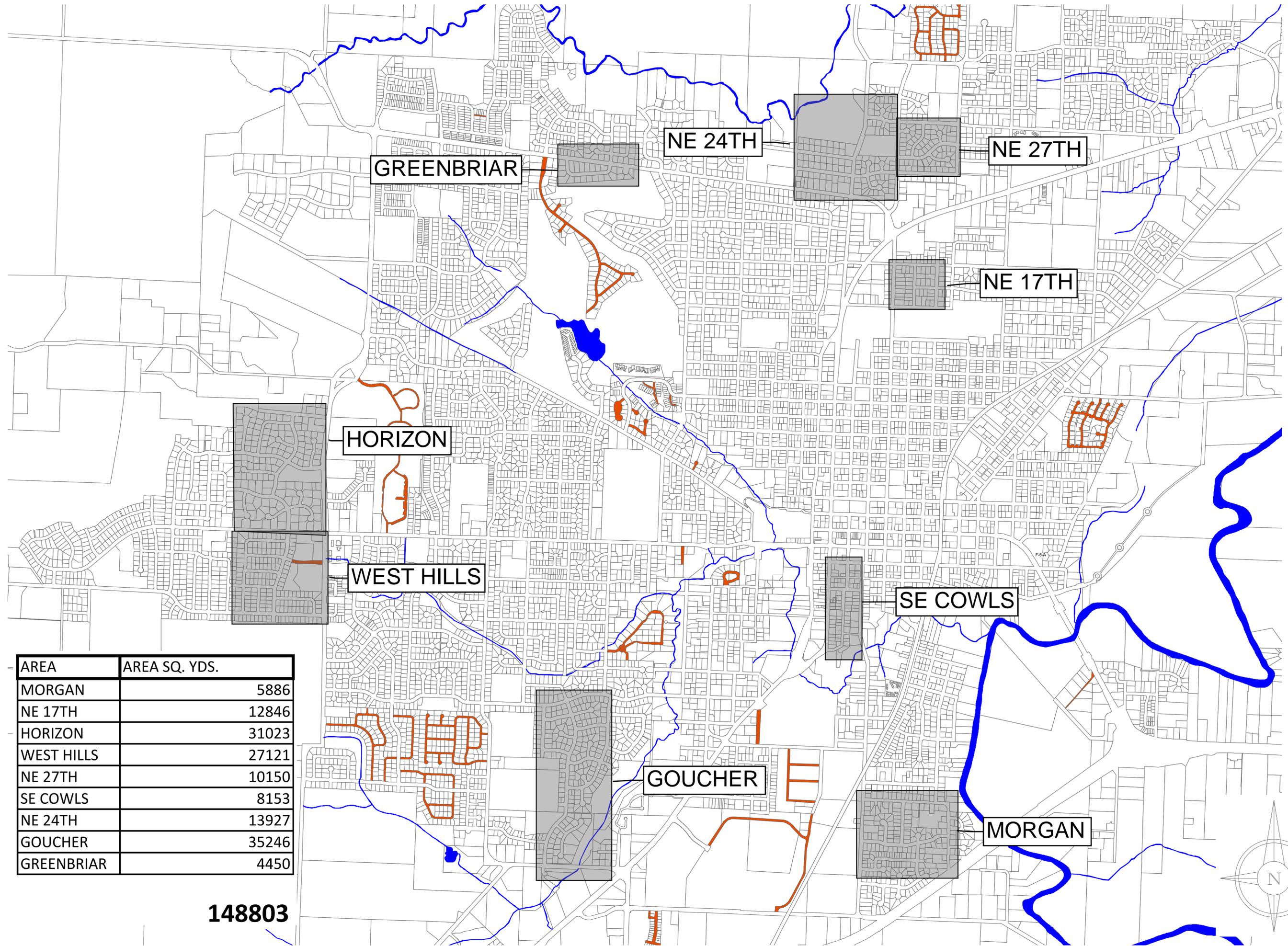
City Council President

Approved as to form:

Attest:

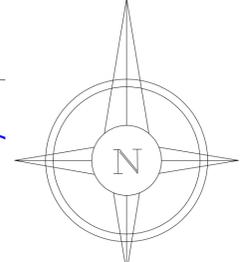
City Attorney

City Recorder



AREA	AREA SQ. YDS.
MORGAN	5886
NE 17TH	12846
HORIZON	31023
WEST HILLS	27121
NE 27TH	10150
SE COWLS	8153
NE 24TH	13927
GOUCHER	35246
GREENBRIAR	4450

148803

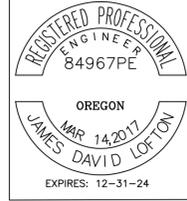


SCALE: N/A
 Drawn: MB
 Checked: Date: March 5, 2024
 Project No. 2024-3
 SHEET 1 of 10

CITY OF McMINNVILLE, OREGON
 ENGINEERING DEPARTMENT

2024 SLURRY SEAL
 VICINITY MAP

City of McMinnville



2024 SLURRY SEAL				Doolittle Construction, LLC		One Way Trigger, LLC		VSS International, Inc		Pave Northwest, Inc		Blackline, Inc	
ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
TEMPORARY FEATURES AND APPURTENANCES (00200)													
1	Mobilization (00210)	LS	ALL		\$ 20,000.00		\$ 30,500.00		\$ 15,000.00		\$ 16,000.00		\$ 12,500.00
2	Temporary Protection and Direction of Traffic (00221)	LS	ALL		\$ 28,470.60		\$ 9,500.00		\$ 59,398.55		\$ 4,500.00		\$ 15,000.00
WEARING SURFACES (00700)													
5	Type II Slurry Seal (00706)	CY	148803	\$ 1.80	\$ 267,845.40	\$ 1.90	\$ 282,725.70	\$ 2.15	\$ 319,926.45	\$ 2.13	\$ 316,950.39	\$ 2.03	\$ 302,070.09
				TOTAL	\$ 316,316.00	TOTAL	\$ 322,725.70	TOTAL	\$ 394,325.00	TOTAL	\$ 337,450.39	TOTAL	\$ 329,570.09

Bid Complete & Signed?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Addendum Acknowledged?	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A
Bid Bond & Power of Attorney?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
1st Tier Submitted?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

CITY OF McMinnville

2024 Slurry Seal
Project No. 2024-3

CONSTRUCTION CONTRACT

This Construction Contract (“Contract”) for the 2024 Slurry Seal Project No. 2024-3 (“Project”) is made and entered into on this _____ day of _____ 2024 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Doolittle Construction, LLC** (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

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

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing Recitals and all of the following additional “Contract Documents”: Invitation to Bid, Instructions to Bidders, Bid, Standard Construction Contract, Payment Bond, Performance Bond, Special Provisions, McMinnville General Conditions, all attached hereto, together with the Oregon Standard Specifications for Construction (2021 edition), published by the Oregon Department of Transportation, incorporated by this reference, and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than August 16, 2024, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Final Completion by no later than August 16, 2024. See **Section 222** for the definition of Final Completion

Section 3. Contractor’s Work

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Project.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor’s Project Manager will provide such written documentation.

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

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

Section 4. Contract Sum, Retainage, and Payment

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor a not to exceed unit price of **THREE HUNDRED SIXTEEN THOUSAND AND THREE HUNDRED SIXTEEN DOLLARS (\$316,316.00)** for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor. Unit Prices are as more particularly described in the Contract Documents.

4.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill

the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 23**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a **five percent (5%)** withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 22**.

4.4. Except as provided in **Section 8.2**, the Contract Sum includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees required to perform the Work on the Project.

4.5. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

4.6. Contractor's unit prices and Contract Sum are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

4.7. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in Special Provisions, McMinnville General Conditions, Oregon Standard Specifications for Construction (2021 edition) and in ORS 279C.570.

Section 5. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this project are those published by the Bureau of Labor and Industries (BOLI), effective January 5, 2024, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages

actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 6. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

Section 7. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

Section 8. City's Rights and Responsibilities

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

8.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one-tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

8.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the

Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

8.5. Award of this Contract is subject to budget appropriation. Funds are approved for 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 20**.

Section 9. City's Project Manager

The City's Project Manager is Matt Bernards. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 10. Contractor's Project Manager

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

Section 11. Project Information

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

Section 12. Duty to Inform

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to

provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

Section 13. Subcontractors and Assignments

13.1. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 14. Contractor's Responsibilities

In addition to the Contractor's Responsibilities set forth in the General Conditions and Supplementary Conditions included in the Contract Documents, Contractor also agrees to the following, some of which may also be set forth in the General Conditions:

14.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

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

14.3. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with, and be subject to, the provisions of this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

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

14.5. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

14.6. No person shall be discriminated against by Contractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

14.7. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.8. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

14.9. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

14.10. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

14.11. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.12. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

14.13. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

14.14. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the

person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

14.15. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

14.16. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

14.16.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

14.16.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

14.16.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

14.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

14.18. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.16.1, 14.16.2, and 14.16.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

14.19. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

14.20. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

14.21. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

14.22. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

14.23. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

14.24. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

14.25. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

Section 15. Subcontractor Requirements

15.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

15.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in **Subsection 15.1.1** above. A contractor

or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

15.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 15.1.1 and 15.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

15.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

15.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

15.6. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

15.7. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

15.8. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

Section 16. Indemnity

16.1. Refer to the City of McMinnville standard 00100 General Conditions section 00170.72 – Indemnity/Hold Harmless attached with the Bid / Contract Documents.

Section 17. Insurance

17.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder.

The policy or policies of insurance maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

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

17.1.2. Business Automobile Liability Insurance. If Contractor will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor has 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**.

17.1.3. Workers Compensation Insurance. Contractor and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

17.1.4. Insurance Carrier Rating. Coverages provided by Contractor 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.

17.1.5. Additional Insured & Termination Endorsements. Additional Insured coverage under Contractor'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.

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

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

Section 18. Bonding Requirements

18.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

18.2. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 19. Warranty

19.1. Contractor shall provide a full warranty for all Work for a period of **1 year** from the date of Final Acceptance of all Work.

19.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of **1 year** from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within **1 year** following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The **1 year** warranty period shall, with relation to such required repair, be extended **1 year** from the date of completion of such repair.

19.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in

the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

19.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

Section 20. Early Termination; Default

20.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

20.1.1. By mutual written consent of the parties;

20.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

20.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

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

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

20.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 26**, for which Contractor has received payment or the City has made payment.

Section 21. Suspension of Work

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

Section 22. Final Completion and Liquidated Damages

22.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is complete, and create a project corrections list ("punch list") of any remaining items to be completed before the Final Completion date of August 16, 2024. All punch list items must be fully addressed and corrected on or before the Final Completion date.

22.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if all Work is not fully completed by August 16, 2024 plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount of Five-Hundred Dollars (\$500.00) per day for each and every day that expires after **August 16, 2024**. Retainage will not be released before Final Completion is established.

22.3. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Final Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Completion. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

22.4. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to circumstances beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that would preclude any reasonable Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 23. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

Section 24. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Yamhill County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

Section 25. Access to Records

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

Section 26. Property of the City

26.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Contractor under this Contract shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Contractor as creator of such work shall be conveyed to the City upon request without additional compensation.

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

Section 27. Notices

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

To City: City of McMinnville
Attn: Matt Bernards
230 NE Second Street
McMinnville, OR 97128

To Contractor: _____
Attn: _____

Section 28. Miscellaneous Provisions

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

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

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

28.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the McMinnville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

28.5. 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.

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

28.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

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

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

28.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

28.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

28.12. 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 Contract, the first day from which the designated period of time begins to run shall not be included.

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

28.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions

and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

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

28.16. 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 Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

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

28.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

28.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

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

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

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

By: _____

Print Name: _____

As Its: _____

Employer I.D. No. _____

CITY:

CITY OF McMINNVILLE

By: _____

Print Name: _____

As Its: _____

APPROVED AS TO FORM:

David Ligtenberg, City Attorney
City of McMinnville, Oregon

Final Action:

Approved Disapproved

Liquor License Recommendation

BUSINESS NAME / INDIVIDUAL: Schone Tal Cellars LLC
BUSINESS LOCATION ADDRESS: 328 NE Davis Street
LIQUOR LICENSE TYPE: Winery Primary Location

Is the business at this location currently licensed by OLCC

Yes No

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

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

EXEMPTIONS:
(list any exemptions)

Tritech Records Management System Check: Yes No

Criminal Records Check: Yes No

Recommended Action: Approve Disapprove



Chief of Police / Designee

City Manager / Designee

LIQUOR LICENSE APPLICATION

Page 1 of 4

Check the appropriate license request option:

[New Outlet](#) | [Change of Ownership](#) | [Greater Privilege](#) | [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: (Use the DISTT form [HERE](#))

Limited On-Premises

Off Premises

Warehouse

Wholesale Malt Beverage and Wine

LOCAL GOVERNMENT USE ONLY

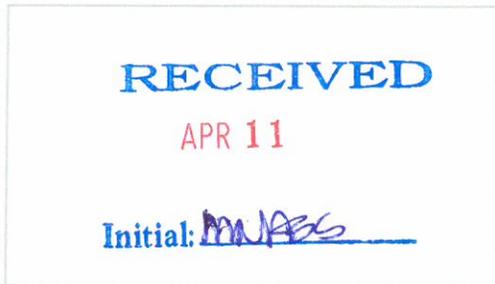
LOCAL GOVERNMENT
After providing your recommendation, return this form to the applicant **WITH** the recommendation marked below

Name of City OR County (not both)

Please make sure the name of the Local Government is printed legibly or stamped below

Date application received:

Optional: Date Stamp Received Below



- Recommend this license be granted
- Recommend this license be denied
- No Recommendation/Neutral

Printed Name

Date

Signature

SchöneTal Cellars LLC

Trade Name



STAFF REPORT

DATE: April 23, 2024
TO: Mayor and City Councilors
FROM: David Ligtenberg, City Attorney
SUBJECT: An Ordinance Amending the McMinnville Municipal Code to Adopt a Local Definition of the Word "Established," and Adopting Additional Time, Place, or Manner Regulations for Camping, as well as Banning Open Flames

STRATEGIC PRIORITY & GOAL:



COMMUNITY SAFETY & RESILIENCY

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

OBJECTIVE/S: Provide exceptional police, municipal court, utility services and public works

Report in Brief:

After recent discussions with regard to camping regulations and enforcement in the City of McMinnville, the Council has requested the consideration of portions of the City's regulations on camping on City property. Those changes being considered are: 1) redefining the word "Established" with regard to campsites to meet State law considerations and to allow for better enforcement of the City's current camping code; 2) incorporating "buffer zones" around schools where camping would be prohibited at all times; and 3) banning the use of open flames in or around campsites to assuage fire risks and corresponding public safety concerns.

Background:

The City first formally prohibited camping in 2018. Shortly after, the 9th Circuit published *Martin v. Boise*, indicating that a city's total prohibition of camping is unlawful under the 8th Amendment unless the city has available shelter beds. The City responded in 2019 by implementing time, place, and manner regulations for camping on City property, rather

than a full prohibition. In 2021, the City adopted a minor clarification to the code, defining the word “Established.”

The State, shortly after the City’s most recent amendment in 2021, codified the holdings of *Martin v. Boise*, clarified the use of time, place, and manner regulations with regard to camping regulations, and legislated certain parameters and procedures for the removal of an “established camping site,” including a 72-hour notice requirement.

Discussion:

A. Definition of “Established”

Under ORS 174.010, when interpreting state statutes, it should be presumed that all parts of the statute are to be given effect, and no part shall be omitted that has been inserted by the Legislature. Applying that concept to HB 3124 (ORS 195.505), if the Legislature had intended the 72-hour notice requirement to apply to any campsite, it could have said as much. Rather, the Legislature used the term “established camping site,” which means that the modifier should be given meaning.

Further, while the Legislature did not define the word “established” in that context, it also provided in ORS 195.505(11) that “[a]ny law or policy of a city or county that is more specific . . . preempts contrary provisions of this section.” Adopting a local definition for an otherwise-undefined term is an example of adding specificity.

When the City of McMinnville adopted a definition of the word “Established” in its code regulating camping on City property, it was apparently attempting to clarify a particular enforcement issue—it was not presumptively defining what would thereafter become a relevant term in State law. However, when the State then used the term “established camping site” in ORS 195.505, the City’s definition already fit into the most conservative approach to the 72-hour notice requirement. Namely, if a campsite is immediately established, then any campsite requires 72 hours notice prior to abatement. Thus, since 2021, the McMinnville Police Department policy has treated every placement of camp facilities and/or camp paraphernalia as an “established camping site,” regardless of the duration it had been in place.

However, a number of Oregon jurisdictions have already recognized what appears to be a meaningful distinction between a “campsite” and an “established campsite.” In Medford, Bend, Salem, and Corvallis, cities have defined “established” as being in existence at least some period of time (between 24 hours and 5 days).

A local definition will allow immediate abatement of any campsite in a City-owned location where camping is expressly prohibited in MMC § 8.36.030. Further, in locations where camping is permitted throughout the City, such camping is expressly limited to between

the hours of 9:30 p.m. to 6:30 a.m. In those locations, any campsite remaining after 6:30 a.m. can be immediately abated. Either of these scenarios providing that the campsite has not been in place for the period of time that would then defined it as “established.” See Exhibit A for a map of where those scenarios would play out within the City. Based on rough measurements from that map, out of 138.6 miles of public roadway in the City, camping is prohibited along 129 miles. Considering that around 3.5 of the remaining miles are physically restricted, that leaves around 6 miles along which camping is allowed. This is in addition to any public property that is neither park, parking lot, residential, or within the Urban Renewal area.

If the City of McMinnville adopts such a local definition, the McMinnville Police Department requests setting the definition at 5 days. This length of time would allow officers to note a legal campsite on an evening prior to a holiday weekend and still allow for immediate abatement if the camp were still in place after the weekend.

The definition drafted in the attached Ordinance uses the language, “having been in a single location, or returned or relocated to within 1,000 feet of a single location, during a period of at least 5 days.” The 1,000 foot distance is a term carried over from the previous definition as set by Council to prevent short moves, or quick removals and returns, from flouting the intent of the code.

Finally, the proposed definition also expressly states that if a law enforcement officer is unsure of the age of a campsite, the officer should default to treating it as established, and should only treat it as non-established if evidence exists that the campsite has been in place for less than five days. This evidence could take a variety of forms, including whether a space was cleared of all campsites fewer than five days prior, whether patrol officers had observed the area free from campsites, or other credible evidence. Regardless, the proposed definition does not place homeless individuals in the position of having to prove that their tent was in place for more than five days.

B. Additional Time, Place, or Manner Regulations

Currently, all schools within the City of McMinnville already lie in areas where camping is strictly prohibited at all times. This is due mostly to their being located within residential zones. Despite recent discussions implying that portions of Patton Middle School (specifically along its east border at McDaniel Ln.) and Sue Buel Elementary School (specifically along Booth Bend Rd.) do not fall within this otherwise general ban area, more careful scrutiny of the map indicates that only about 50 feet of McDaniel Ln. are actually affected. A 250-foot buffer zone around elementary and secondary schools would not fundamentally change anything that is not already prohibited, but would explicitly prohibit camping adjacent to school grounds, and along either side of all streets abutting such property—bringing schools in line with the current code with regard to residential zones, if zoning changes or future schools were ever implicated by these factors.

It should be noted that camping during the day (after 6:30 a.m.) has always been prohibited in any of these areas—as it is everywhere in the City. And, as noted, any camping within residential zones—where all McMinnville schools fall—is prohibited at all times. The updated definition of “established,” above, is a measure that may allow for greater enforcement in these areas, allowing abatement of camps that are not yet “established.”

Another discussed expansion involved some consideration of routes that students may walk to schools. The attached, proposed Ordinance does not add additional regulation in this vein for three reasons. 1) The proposed 250-foot buffer now already includes every street adjacent to school lots; 2) Routes already designated as “Walk-to-School Routes” within City planning documents encompass a significant proportion of major routes in the City (see Exhibit B), making such a standard overly broad; and 3) efforts to define particular routes based on actual student counts or paths are likely to be frequently changing, vague, or overly burdensome for the City or the School District to support with definite numbers.

C. Open Flame Ban

ORS 195.530 (titled “Noncamping Use of Public Property by Homeless Individuals”), section (2) states, “Any city or county law that regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regard to persons experiencing homelessness.” Section (1)(A) of the statute states, “‘Keeping warm and dry’ means using measures necessary for an individual to survive outdoors given the environmental conditions,” and section (1)(B) further states, “‘Keeping warm and dry’ does not include using any measure that involves fire or flame.”

Citizen concerns about open fires are a significant driver of the calls for service received by the City with regard to campsites on City property. In the warmer, dryer months of the year, the overall concern would understandably be that these open fires would result in out-of-control wildfires that could endanger people and property in the surrounding area. In the cold, wet months of the year, the concern has tended to focus on the potential danger to the occupants of tents or other structures because they tend to build these open fires very close to, or inside, such tents or structures. Additionally, fires on sidewalks can cause damage to City property or danger for people walking by. Fires on other City property may damage plants or other City-owned property, and will likely leave a mess for City staff to clean.

D. Other Amendments

Note that three additional changes are being proposed by the attached Ordinance for the sake of clarity. First, the definition of “Campsite” is being changed to accommodate the fact that it previously contained the word “established” within the definition. This is not intended

to change the meaning or operation of any portion of the code, but to preclude any confusion with the adoption of a functional local definition of “established.”

Second, MMC § 8.36.030(A)(4) already prohibited any camping within any residential zone, as defined in MMC Title 17. Technically, based on other definitions within Title 17, that would not include the far side of the street where a residential zone ended at a street. Such strict definition does not fit the intent of the code, nor reasonable enforcement practices. This clarification indicates that when a residential zone ends at a street, both sides of that street are to be considered residential for purposes of this prohibition.

Third, MMC § 8.36.040(D) referenced ORS 203.079. That reference has been renumbered in State law and is being updated to properly reflect ORS 195.505.

Attachments:

1. Ordinance 5144: An Ordinance Amending McMinnville Municipal Code Section 8.36.010 to Adopt a Local Definition of the Word “Established” for Purposes of Camping; and Section 8.36.030 Adopting Additional Time, Place, or Manner Regulations for Camping; and Banning Open Flames
2. Exhibit A: Camping Code Practical Map
3. Exhibit B: Walk-To-School Route Plans

Recommendation:

1. The City Council may adopt Ordinance 5144 as attached. This will define “Established” with regard to campsites, incorporate additional time, place, or manner restrictions, and ban open flames in or around campsites.
2. The City Council may direct staff to amend Ordinance 5144 for introduction at a later date.
3. The City Council may reject Ordinance 5144, leaving the City’s camping code (MMC Chapter 8.36) in its current state.

ORDINANCE NO. 5144

AN ORDINANCE AMENDING MCMINNVILLE MUNICIPAL CODE SECTION 8.36.010 TO ADOPT A LOCAL DEFINITION OF THE WORD “ESTABLISHED” FOR PURPOSES OF CAMPING; AND SECTION 8.36.030 ADOPTING ADDITIONAL TIME, PLACE, OR MANNER REGULATIONS FOR CAMPING AND BANNING OPEN FLAMES

RECITALS:

WHEREAS, the City of McMinnville recognizes the social nature of the problem of homeless individuals camping on public property; and

WHEREAS, the City seeks to implement a policy that ensures the most humane treatment for removal of homeless individuals camping on public property; and

WHEREAS, the State Legislature explicitly allowed cities to add specificity to the procedural requirements of ORS 195.505; and

WHEREAS, ORS 195.505 requires certain procedures for camp removal policies with regard to an “established camping site,” but does not further define what it would mean for a camping site to be “established”; and

WHEREAS, the City now adopts a local definition of the word “established” to allow better enforcement of its reasonable time, place, and manner regulations with regard to camping; and

WHEREAS, the City also desires to update the current code to allow for legal camping during reasonable time periods, while protecting sensitive areas of the City that are disproportionately impacted by the negative effects of such activity, particularly local schools; and

WHEREAS, the City intends to ban open flames in any campsite on public property as an obvious safety hazard;

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

1. McMinnville Municipal Code Section 8.36.010 is amended as follows: *[underlined language is new, ~~striketrough~~ language is to be repealed, and ellipses (. . .) indicate existing code which remains unchanged but is omitted from this ordinance for the sake of brevity].*

8.36.010 Definitions.

For the purpose of this chapter, the following definitions will apply:

“Camp” or “camping” means to pitch, erect, create, use, or occupy camp facilities for the purposes of habitation, as evidenced by the use of camp paraphernalia.

“Camp facilities” include, but are not limited to, tents, huts, temporary shelters, or vehicles.

“Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-city designated cooking facilities and similar equipment.

“Campsite” means any place where one or more persons have ~~established~~ located temporary sleeping accommodations by use of camp facilities and/or camp paraphernalia.

“City property” means any real property or structures owned, leased or managed by the city, including public rights-of-way.

“Designated temporary campsite” means a campsite that is authorized by Sections 8.36.020 through 8.36.040.

~~“Established” means the creation, installation, or placement of camp facilities and/or camp paraphernalia. Camp facilities and/or camp paraphernalia are considered to establish a new campsite if moved more than 1,000 feet from the prior location. having been in a single location, or returned or relocated to within 1,000 feet of a single location, during a period of at least 5 days. If law enforcement personnel do not have evidence about the age of a campsite, law enforcement personnel should presume it is an established campsite.~~

....

2. Section 8.36.030 is amended as follows:

8.36.030 Prohibited camping.

A. Except as expressly authorized by this code, it is unlawful at all times for any persons to establish or occupy a campsite on the following city property:

1. All park areas;
2. All public property located within the boundaries of the McMinnville urban renewal area;
3. All publicly owned or maintained parking lots; and

4. All public property located within an area zoned for residential use under MMC Title 17. Whenever an area zoned for residential use abuts another zone at a street, the public right-of-way on both sides of that street shall be considered within an area zoned for residential use for purposes of this Section.
5. Within 250 feet from a lot or parcel containing an elementary or secondary school.

....

F. No person shall start or maintain any fire or open flame in or around a campsite.

3. Section 8.36.040 is amended as follows:

8.36.040 Penalties and enforcement.

....

D. The provisions of this chapter will be enforced in accordance with ORS ~~203.079~~195.505 or until released by the city prosecutor. Vehicles that are being held by the city under this chapter will be released to the legal owner or interest holder who has evidence of the following: (1) ownership or legal right to possession; and (2) valid, current automobile insurance covering the vehicle.

4. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 23th day of April 2024 by the following votes:

Ayes: _____

Nays: _____

City Council President

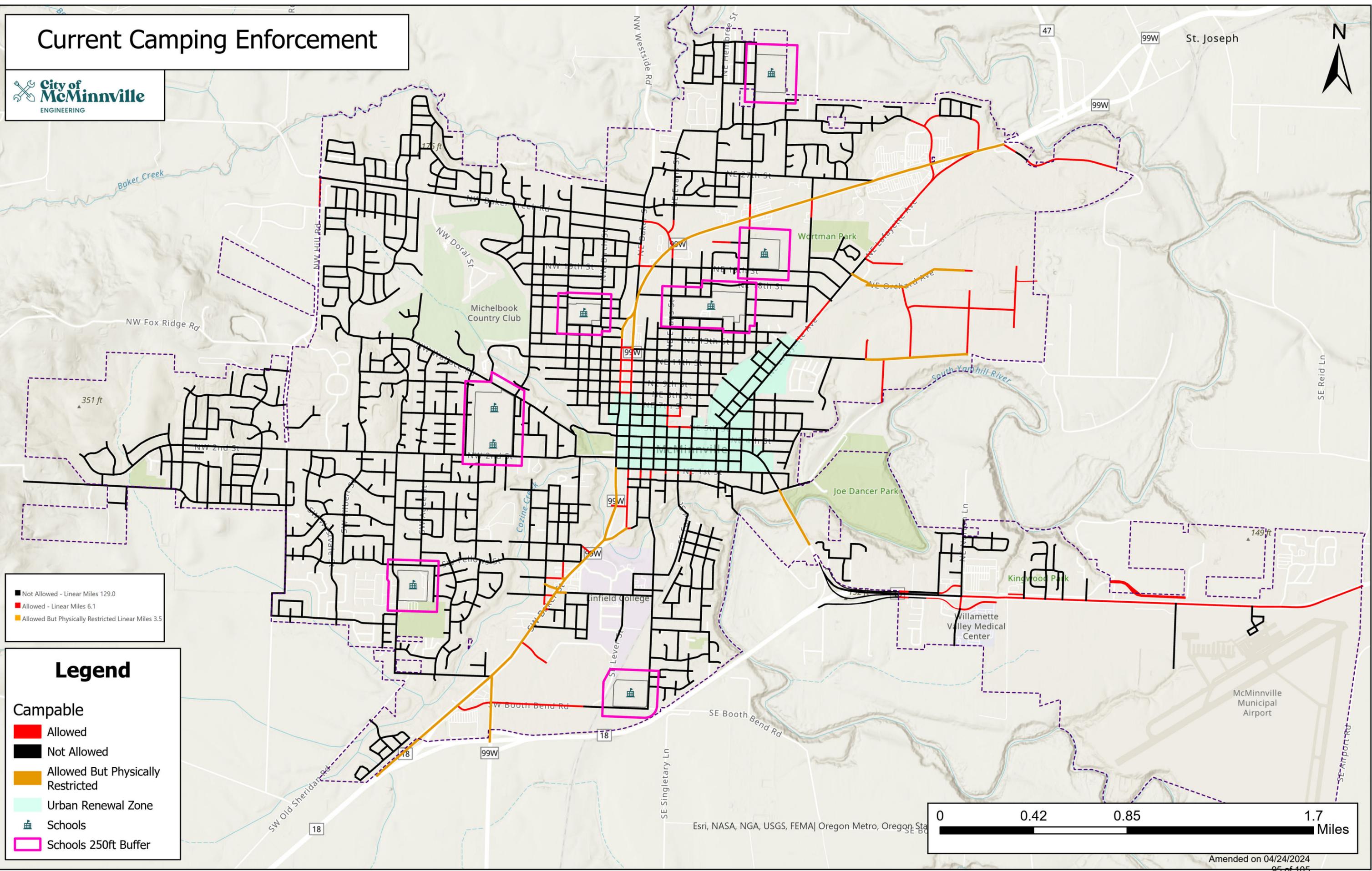
Approved as to form:

Attest:

City Attorney

City Recorder

Current Camping Enforcement

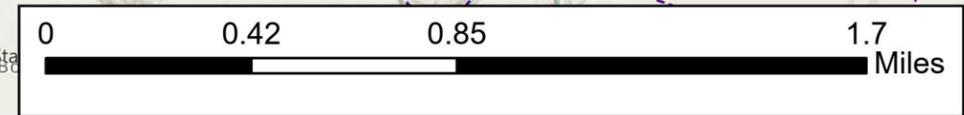


■ Not Allowed - Linear Miles 129.0
■ Allowed - Linear Miles 6.1
■ Allowed But Physically Restricted Linear Miles 3.5

Legend

Campable

- Allowed
- Not Allowed
- Allowed But Physically Restricted
- Urban Renewal Zone
- Schools
- Schools 250ft Buffer



Esri, NASA, NGA, USGS, FEMA | Oregon Metro, Oregon State



Transportation System Plan



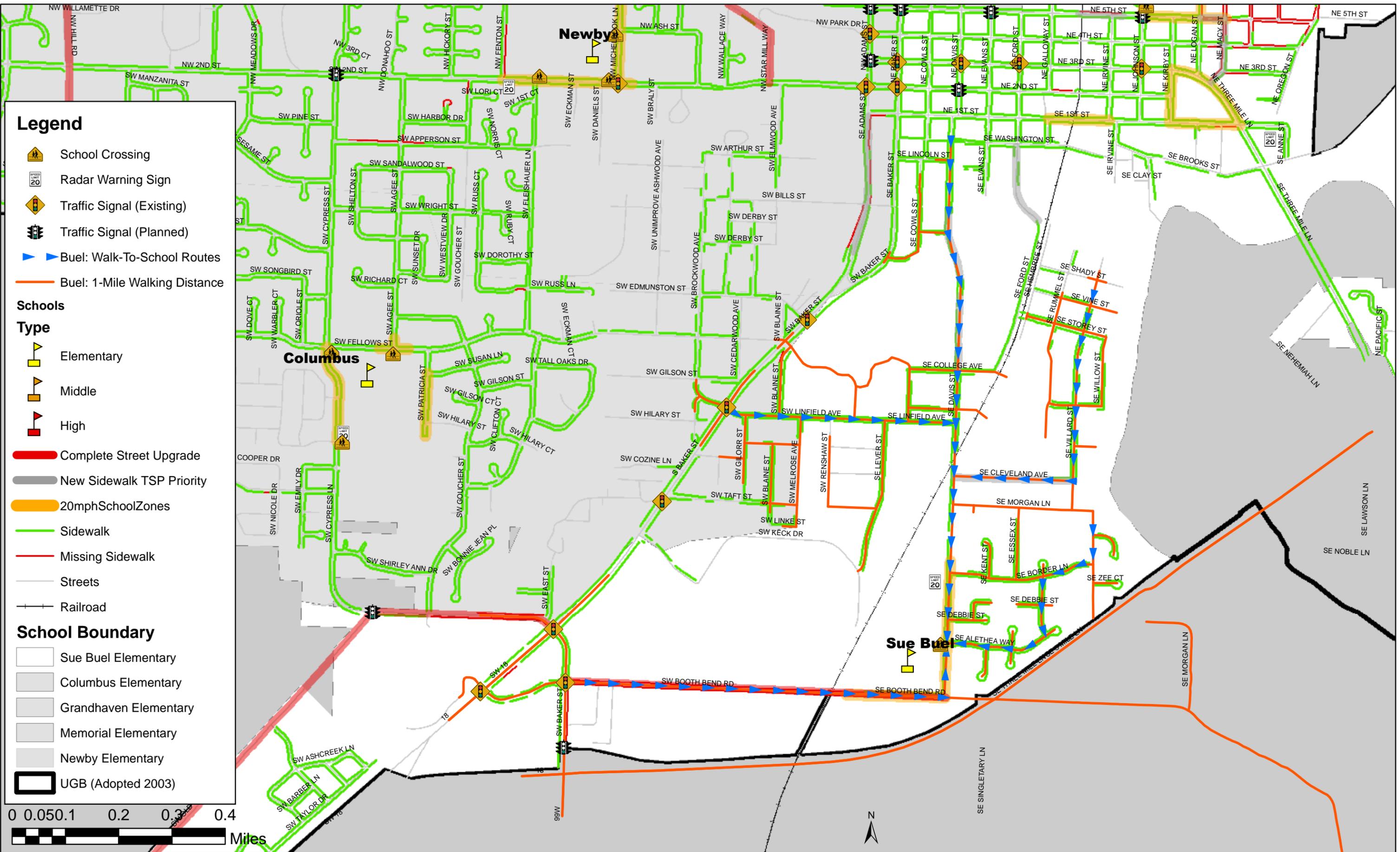
J Walk-To-School Route Plans

This appendix summarizes the McMinnville Walk-To-School Route Plans for each of the seven existing schools:

- Sue Buel Elementary
- Grandhaven Elementary
- Memorial Elementary
- Newby Elementary
- Columbus Elementary
- Patton Middle School
- Duniway Middle School
- McMinnville High School

These route plans were developed based on recommended practices and procedure as outlined in the *School Administrator's Guide to School Walk Routes and Student Pedestrian Safety* (Washington Traffic Safety Commission and Washington State Department of Transportation). Based on the McMinnville School District policy on walking distance for elementary (1 mile) and middle schools (1 ½ mile), walk routes were identified while considering the following:

- routes that provide the greatest physical separation between walking children and traffic
- exposure of children to the lowest vehicular speeds and volume
- minimization of street and rail crossings, targeting designated crosswalks and traffic signals where possible, and
- walk route plans do not necessarily need to cover all neighborhood streets.



Legend

- School Crossing
- Radar Warning Sign
- Traffic Signal (Existing)
- Traffic Signal (Planned)
- Buel: Walk-To-School Routes
- Buel: 1-Mile Walking Distance

Schools

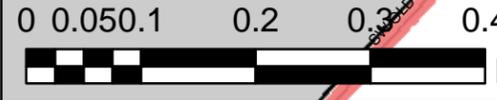
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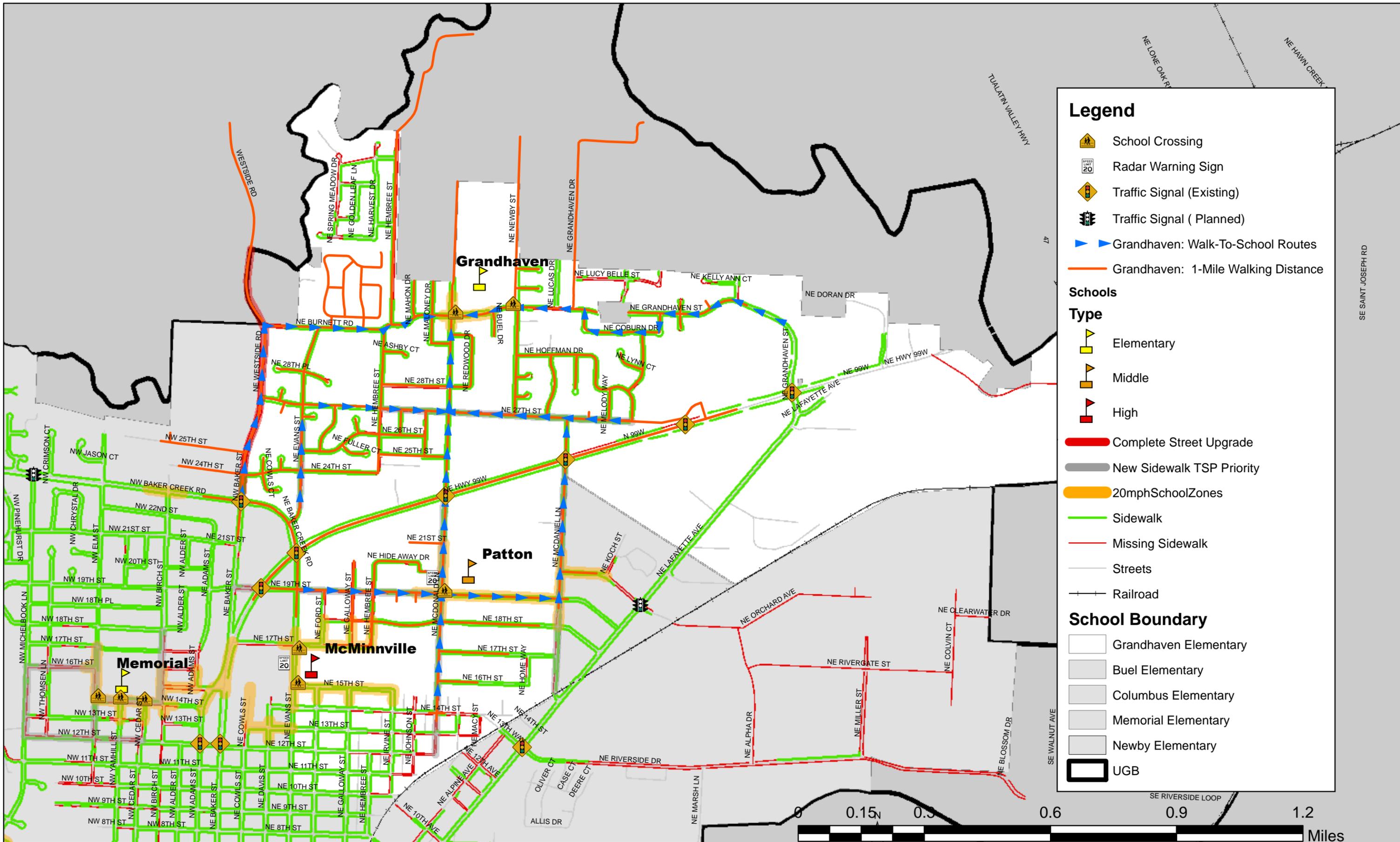
- Elementary
- Middle
- High

- Complete Street Upgrade
- New Sidewalk TSP Priority
- 20mph School Zones
- Sidewalk
- Missing Sidewalk
- Streets
- Railroad

School Boundary

- Sue Buel Elementary
- Columbus Elementary
- Grandhaven Elementary
- Memorial Elementary
- Newby Elementary
- UGB (Adopted 2003)





Legend

- School Crossing
- Radar Warning Sign
- Traffic Signal (Existing)
- Traffic Signal (Planned)
- Grandhaven: Walk-To-School Routes
- Grandhaven: 1-Mile Walking Distance

Schools

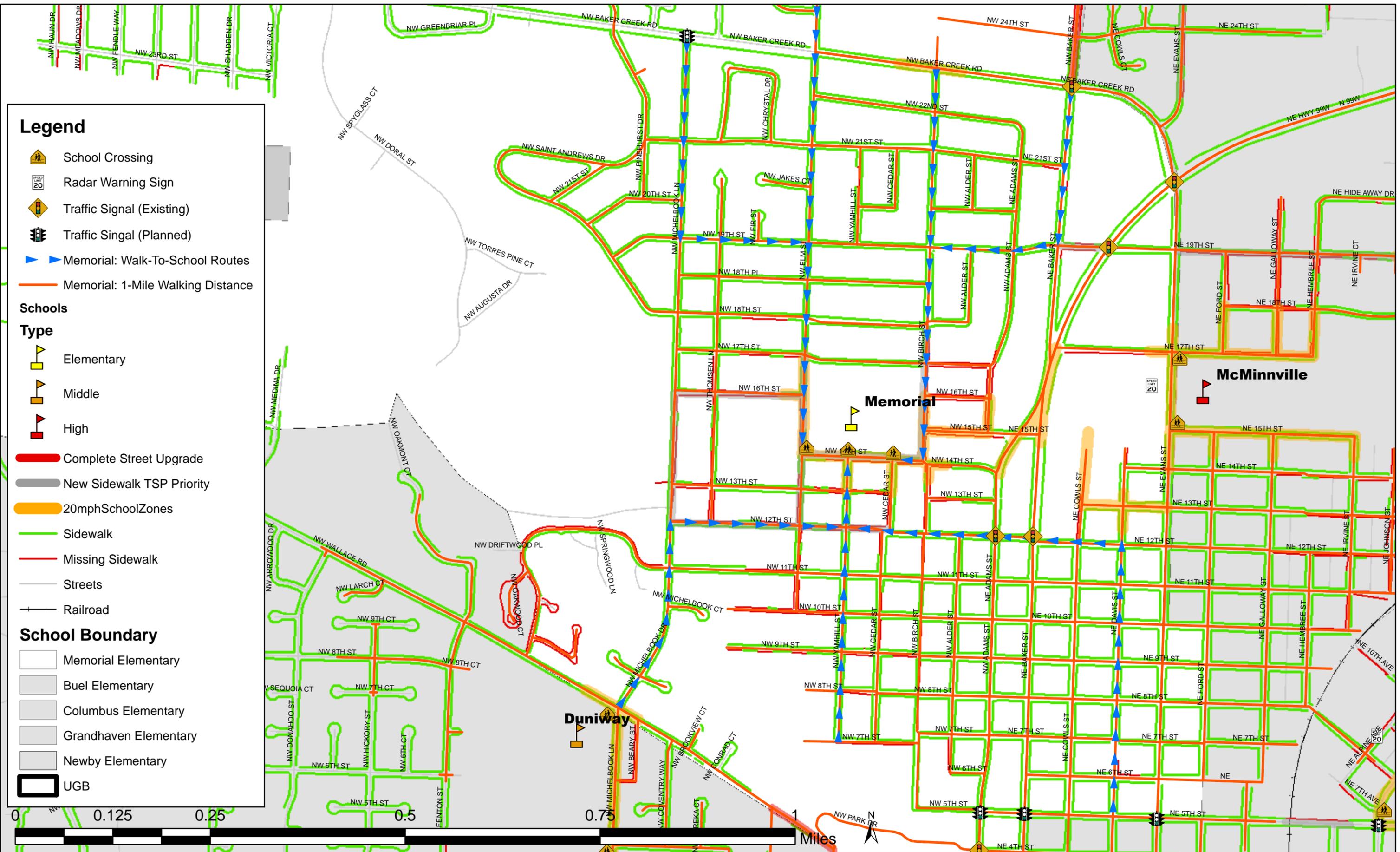
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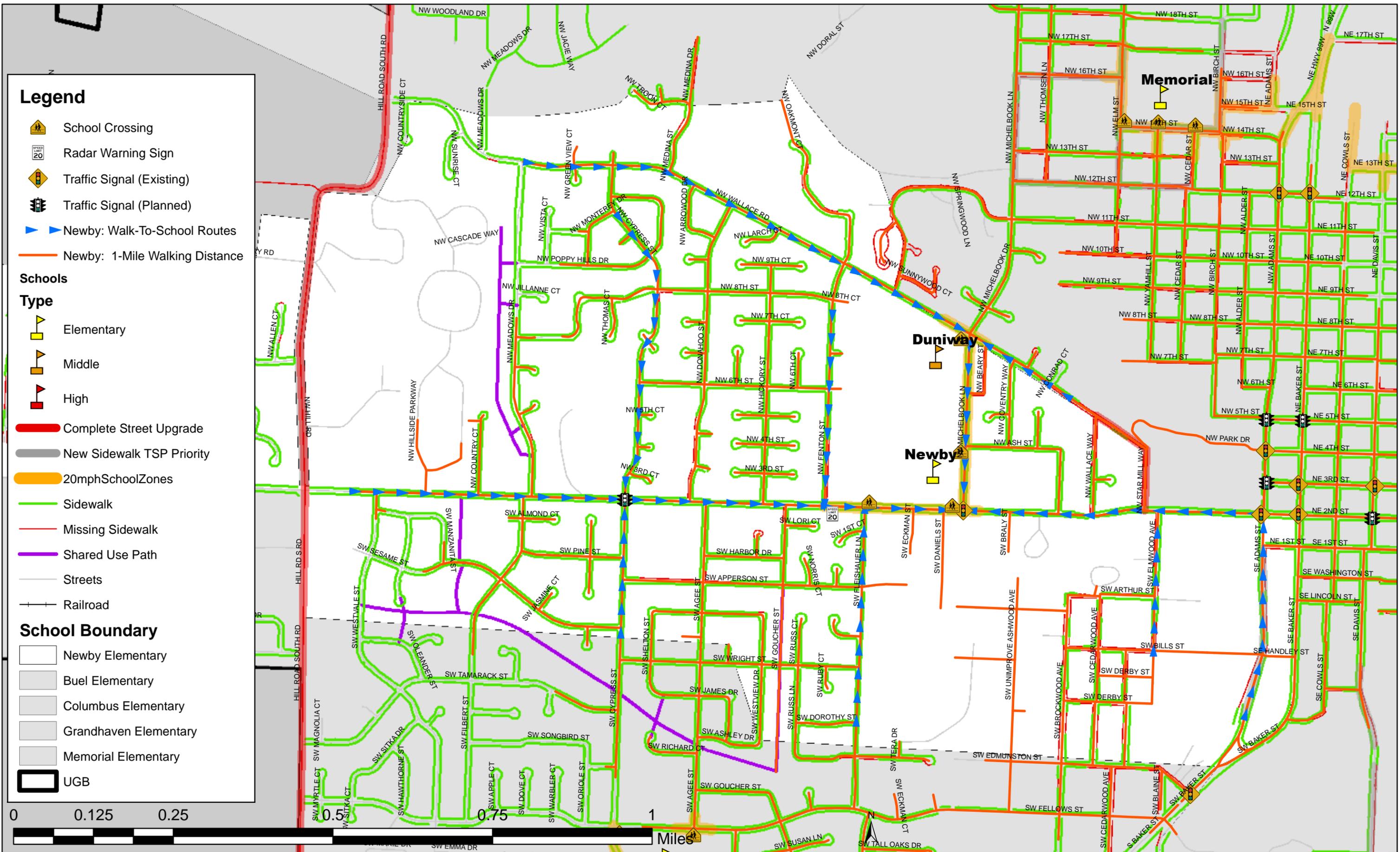
- Elementary
- Middle
- High

- Complete Street Upgrade
- New Sidewalk TSP Priority
- 20mph School Zones
- Sidewalk
- Missing Sidewalk
- Streets
- Railroad

School Boundary

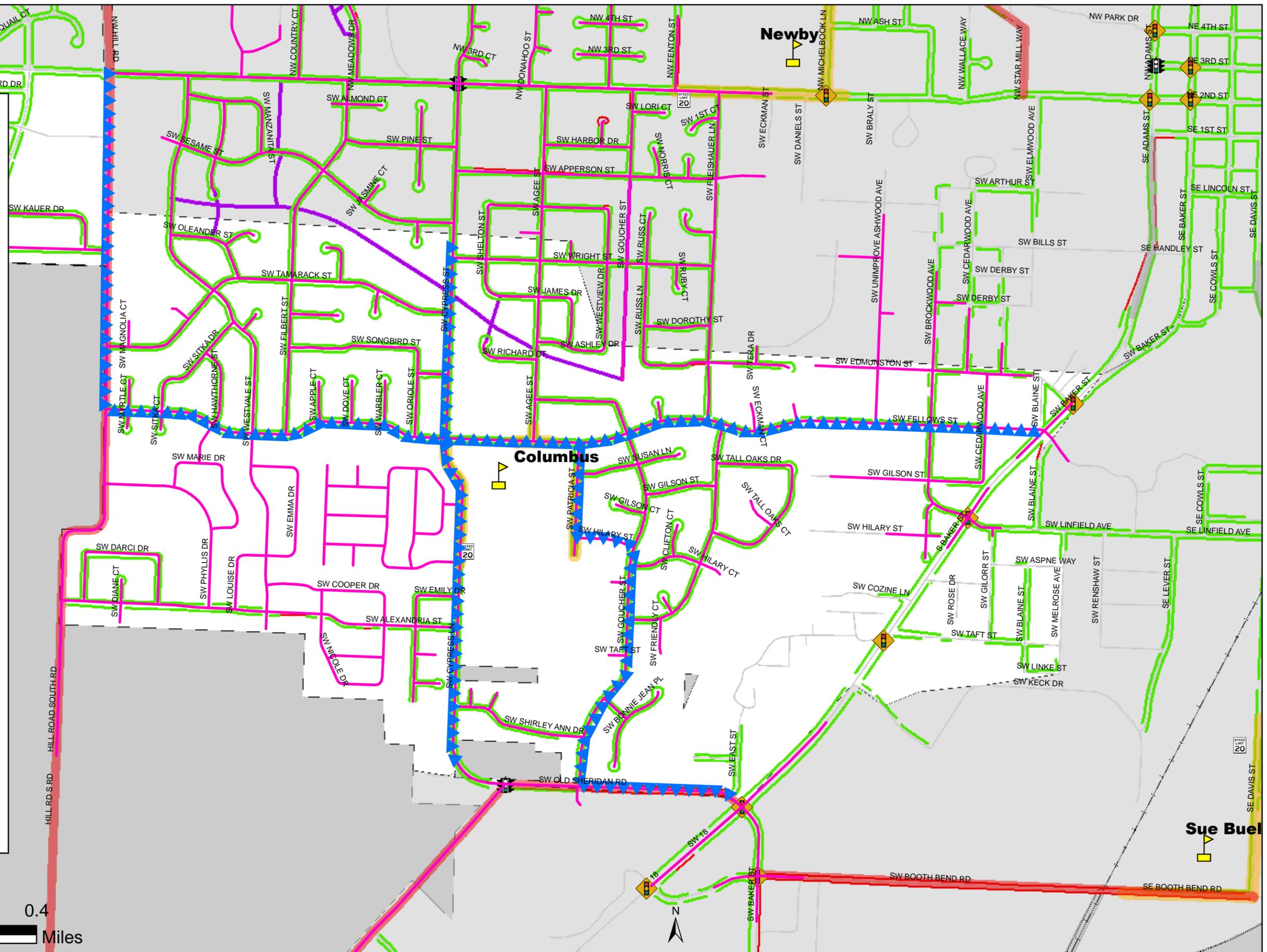
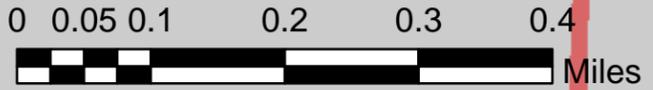
- Grandhaven Elementary
- Buel Elementary
- Columbus Elementary
- Memorial Elementary
- Newby Elementary
- UGB

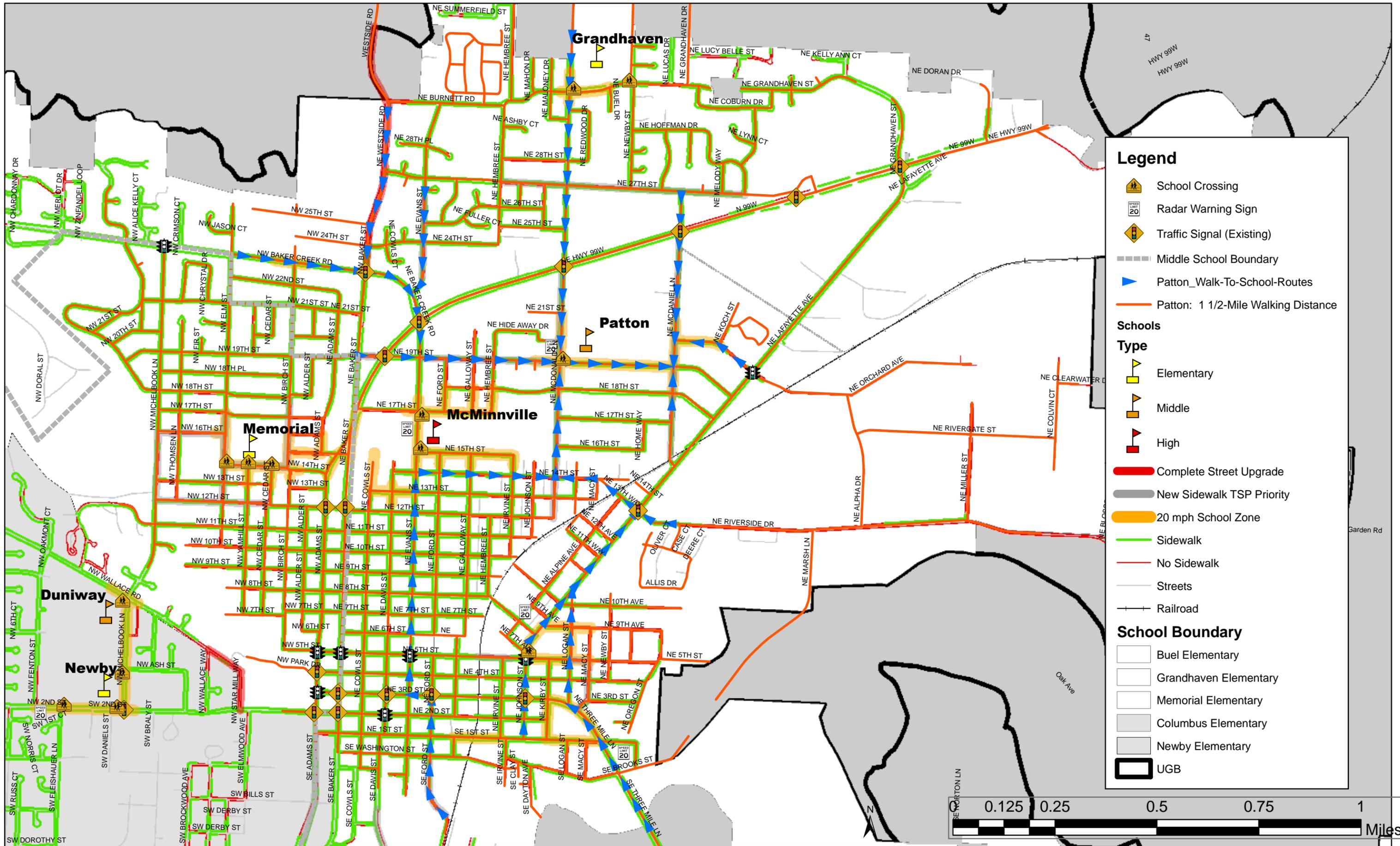


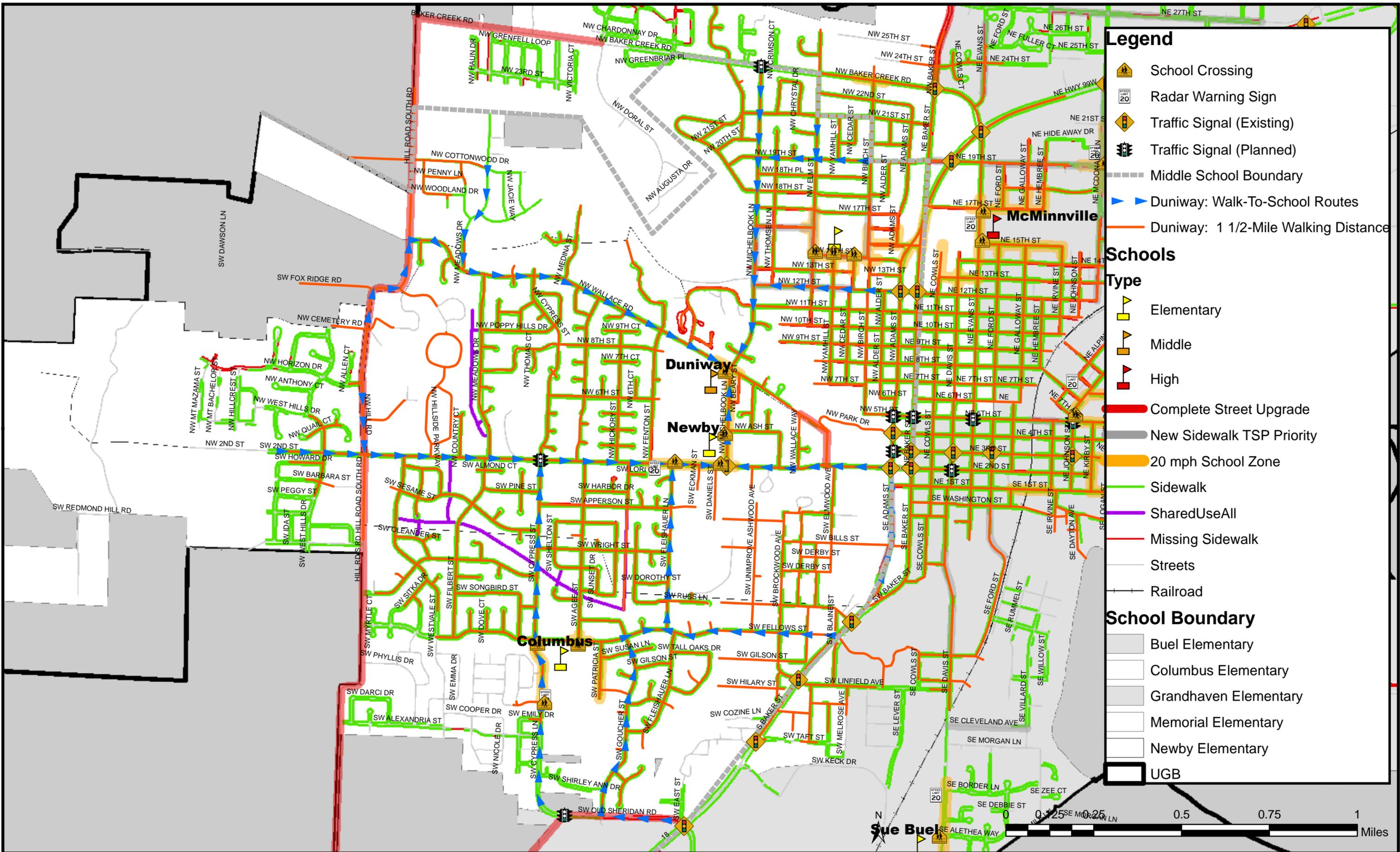


Legend

- Columbus: Walk-to-School Route
- Columbus: 1-Mile Walking Distance
- Radar Warning Sign
- Traffic Signal - Existing
- Schools**
- Type**
- Elementary
- Middle
- High
- Complete Street Upgrade
- New Sidewalk TSP Priority
- 20mph School Zones
- Sidewalk
- Shared Use Path
- Missing Sidewalk
- Streets
- Railroad
- School Boundary**
- Columbus Elementary
- Buel Elementary
- Grandhaven Elementary
- Memorial Elementary
- Newby Elementary
- UGB







Legend

- School Crossing
- Radar Warning Sign
- Traffic Signal (Existing)
- Traffic Signal (Planned)
- Middle School Boundary
- Duniway: Walk-To-School Routes
- Duniway: 1 1/2-Mile Walking Distance

Schools

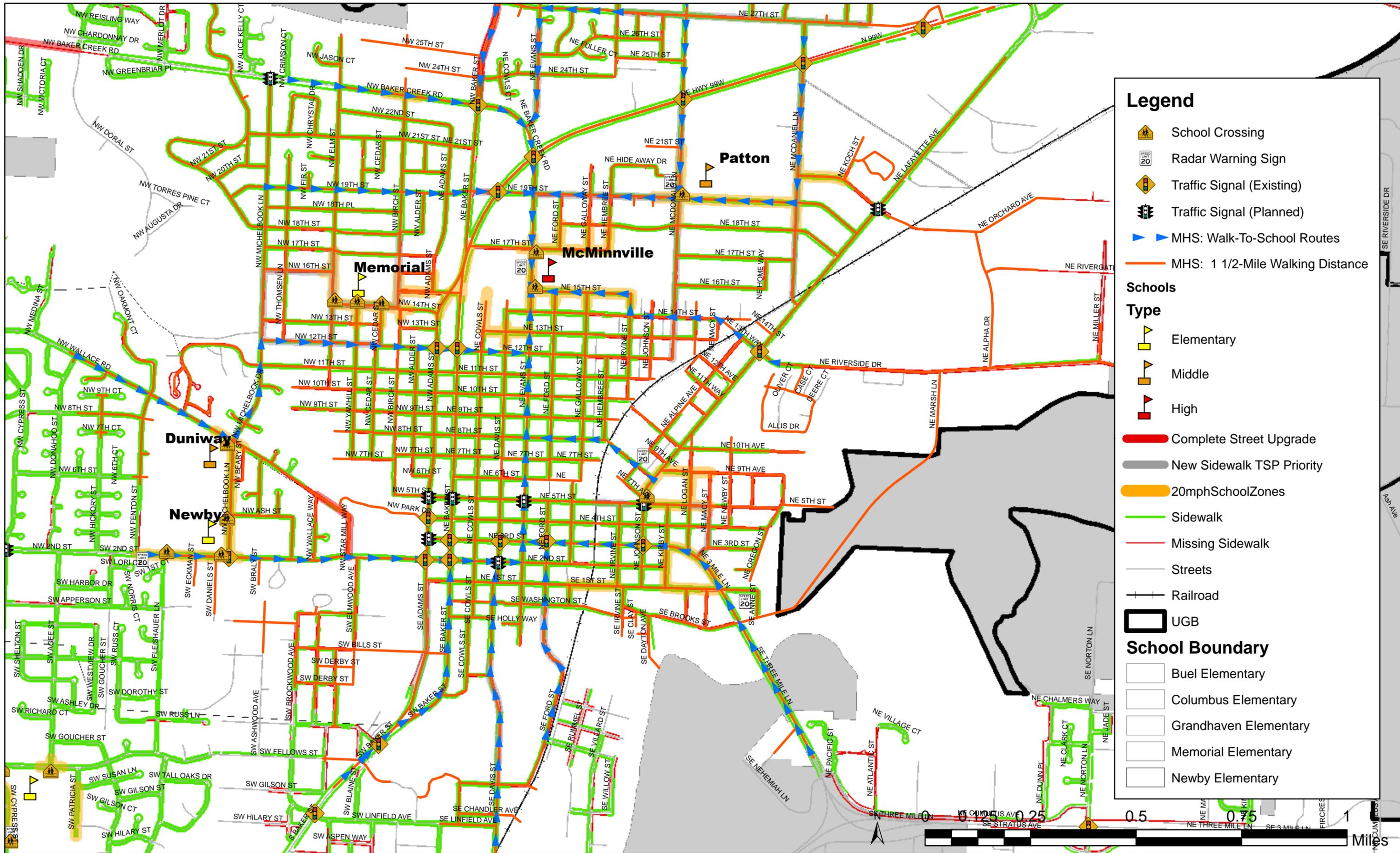
Type

- Elementary
- Middle
- High

- Complete Street Upgrade
- New Sidewalk TSP Priority
- 20 mph School Zone
- Sidewalk
- SharedUseAll
- Missing Sidewalk
- Streets
- Railroad

School Boundary

- Buel Elementary
- Columbus Elementary
- Grandhaven Elementary
- Memorial Elementary
- Newby Elementary
- UGB



Legend

- School Crossing
- Radar Warning Sign
- Traffic Signal (Existing)
- Traffic Signal (Planned)
- MHS: Walk-To-School Routes
- MHS: 1 1/2-Mile Walking Distance

Schools

Type

- Elementary
- Middle
- High

- Complete Street Upgrade
- New Sidewalk TSP Priority
- 20mphSchoolZones
- Sidewalk
- Missing Sidewalk
- Streets
- Railroad
- UGB

School Boundary

- Buel Elementary
- Columbus Elementary
- Grandhaven Elementary
- Memorial Elementary
- Newby Elementary