



**City Council Meeting Agenda**

**Tuesday, May 14th, 2024**

**6:00 p.m. – Work Session Meeting**

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

*Welcome! The public is strongly encouraged to participate remotely but there is seating at Civic Hall for those who are not able to participate remotely. However, if you are not feeling well, please stay home and take care of yourself.*

*The public is strongly encouraged to relay concerns and comments to the Council in one of four ways:*

- *Attend in person and fill out a public comment card*
- *Email at any time up to **12 p.m. on Monday, May 13th** to [CityRecorderTeam@mcminnvilleoregon.gov](mailto:CityRecorderTeam@mcminnvilleoregon.gov)*
- *If appearing via telephone only please sign up prior by **12 p.m. on Monday, May 13th** by emailing the City Recorder at [CityRecorderTeam@mcminnvilleoregon.gov](mailto: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.***

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*You can live broadcast the City Council Meeting on cable channels Xfinity 11 and 331,  
Frontier 29 or webstream here:  
[mcm11.org/live](http://mcm11.org/live)*

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

*You may join online via Zoom Meeting:*

<https://mcminnvilleoregon.zoom.us/j/88396526792?pwd=m0dSOQQGzRiDPMWzqRleGbkJpIU1eA.1>

*Zoom ID: 883 9652 6792*

*Zoom Password: 671135*

*Or you can call in and listen via Zoom: 1-253- 215- 8782  
ID: 883 9652 6792*

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

1. CALL TO ORDER
2. QUASI-JUDICIAL AND LEGISLATIVE TRAINING
3. ADJOURNMENT OF WORK SESSION

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

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PROCLAMATIONS
  - a. National Emergency Medical Services Week Proclamation
  - b. National Public Works Week Proclamation
  - c. National Police 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

6. CONSENT AGENDA

- a. Consider **Resolution No. 2024-22**: A Resolution authorizing the City Manager to amend the timeline by Change Order to the contract with Fackler Construction Company for the Construction Manager/General Contract for the AnyDoor Place, a McMinnville Navigation Center, changing the substantial completion date from May 24 to June 30, 2024.
- b. Consider **Resolution No. 2024-24**: A Resolution authorizing the City Manager to execute a contract for the 2024 Pavement Patching project, Project 2024-4, with K & E Paving, Inc. dba H & H Paving.

7. RESOLUTION

- a. Consider **Resolution No. 2024-21**: A Resolution adopting a fiscal year 2023-24 budget amendment for the Fire District Transition Fund

8. ADJOURNMENT OF REGULAR MEETING



# PROCLAMATION

**WHEREAS**, emergency medical services are a vital public service; and

**WHEREAS**, the members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

**WHEREAS**, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

**WHEREAS**, emergency medical services have grown to fill a gap by providing important, out-of-hospital care, including preventative medicine, follow-up care, and emergency medical transport; and

**WHEREAS**, the emergency medical services system consists of first responders, emergency medical technicians, paramedics, emergency medical dispatchers, firefighters, police officers, and other out-of-hospital medical care providers; and

**WHEREAS**, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

**WHEREAS**, emergency medical team members have stepped up during the time of the COVID-19 pandemic, through stressors such as policy change, increased PPE wear, and potential exposures; and

**WHEREAS**, it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week; now

**NOW, THEREFORE, I, Remy Drabkin**, Mayor of the City of McMinnville, do hereby proclaim the week of May 19th – 25th, 2024 as

## **NATIONAL EMERGENCY MEDICAL SERVICES WEEK**

in the City of McMinnville, and I urge all community members to observe Emergency Medical Services week and support our first response 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 14th day of May, 2024.

-----  
Remy Drabkin, Mayor



## National Public Works Week Proclamation

May 19 – 25, 2024

**WHEREAS**, public works professionals focus on infrastructure, facilities and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life and well-being of the people of the City of McMinnville; and,

**WHEREAS**, these infrastructure, facilities, and services could not be provided without the dedicated efforts of public works professionals, who are responsible for building, maintaining, improving, and protecting our community's transportation, water and power supply, water and wastewater treatment systems, public buildings, parks and open spaces, and other structures and facilities essential for our community members; and,

**WHEREAS**, it is in the public interest for the community and civic leaders in the City of McMinnville to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in our community; and,

**WHEREAS**, the year 2024 marks the 64th annual National Public Works Week sponsored by the American Public Works Association.

**NOW THEREFORE**, I, Remy Drabkin, Mayor of the City of McMinnville, do hereby designate the week May 19-25, 2024 as **National Public Works Week** in the City of McMinnville, and I call upon all community members, business leaders, and civic organizations to recognize the substantial contributions that the employees of McMinnville Water & Light and the employees of the City's Public Works Department, which includes Engineering, Operations, Wastewater and the Airport, make to protecting and enhancing our health, safety, and quality of life.

**IN WITNESS, WHEREOF**, I hereunto set my hand and cause the Official Seal of the City of McMinnville to be affixed this 14<sup>th</sup> day of May 2024.

-----  
Remy Drabkin, Mayor

# PROCLAMATION

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

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

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

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

**Now, Therefore, I, Remy Drabkin** Mayor of the City of McMinnville, do hereby proclaim May 12–18, 2024 to be:

## **National Police Week**

and call upon all McMinnville community members and upon all patriotic, civic, and educational organizations to observe the week of May 12 – 18, 2024, as **Police Week** with appropriate ceremonies and observances in which all of our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all community members.

I further call upon all McMinnville community members to observe May 15, 2024, as Peace Officers’ Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

**In Witness Whereof,** I have hereunto set my hand and caused the official Seal of the City of McMinnville to be affixed this 14<sup>th</sup> day of May, 2024.

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Remy Drabkin, Mayor



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

# STAFF REPORT

**DATE:** May 14, 2024  
**TO:** McMinnville City Council  
Heather Richards, Community Development Director  
Alexandra Ball, Yamhill Community Action Partnership (YCAP)  
**FROM:** Jody Christensen, Special Projects Manager  
**SUBJECT:** Resolution No. 2024-22 for the AnyDoor Place Navigation Center Fackler Construction Company Contract Extension

## STRATEGIC PRIORITY & GOAL:



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

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### Report in Brief:

This is consideration of Resolution No. 2024-22.

Resolution 2024-22 authorizes the City Manager to execute the A1A G701-2017 Change Order No. 4 to the A1A A133-2019 Guaranteed Maximum Price (GMP) contract dated July 12, 2023, with Fackler Construction Company (FCC) for the AnyDoor Place, a Navigation Center approving an increase to the timeline for the substantial completion date from May 24, 2024, to June 30, 2024.

The change order is to address the sprinkler installation modifications needed to meet insurance and trauma informed design requirements.

### Background:

**Project:** AnyDoor Place, a Navigation Center, located on 327 and 329 SW Adams Street in McMinnville, is an emergency low-barrier shelter with 36 beds and on-site supportive services to help people who are experiencing houselessness to stabilize and work towards achieving permanent shelter. Onsite services will be counseling, medical provisions, employment coaching, and housing case management. The City has a project manager assigned to manage the construction. Yamhill Community Action Partnership (YCAP) will own the facility and manage the services.

## **Discussion:**

Every other week, the project management team (PMT) with a representative from Yamhill Community Action Partnership (YCAP), FFA Architects, and the City are onsite to tour the AnyDoor Place Navigation Center with the Fackler Construction Company (FCC) team to see the progress and review the month's draft invoice for accuracy.

On the 4.11.2024 site observation visit, it was noted that the installation method of the sprinkler system was not on the approved plan set and had not followed contractor/architect professional protocols. There were concerns related to clearance for people, furniture, and casework. In addition, the method created an "attractive nuisance" issue.

On the 4.25.2024 site observation visit, several of the previously noted issues had not been addressed. YCAP service development staff attended the site walk. In a YCAP after action discussion with internal staff, it was determined that the sprinklers current state created two unacceptable situations. First, YCAP would not be able to obtain insurance due to the exposure and risk, and two, the required trauma informed design had been compromised.

On 4.26.2024, YCAP reported these determinations to the City and FFA. City staff decided that a contract extension would be required to address the sprinkler modifications to meet insurance and design requirements.

## **Attachments:**

1. Resolution No. 2024-22
2. Exhibit A to Resolution No. 2024-22, Change Order No. 4

## **Fiscal Impact:**

This action will amend the substantial completion date but will not amend the project budget.

## **Recommendation:**

Staff recommends that the City Council adopt Resolution 2024-22 authorizing the City Manager to execute A1A G701-2017 Change Order No. 4 to the A1A A133-2019 Guaranteed Maximum Price (GMP) contract dated July 12, 2023, with Fackler Construction Company (FCC) for the AnyDoor Place, a Navigation Center, approving an increase to the timeline for the substantial completion date from May 24, 2024, to June 30, 2024.

**RESOLUTION NO. 2024-22**

A Resolution authorizing the City Manager to amend the timeline by Change Order to the contract with Fackler Construction Company for the Construction Manager/General Contract for the AnyDoor Place, a McMinnville Navigation Center, changing the substantial completion date from May 24 to June 30, 2024.

**RECITALS:**

**Whereas**, the AnyDoor Place, a McMinnville Navigation Center, addresses the need for an emergency low-barrier shelter and supportive services facility in McMinnville; and

**Whereas**, Fackler Construction Company was approved by Resolution 2023-23 for the AIA A133-2019 Guaranteed Maximum Price (GMP) contract of the AnyDoor Place, A McMinnville Navigation Center; and

**Whereas**, Resolution No.2024-11 amended the substantial completion date of the AIA A133-2019 contract with Fackler Construction Company to May 24, 2024; and

**Whereas**, due to an unforeseen issue with the installation of the fire suppression system, the substantial completion deadline needs to be extended to June 30, 2024; and

**Whereas**, the AIA A133-2019 Guaranteed Maximum Price (GMP) contract terms can be changed by AIA G701-2017 Change Orders; and

**Whereas**, this change order does not impact the contract price; and

**Whereas**, Funding for this project is included in the adopted FY24 Affordable Housing Fund of the City of McMinnville budget.

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

1. That entry into the AIA G701-2017 Change Order No. 4 to the AIA A133-2019 Guaranteed Maximum Price (GMP) contract dated July 12, 2023, with Fackler Construction Company (FCC) for the AnyDoor Place, a Navigation Center is hereby approved.
2. The City Manager is hereby authorized and directed to execute the AIA G701-2017 Change Order to the AIA A133-2019 GMP Contract.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 26th day of May 14th by the following votes:

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

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

Approved this 14th day of May 2024.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

Exhibit A: AIA Document G701-2017



# DRAFT AIA® Document G701™ - 2017

## Change Order

<b>PROJECT:</b> <i>(Name and address)</i> AnyDoor Place - McMinnville 237 & 329 SE Adams St McMinnville, OR	<b>CONTRACT INFORMATION:</b> Contract For: Construction Date: 05.25.2023	<b>CHANGE ORDER INFORMATION:</b> Change Order Number: 04 Date: 05.14.2024
<b>OWNER:</b> <i>(Name and address)</i> City of McMinnville  230 NE 2nd St. McMinnville, OR 97128	<b>ARCHITECT:</b> <i>(Name and address)</i> FFA Architecture & Interiors  520 SW Yamhill St. Suite 900, Portland, OR 97204	<b>CONTRACTOR:</b> <i>(Name and address)</i> Fackler Construction Co.  505 SE Adams St. Suite 200 McMinnville, OR 97128

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

Time Extension for Fire Sprinkler Pipe Re-work - 37 additional calendar days. All other scopes of work should be finished by 05.24.2024. Punchwalk for site, exterior and staff spaces on the on the first floor of 327 and lower floor of 327 and new construction should still occur by 05.23.2024.

The original Contract Sum was

The net change by previously authorized Change Orders

The Contract Sum prior to this Change Order was

The Contract Sum will be increased by this Change Order in the amount of

The new Contract Sum including this Change Order will be

\$	2,184,066.87
\$	123,668.86
\$	2,307,735.73
\$	0.00
\$	2,307,735.73

The Contract Time will be increased by Thirty-Seven (37) days.

The new date of Substantial Completion will be 06.30.2024

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

FFA Architecture & Interiors <b>ARCHITECT</b> <i>(Firm name)</i>	Fackler Construction Co. <b>CONTRACTOR</b> <i>(Firm name)</i>	City of McMinnville <b>OWNER</b> <i>(Firm name)</i>
_____ <b>SIGNATURE</b>	_____ <b>SIGNATURE</b>	_____ <b>SIGNATURE</b>
_____ <b>PRINTED NAME AND TITLE</b>	_____ <b>PRINTED NAME AND TITLE</b>	_____ <b>PRINTED NAME AND TITLE</b>
_____ <b>DATE</b>	_____ <b>DATE</b>	_____ <b>DATE</b>



## STAFF REPORT

**DATE:** May 6, 2024  
**TO:** Jeff Towery, City Manager  
**CC:** Geoffrey Hunsaker, Public Works Director  
**CC:** James Lofton, City Engineer  
**CC:** David Renshaw, Public Works Superintendent  
**CC:** Darrin Causey, H & H Paving  
**FROM:** Matt Bernards, Engineering Technician  
**SUBJECT:** 2024 Pavement Patching Contract Award

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### **Report in Brief:**

This action is the consideration of a resolution to award a public improvement contract in the amount of \$297,288.50 to K & E Paving, Inc. dba H & H Paving for the construction of the 2024 Pavement Patching project, Project 2024-4.

### **Background:**

In a continuing effort to improve the quality and service life of McMinnville's streets, this project will patch approximately 3,921 SY of residential street surfaces. The paving work is broken into 4 areas: Downtown, NE Evans St, NE 19<sup>th</sup> St, and NW 19<sup>th</sup> St. The project vicinity map (attachment 2) reflects the work areas covered by the contract.

### **Discussion:**

On Thursday, May 2, 2024, seven bids were received, opened, and publicly read for the construction of the 2024 Pavement Patching project. The bid results are as follows:

- |                                       |              |
|---------------------------------------|--------------|
| • Roy Houck Construction, LLC         | \$461,272.00 |
| • KNL Industries, Inc.                | \$537,828.00 |
| • North Santiam Paving Co.            | \$704,916.00 |
| • K & E Paving, Inc. dba H & H Paving | \$297,288.50 |
| • Knife River Corporation             | \$590,517.00 |

- Kodiak Pacific Construction Co. \$556,936.00
- S-2 Contractors, Inc. \$430,638.00

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 K & E Paving, Inc. dba H & H Paving, in the amount of \$297,288.50, 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 2024-24
2. Project Vicinity Map
3. Project Bid Results
4. Construction Contract

**Fiscal Impact:**

Project funding is included in the proposed FY24-25 Street Fund (20) 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 Pavement Patching project, Project 2024-4, in the amount of \$297,288.50, to K & E Paving, Inc. dba H & H Paving.

**RESOLUTION NO. 2024 - 24**

A Resolution authorizing the City Manager to execute a contract for the 2024 Pavement Patching project, Project 2024-4, with K & E Paving, Inc. dba H & H Paving.

**RECITALS:**

**Whereas**, in a continuing effort to improve the quality and service life of McMinnville’s streets, the 2024 Pavement Patching project, Project 2024-14 (“the Project”) will patch approximately 3,921 SY of residential street surfaces. The paving work is broken into 4 areas: Downtown, NE Evans St, NE 19<sup>th</sup> St, and NW 19<sup>th</sup> St; and

**Whereas**, at 2:00pm on May 2, 2024, 7 bids for the Project were publicly opened and read aloud. The bid from K & E Paving, Inc. dba H & H Paving, in the amount of \$297,288.50, met all the bid requirements and should be considered the lowest responsible and responsive bid; and

**Whereas**, project funding is included in the proposed FY24-25 Street Fund (20) budget for the pavement patching 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 K & E Paving, Inc. dba H & H Paving, in the amount of \$297,288.50, with a substantial completion date of August 16, 2024 for the 2024 Pavement Patching project, Project 2024-4, 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 14th day of May 2024 by the following votes:

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

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

Approved this 14th day of May 2024.

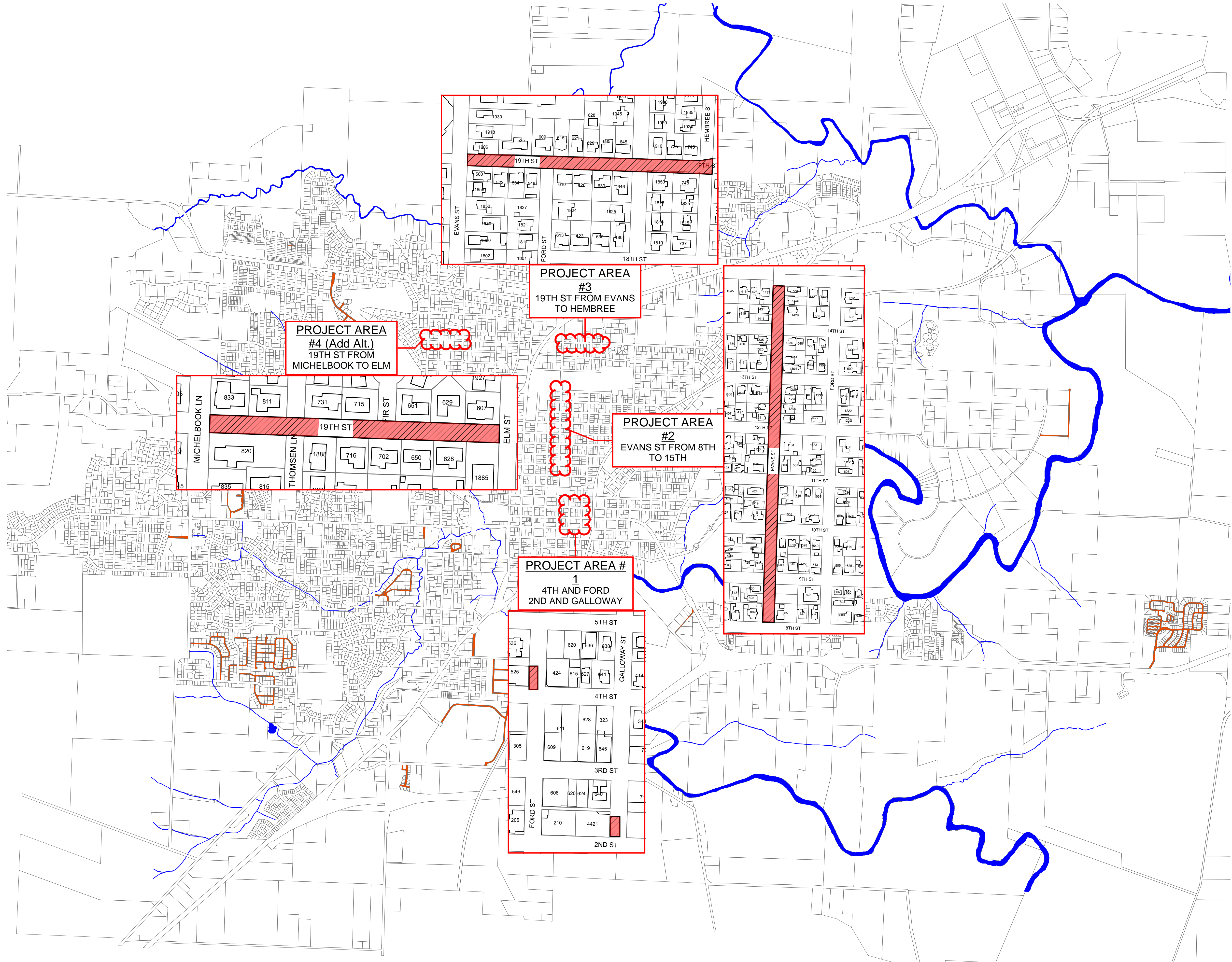
\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

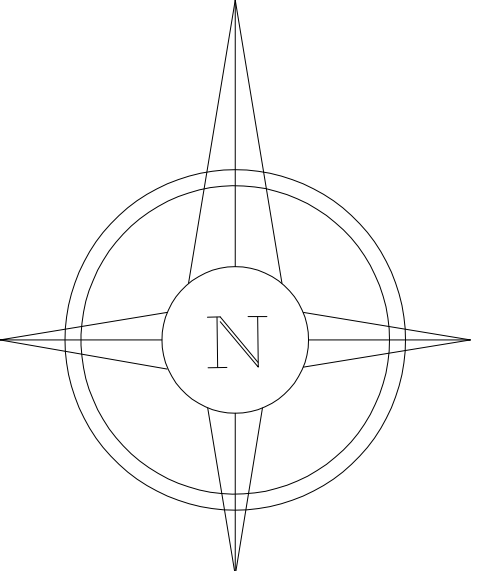


**PROJECT AREA  
#4 (Add Alt.)  
19TH ST FROM  
MICHELBOOK TO ELM**

**PROJECT AREA  
#3  
19TH ST FROM EVANS  
TO HEMBREE**

**PROJECT AREA  
#2  
EVANS ST FROM 8TH  
TO 15TH**

**PROJECT AREA #  
1  
4TH AND FORD  
2ND AND GALLOWAY**



**City of McMinnville**

REGISTERED PROFESSIONAL  
ENGINEER  
84967PE

OREGON  
MAR 14 2017  
JAMES DAVID LOFTON

EXPIRES: 12-31-24

CITY OF McMINNVILLE, OREGON  
ENGINEERING DEPARTMENT  
2024 PAVEMENT PATCHING  
PROJECT VICINITY

SCALE: N/A  
Drawn: MB  
Checked:  
Date: April 4, 2024  
Project No. 2024-4  
SHEET 1 of 3

2024 PAVEMENT PATCHING				Roy Houck Const, LLC		KNL Industries, Inc		North Santiam Paving Co.		K&E Paving dba H&H Paving		Knife River Corp.		Kodiak Pacific Const.		S-2 Contractors, Inc.	
BASE BID	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
<b>TEMPORARY FEATURES AND APPURTENANCES (00200)</b>																	
10	Mobilization (00210)	LS	ALL		\$ 35,000.00		\$ 40,000.00		\$ 88,500.00		\$ 25,450.00		\$ 45,075.00		\$ 85,000.00		\$ 17,000.00
20	Temporary Protection and Direction of Traffic (00221)	LS	ALL		\$ 20,000.00		\$ 50,000.00		\$ 35,000.00		\$ 9,600.00		\$ 23,650.00		\$ 49,000.00		\$ 40,000.00
<b>WEARING SURFACES (00700)</b>																	
30	1" Asphalt Concrete Pavement Repair (excludes AC) (00748)	SY	3,674	\$ 16.00	\$ 58,784.00	\$ 24.00	\$ 88,176.00	\$ 30.00	\$ 110,220.00	\$ 11.25	\$ 41,322.50	\$ 32.00	\$ 117,568.00	\$ 25.50	\$ 93,687.00	\$ 19.00	\$ 69,806.00
	18" Asphalt Concrete Pavement Repair (excludes AC) (00748)	SY	247	\$ 110.00	\$ 27,170.00	\$ 60.00	\$ 14,820.00	\$ 100.00	\$ 24,700.00	\$ 55.50	\$ 13,708.50	\$ 92.00	\$ 22,724.00	\$ 95.00	\$ 23,465.00	\$ 100.00	\$ 24,700.00
40	Level 3, 1/2" Dense WMAC (000744)	TN	1,358	\$ 190.00	\$ 258,020.00	\$ 200.00	\$ 271,600.00	\$ 270.00	\$ 366,660.00	\$ 124.50	\$ 169,071.00	\$ 232.00	\$ 315,056.00	\$ 178.00	\$ 241,724.00	\$ 170.00	\$ 230,860.00
50	Over-Excavation (per Details 37 & 38)	CY	20	\$ 500.00	\$ 10,000.00	\$ 500.00	\$ 10,000.00	\$ 260.50	\$ 5,210.00	\$ 165.00	\$ 3,300.00	\$ 125.00	\$ 2,500.00	\$ 205.00	\$ 4,100.00	\$ 150.00	\$ 3,000.00
				<b>TOTAL</b>	<b>\$ 408,974.00</b>	<b>TOTAL</b>	<b>\$ 474,596.00</b>	<b>TOTAL</b>	<b>\$ 630,290.00</b>	<b>TOTAL</b>	<b>\$ 262,462.00</b>	<b>TOTAL</b>	<b>\$ 526,573.00</b>	<b>TOTAL</b>	<b>\$ 496,976.00</b>	<b>TOTAL</b>	<b>\$ 385,366.00</b>
<b>ADD ALTERNATE A</b>																	
<b>TEMPORARY FEATURES AND APPURTENANCES (00200)</b>																	
60	Temporary Protection and Direction of Traffic (00221)	LS	ALL		\$ 5,000.00		\$ 10,000.00		\$ 3,750.00		\$ 3,400.00		\$ 4,500.00		\$ 7,400.00		\$ 3,500.00
<b>WEARING SURFACES (00700)</b>																	
70	1" Asphalt Concrete Pavement Repair (excludes AC) (00748)	SY	518	\$ 16.00	\$ 8,288.00	\$ 24.00	\$ 12,432.00	\$ 37.00	\$ 19,166.00	\$ 14.50	\$ 7,511.00	\$ 31.00	\$ 16,058.00	\$ 36.00	\$ 18,648.00	\$ 19.00	\$ 9,842.00
80	Level 3, 1/2" Dense WMAC (000744)	TN	379	\$ 190.00	\$ 71,810.00	\$ 200.00	\$ 75,800.00	\$ 270.00	\$ 102,330.00	\$ 124.50	\$ 47,285.50	\$ 234.00	\$ 88,866.00	\$ 178.00	\$ 67,851.00	\$ 170.00	\$ 64,430.00
90	Over-Excavation (per Detail 37)	CY	10	\$ 500.00	\$ 5,000.00	\$ 500.00	\$ 5,000.00	\$ 338.00	\$ 3,380.00	\$ 163.00	\$ 1,630.00	\$ 150.00	\$ 1,500.00	\$ 205.00	\$ 2,050.00	\$ 150.00	\$ 1,500.00
				<b>TOTAL</b>	<b>\$ 52,298.00</b>	<b>TOTAL</b>	<b>\$ 63,232.00</b>	<b>TOTAL</b>	<b>\$ 74,626.00</b>	<b>TOTAL</b>	<b>\$ 34,826.50</b>	<b>TOTAL</b>	<b>\$ 63,944.00</b>	<b>TOTAL</b>	<b>\$ 59,960.00</b>	<b>TOTAL</b>	<b>\$ 45,272.00</b>

<b>TOTAL BASE &amp; ALTERNATE A</b>	<b>\$ 461,272.00</b>	<b>\$ 537,828.00</b>	<b>\$ 704,916.00</b>	<b>\$ 297,288.50</b>	<b>\$ 590,517.00</b>	<b>\$ 556,936.00</b>	<b>\$ 430,638.00</b>
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Bid Complete & Signed?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Addendum Acknowledged?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Bid Bond & Power of Attorney?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<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"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

**CITY OF McMinnville**

**2024 Pavement Patching**

Project No. 2024-4

**CONSTRUCTION CONTRACT**

This Construction Contract (“Contract”) for the 2024 Pavement Patching Project No. 2024-4 (“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 **K&E Paving, Inc. dba H&H Paving**, 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”: 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 **TWO HUNDRED NINETY-SEVEN THOUSAND TWO HUNDRED EIGHTY-EIGHT DOLLARS AND FIFTY CENTS (\$297,288.50)** 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 April 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 Darrin Causey. 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:              K & E Paving, Inc. dba H & H Paving  
   Attn: Darrin Causey  
   3871 Langley Street SE  
   Salem, OR 97317

## **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:**

**CITY:**

K & E PAVING, INC dba H & H PAVING

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

## STAFF REPORT

**DATE:** May 14, 2024  
**TO:** Jeff Towery, City Manager  
**FROM:** Jennifer Cuellar, Finance Director  
**SUBJECT:** FY2023-24 Budget Amendment Resolution for Fire District Transition Fund

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### CITY GOVERNMENT CAPACITY

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

**Report in Brief:** The FY2023-24 period is the year during which the McMinnville Fire District (MFD) was created and the fire department transitioned out of the City of McMinnville's service delivery portfolio, an unusual circumstance for Oregon jurisdictions. A number of unanticipated items have come up during this year as a result. This budget amendment addresses the new plan with regard to paying Fire Truck debt service payments.

#### **Discussion of Budget Amendment**

Oregon Revised Statute (ORS) 294.471(1)(a) allows a local government to prepare a budget amendment when circumstances arise that were unknown at the time the budget was prepared. At the time of creating the FY2023-24 budget, the transition plan included the MFD taking formal assignment of the loan from the lender and this was reflected in the budget.

The MFD agreed to paying off this loan as part of its IGA with the City but the formal loan re-assignment with the lender has not taken place so this debt obligation formally remains in effect for the City. Therefore, the City of McMinnville must recognize in its financial statements the payment of this debt service in FY2023-24, which also requires it to be budgeted.

The revenue in and debt payment out will be captured in the City's Fire District Transition Fund in the amount of \$645,506.

The budget amendment is 7.9% of the FD Transition Fund's current appropriation so no budget hearing is required. Statute requires budget amendments of more than 10% to include a public hearing.

#### **Fiscal Impact:**

The debt obligation will be fully offset by revenue in from the MFD and, thus, has no net impact on the financial condition of the City.

The proposed budget amendment is as follows:

	<b>Amended Budget as of May 1, 2024</b>	<b>Budget Adjustment</b>	<b>Amended Budget</b>
<b>Fire District Transition Fund:</b>			
<b>Resources:</b>			
Intergovernmental	\$ 4,896,542	\$ 645,506	\$ 5,542,048
All other resources unchanged	<u>3,284,471</u>	<u>0</u>	<u>3,284,471</u>
Total Resources	<u>\$ 8,181,013</u>	<u>\$ 645,506</u>	<u>\$ 8,826,519</u>
<b>Requirements:</b>			
Debt Service	\$ -	\$ 645,506	\$ 645,506
All other requirements unchanged	<u>8,181,013</u>	<u>0</u>	<u>8,181,013</u>
Total requirements	<u>\$ 8,181,013</u>	<u>\$ 645,506</u>	<u>\$ 8,826,519</u>

**Council Options:**

1. Adopt the FY2023-24 budget amendment thereby allowing budget appropriation room required to add this debt service to the budget.
2. Do not adopt the proposed FY2023-24 budget amendment. This would result in a budget violation as the City would make its required financial reporting on debt service obligations in the FY2023-24 financial statements.

**Documents:**

1. Resolution 2024-21 FY2023-24 Budget Amendment Fire District Transition Fund

**RESOLUTION NO. 2024 - 21**

A Resolution adopting a fiscal year 2023-24 budget amendment for the Fire District Transition Fund.

**RECITALS:**

**Whereas**, this resolution proposes to amend the FY2023-24 City of McMinnville budget due to "an occurrence or condition that [was] not ascertained when preparing the original budget" as described in Oregon Revised Statute (ORS) 294.471(1)(a); and

**Whereas**, the unknown circumstance was that the City of McMinnville retained the contractual debt obligation associated with the 2014 purchase of Fire vehicles in the amount of \$645,506 for FY2023-24, instead of formally assigning it to the McMinnville Fire District upon their creation; and

**Whereas**, the servicing of the debt and ultimate retirement of this obligation must be recognized in the City's financial records; and

**Whereas**, this circumstance will require a budget amendment in the Fire District Transition Fund as both an intergovernmental revenue and offsetting debt service outlay of \$645,506; and

**Whereas**, the budget amendment for the Fire District Transition Fund is less than 10% of the current appropriation and therefore may be approved by Council resolution as provided in ORS 294.473; and

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

1. **Adopt the following Budget Amendment:** The Common Council of the City of McMinnville adopts the following Budget Amendment for 2023-2024 in the Fire District Transition Fund.
2. **Make Added Appropriations:** The new appropriations for fiscal year 2023-2024 are hereby adopted as detailed in Exhibit A.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of May 2024 by the following votes:

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

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

Approved this 14th day of May 2024.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

# Exhibit A

	Amended Budget as of May 1, 2024	Budget Adjustment	Amended Budget
<b>Fire District Transition Fund:</b>			
<b>Resources:</b>			
Intergovernmental	\$ 4,896,542	\$ 645,506	\$ 5,542,048
All other resources unchanged	<u>3,284,471</u>	<u>0</u>	<u>3,284,471</u>
Total Resources	<u>\$ 8,181,013</u>	<u>\$ 645,506</u>	<u>\$ 8,826,519</u>
<b>Requirements:</b>			
Debt Service	\$ -	\$ 645,506	\$ 645,506
All other requirements unchanged	<u>8,181,013</u>	<u>0</u>	<u>8,181,013</u>
Total requirements	<u>\$ 8,181,013</u>	<u>\$ 645,506</u>	<u>\$ 8,826,519</u>