



## **CITY OF McMINNVILLE REQUEST FOR PROPOSAL**

FOR THE LEASING OF FARM LAND AT THE  
MCMINNVILLE WATER RECLAMATION FACILITY

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### **FARMING LAND LEASE**

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**PROPOSALS DUE:**

**August 14, 2019 by 5:00 p.m.**

**SUBMIT PROPOSAL TO:**

**Community Development Center**  
City of McMinnville  
231 NE Fifth Street  
McMinnville, OR 97128

**REFER QUESTIONS TO:**

**Larry Sherwood, Project Manager**  
(503) 434-7312  
[Larry.Sherwood@mcminnvilleoregon.gov](mailto:Larry.Sherwood@mcminnvilleoregon.gov)

**RFP ISSUE DATE:**

July 19, 2019

## REQUEST FOR PROPOSAL

The City of McMinnville will receive written, sealed proposals until 5:00 p.m. on August 14, 2019 at the Community Development Center, 231 NE Fifth Street, McMinnville, OR 97128, for the following services:

### LEASING OF FARM LAND AT THE MCMINNVILLE WATER RECLAMATION FACILITY

This solicitation and selection will be conducted using a Request for Proposal (RFP) process. The intent is to select one individual or firm to provide services. Facsimile or electronically transmitted proposals will not be accepted. Late proposals will not be considered.

The Request for Proposal (RFP) documents may be obtained from Larry Sherwood, Project Manager, 231 NE Fifth Street, McMinnville, OR 97128; (503) 434-7312; [Larry.Sherwood@mcminnvilleoregon.gov](mailto:Larry.Sherwood@mcminnvilleoregon.gov). Information about the RFP can also be found on the City's website at <http://www.mcminnvilleoregon.gov/rfps>. Documents may also be obtained from the above listed website by creating a new user account and registering for the project. General information, including the plan holder list, is available without registering.

Addenda, clarifications and notices will be distributed through the City's online plan holder system. Potential proposers are responsible for ensuring contact information is registered correctly and that email updates are being received. It is in the best interest of potential proposers to check the website periodically to ensure all updates are received. The City is not responsible for failure of proposers to receive notifications.

The City reserves the right to reject any and all proposals, to waive any irregularities, and to accept the proposals deemed in the best interest of the City. The City may reject any proposal not in compliance with all prescribed procedures and requirements, and may reject for good cause any or all proposals upon a finding by the City that it is in the public interest to do so.

LARRY SHERWOOD, PROJECT MANAGER  
CITY OF MCMINNVILLE

Dated & Published: Capitol Press – July 19, 2019

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## SECTION I – BACKGROUND AND SCOPE OF WORK

### A. INTRODUCTION

The City of McMinnville is requesting proposals from qualified firms and/or individuals to lease portions of the real property located on and adjacent to the McMinnville Water Reclamation Facility for farming purposes. The available area for lease is more specifically described in Exhibit A.

### B. BACKGROUND

The City of McMinnville owns and operates the Water Reclamation Facility located in Yamhill County, Oregon. Undeveloped land outside of future facility expansion areas has been leased for dry agricultural farming purposes for many years. There is approximately 61.2 acres of undeveloped land available for farm lease through this proposal and each of these parcels has been farmed in the past.

### C. DESCRIPTION OF PROJECT

There are currently four (4) separate parcels on City of McMinnville owned Property available for farm lease. The parcels range from approximately 3.4 to 31.0 acres and total approximately 61.2 acres. Some of the areas are not contiguous and may be separated by drainage ditches, swales and roadways. See Exhibit A for location of available parcels. The actual acreage to be farmed will be determined by the successful proposer's due diligence of the property to determine how much of each parcel they can successfully farm.

The lease duration is for 5 years. The lease may, upon mutual agreement of the Lessor and the Lessee, be extended for five (5) additional renewal terms of one year each. Lessee shall provide written notification to the Lessor at least thirty (30) days prior to the expiration of the lease that the Lessee wishes to extend the lease. The successful proposer shall furnish all labor, materials, supplies, and equipment, machinery to farm crops in conformance with the lease documents (Exhibit B).

This RFP is asking for proposals to use the Lease Parcels for farm purposes, specifically for the growing of dry land agricultural crops. Livestock uses of the Lease Parcels will be prohibited. It should be noted and understood there is no irrigation available located on the property available for use in growing crops.

Proposal documents for the lease of these facilities can be obtained online at the following web address:

<http://www.mcminnvilleoregon.gov/rfps>

## SECTION II – PROPOSAL PROCESS

### A. RFP SCHEDULE

The approximate schedule for the RFP process follows. The dates and times are subject to change.

July 19, 2019	RFP advertised in the Capitol Press
August 7, 2019 (5:00pm)	Deadline for questions, requests for clarification, and solicitation protests
August 9, 2019 (5:00pm)	Deadline for City responses to questions, requests for clarification, and solicitation protests
August 14, 2019 (5:00pm)	Proposals due
August 16, 2019 (tentative)	Written notification of highest ranked proposer
August 27, 2019 (tentative)	City Council award of contract

### B. PROPOSAL DUE DATE

Proposers shall submit sealed proposals containing one (1) signed, clearly marked, easily reproducible original and four (4) complete copies of the proposal to:

**Larry Sherwood, Project Manager**  
City of McMinnville Community Development Center  
231 NE Fifth Street  
McMinnville, OR 97128

**The sealed proposals are due no later than 5:00 p.m. on Wednesday, August 14, 2019.**

Proposals received after the deadline will be rejected and returned unopened. Proposals may be mailed to the City, but must be received by the Project Manager no later than the above stated date and time. Facsimile and electronically transmitted proposals will not be accepted.

### C. QUESTIONS AND CLARIFICATION

Questions and requests for clarification regarding this RFP solicitation must be directed in writing (either email or fax is acceptable) to:

**Larry Sherwood, Project Manager**  
City of McMinnville  
231 NE Fifth Street  
McMinnville, OR 97128  
Phone: (503) 434-7312  
Fax: (503) 474-4955  
Email: [Larry.Sherwood@mcminnvilleoregon.gov](mailto:Larry.Sherwood@mcminnvilleoregon.gov)

**The deadline for submitting questions or requests for clarification is seven (7) days prior to the proposal due date.** If a substantive clarification is necessary, an addendum will be issued no later than 72 hours prior to the due date to all recorded holders of the RFP solicitation. Note that statements made by the City are not binding upon the City unless confirmed by written addendum.

D. PROPOSAL MODIFICATIONS OR WITHDRAWAL

Proposal modifications or erasures made before signing by the authorized representative must be initialed in ink. Once submitted, proposals may be modified in writing before the time and date set for proposal closing. Any modifications shall be prepared on company letterhead, signed by an authorized representative, and state that the new document supersedes or modifies the prior proposal. Modifications must be submitted in a sealed envelope clearly marked "Proposal Modification", and identifying the proposal title and closing date and time. Proposer may not modify proposal after proposal closing time.

Any proposal may be withdrawn at any time before the proposal due date and time by providing a written notification on company letterhead by an authorized person. The withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal.

E. CANCELLATION, DELAY OR SUSPENSION OF RFP SOLICITATION; REJECTION OF PROPOSALS

Nothing in this RFP shall restrict or prohibit the City from cancelling, delaying, or suspending the RFP solicitation at any time. The City may reject any or all proposals, in whole or in part, if in the best interest of the City, as determined by the City.

F. IRREGULARITIES

The City reserves the right to waive any non-material irregularities or information contained in this RFP, or in any received proposal.

G. PROPOSAL COSTS

The City is not liable for any costs incurred by a proposer in the preparation and/or presentation of a proposal. Execution of a contract is subject to the availability of funds.

H. AVAILABILITY OF RFP RESPONSES; PROPRIETARY INFORMATION

The City will open the proposals so as to avoid disclosing the contents to competing proposers during the process of negotiation. Proposals will not be available for public review until after the issuance of the Notice of Intent to Award.

The City will withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to the City in confidence, as described in ORS 192.502, that are contained in the proposal. Proposals must clearly identify such material, keep it separate, and provide separate notice in writing of the status of this material to:

**Larry Sherwood, Project Manager**

City of McMinnville

231 NE Fifth Street

McMinnville, OR 97128

Phone: (503) 434-7312

Fax: (503) 474-4955

Email: [Larry.Sherwood@mcminnvilleoregon.gov](mailto:Larry.Sherwood@mcminnvilleoregon.gov)

## SECTION III – PROPOSAL FORMAT AND EVALUATION CRITERIA

### A. ORGANIZATION OF PROPOSAL

Proposals shall be prepared simply and economically, providing a straightforward and concise description of the proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be on the completeness and clarity of the content of the proposal.

Proposers shall submit one (1) signed, clearly marked, easily reproducible original and four (4) complete copies of the proposal. Proposals shall be easily recyclable; plastic and wire bindings are discouraged.

The proposal shall not exceed twenty (20) pages in length, including pictures, charts, graphs, tables, and text. Pages shall be 8 ½" x 11", and the text font shall not be less than 10-point type. Resumes of key individuals proposed to be involved in the project are exempted from the 20-page limit if they are appended to the end of the proposal. All pages of the proposal shall be consecutively numbered.

### B. TRANSMITTAL LETTER

Each proposal must be attached to a transmittal letter that identifies the proposed Lessee of the property and the principal who will be the point of contact for this RFP and who has the authority to bind the Proposer in leasing the Lease Parcel. The transmittal letter shall indicate that the proposal will be valid for ninety (90) days from the closing of this RFP, the existing location(s) of the business; and a summary of the key provisions of the proposal.

### C. EVALUATION CRITERIA

Evaluation of the written response portion to the RFP will be based on a point system where responses to the following requests for information will be scored by members of the Evaluation Committee. The possible point values are listed by each evaluation criterion. Please see SECTION IV – PROPOSAL EVALUATION AND CONTRACT AWARD for a summary of the complete evaluation process.

Results obtained in reference checks may be used to score any relevant evaluation criteria. Reference checks will be limited to information that is listed within the evaluation criteria.

The Evaluation Committee may contact Proposers for clarification of proposal responses; however no additions, deletions or substitutions that cannot be termed as clarifications may be made to proposals.

#### 1. QUALIFICATIONS AND EXPERIENCE (Maximum 35 points)

The Proposer must submit a narrative, no longer than two (2) pages in length (not including project/development sales brochures and marketing information which may be attached as an addendum to the proposal), providing the following information:

- Description of the Proposer's experience and background in dry land farming.
- Describe the firm's or individual's experience in farming and operating machinery in and around active municipal facilities.

- Three (3) references with first-hand knowledge of the Proposer's experience in dry land farming.

## 2. FINANCIAL QUALIFICATIONS (Maximum 30 points)

The City must be assured of the Lessee's ability to perform. The proposed Lessee identified in the transmittal letter must complete the form attached as Exhibit C, which form addresses the following information:

- Name, address and contact information
- Principals of the firm (if applicable)
- Background information regarding past projects (if applicable), financial condition of the firm/individual and litigation, if any.

The financial portions of these forms may be submitted in confidence to the City. In accordance with Section VII(C) of the RFP, below, to the extent allowable by the Oregon Public Records Law, the City agrees to keep this confidential. To ensure confidential handling, completed forms should be placed in a separate envelope from the non-confidential elements of the proposal and marked CONFIDENTIAL.

## 3. LEASE PROPOSAL TERMS (Maximum 20 points)

Submit a proposal for the lease of the Lease Parcels that includes the following terms and information, as well as any other terms the Proposer will seek in a lease agreement or in connection with this transaction:

- Rent and any option payments that might occur during any due diligence phase.
- Due diligence period length if necessary for proposed use
- Deposit amount
- Lease Commencement Date
- Indicate any changes requested to the form Lease Agreement attached to this RFP.

This is the standard agreement that successful respondents to this RFP will be required to execute. RFP respondents wishing to propose any exceptions or alternative clauses to the agreement or to any specified criteria within this RFP must propose those exceptions or alternative clauses in their proposal; The City shall not be required to consider lease revisions proposed during lease negotiation and award. Proposed exceptions or alternative clauses should be accompanied by explanatory comments that are succinct, thorough and clear.

- Optional: You may submit a preliminary concept for how the Lease Parcel will be used and upon which the rent is based. This concept plan may be



general or specific. It may be submitted in confidence, as set forth in Part 2 above, and the City agrees to keep such concept plan confidential to the extent allowable by the Oregon Public Records Law.

4. COMPLIANCE HISTORY (Maximum 15 points)

List all agricultural and farming related violations and citations issued to the Lessee in the past 10 years. Provide details of each violation including any subsequent judicial decisions resulting from each violation.

SECTION IV – PROPOSAL EVALUATION AND CONTRACT AWARD

A. RESPONSIVE PROPOSER

Proposers that submit all of the required information, on time and in the requested format, per the requirements of this RFP will be considered responsive proposers. Only those proposals from responsive proposers will be considered for evaluation. Non-responsive proposers will be notified in writing that they did not meet the submittal requirements and will be disqualified for further consideration.

B. EVALUATION CRITERIA

The City will make a selection based on the evaluation of the written proposals from responsive proposers, and any interviews it conducts. The City may elect to interview all responsive proposers or only the highest ranked responsive proposers. The City reserves the right to make a selection based only on the evaluation of the written proposals and not conduct any interviews. Written proposals and interviews will be evaluated based on the following criteria:

EVALUATION CRITERIA	POINTS
1. QUALIFICATIONS AND EXPERIENCE	35
2. FINANCIAL QUALIFICATIONS	30
3. LEASE PROPOSAL TERMS	20
4. COMPLIANCE HISTORY	15
TOTAL POINTS POSSIBLE :	100

Information gained during an interview may be used to re-evaluate proposals according to the above criteria.

C. METHOD OF SELECTION

A selection committee, comprised of the Community Development and Water Reclamation Facility Staff will evaluate each submitted written proposal and each interview, when applicable, to determine the responsible proposer whose proposal is the most advantageous to the City based on the evaluation process and evaluation criteria outlined in this RFP. The City will enter lease negotiations with the highest ranked proposer.

D. NEGOTIATIONS

Following the evaluation process, the City will begin lease negotiations with the highest ranked proposer.

In the event that a lease cannot be negotiated with the highest ranked proposer, negotiations will be permanently discontinued, and the City will start lease negotiations with the next highest ranked proposer. Nothing in this RFP shall restrict or prohibit the City from cancelling the solicitation at any time.

E. LEASE AWARD

The City Council will consider award of the Lease based on the selection committee's recommendation and will authorize the City Manager to execute a lease. The lease will be awarded to the proposer who, in the opinion of the City Council, is the most qualified, and meets all required specifications. The City may reject any proposal not in compliance with this RFP and may reject for good cause any and all proposals upon a finding of the City that it is in the public interest to do so. The City also reserves the right to waive any informality in any proposal and to delete certain items listed in the proposal as set forth herein.

# City of McMinnville WRF Farm Land Lease Areas Exhibit A

Parcel D  
3.4 Acres

Parcel C  
3.7 Acres

Wastewater  
Reclamation  
Facility

Parcel A  
31.0 Acres

Parcel B  
23.1 Acres



Riverside Drive

SE Riverside Loop

Riverside Loop

Google Earth

## EXHIBIT B

LEASE OF REAL PROPERTY  
BY AND BETWEEN  
CITY OF McMinnville, OREGON  
AND  
\_\_\_\_\_  
(Lessee)

This lease is made and entered into on \_\_\_\_\_, by and between City of McMinnville, a municipal corporation of the State of Oregon (Lessor), and \_\_\_\_\_ (Lessee).

**1. Premises:** In consideration of the covenants and agreements contained in this lease, Lessor leases to Lessee the following parcels as shown in Exhibit A: Parcel A, consisting of approximately thirty-one (31.0) acres; Parcel B, consisting of approximately twenty three and one tenth (23.1) acres; Parcel C, consisting of approximately three and seven tenths (3.7) acres; and Parcel D, consisting of approximately three and four tenths (3.4) acres. Exhibit A is attached to this lease and incorporated by this reference. These parcels are located in Yamhill County, Oregon.

**2. Period of the Lease:** The lease on the Premises shall commence upon execution of this document and, unless terminated pursuant to Sections 8, 13, or 16 of this lease, shall continue through August 31, 2025, expiring on September 1, 2025. Lessee covenants with Lessor that, unless Lessee and Lessor have agreed to extend the lease, at the expiration of the lease term or upon any termination of this lease, Lessee will quit and deliver the Premises and all future erections, improvements, or additions to or upon the Premises, to Lessor, peaceably and in as good an order and condition as the Premises are now or may in the future be put by Lessor. Loss by fire, flood, unavoidable casualty, and reasonable use and wear of the Premises is excepted.

**3. Consideration:** Lessee agrees to pay Lessor, as rent for the premises, the sum of \$ \_\_\_\_\_ per acre for each lease year. The lease year shall commence September 1st and shall end on the 31st day of the following August. The payment for the first year of the lease is due within 30 days after execution of this lease. Subsequent payments for the yearly lease shall be in cash, paid in advance and is due on August 1<sup>st</sup> of each year. Payments shall be made to City of McMinnville and be mailed or delivered to City of McMinnville, Attn: Finance Department, 230 NE 2nd Street, McMinnville, OR 97128. Lessee will include with the payment a statement that the payment relates to the "WRF Farm Lease."

Any lease payment required of Lessee that is not paid within ten days of the due date shall bear interest at the rate of the maximum rate of interest permitted by law (at the time of the signing of this agreement, 9% per annum) from the due date until paid.

**4. Expenses Caused by Lease Termination:** Lessor shall not be liable for any expense incurred by Lessee in producing crops, except upon termination of lease by Lessor for Lessor's beneficial use of the premises. Lessee shall be entitled to out of pocket expenses, labor and equipment costs but shall not be entitled to any future

profits from crops should Lessor terminate the lease. Lessor agrees not to terminate the lease during the normal crop growing season unless required to do so in order to meet wastewater facility expansion needs; regulatory requirements on discharge of wastewater effluent or biosolids from the City's Water Reclamation Facility; or other future Lessor needs. In no event shall the Lessee be entitled to any expenses or potential profits beyond the current lease year relative to crops with multi-year production.

**5. Taxes:** Lessor agrees to pay, on or before November 15 each tax year, all taxes due on the Premises. Lessee shall pay, as due, all taxes on its personal property located on the Premises.

**6. Encumbrances:** Should there ever be a mortgage or other encumbrance on the Premises, Lessor agrees to keep the encumbrance in good standing at all times, to make all payments when due, and not to suffer or permit payments to be or become in default.

**7. Relationship of the Parties:** The Lessor and Lessee agree that under no circumstances shall this lease be construed as giving rise to a partnership between them, and neither Lessor nor Lessee shall be liable for the debts or obligations of the other.

**8. Lease Term Extensions:** The lease may, upon mutual agreement of the Lessor and the Lessee, be extended for five (5) additional renewal terms of one year each after termination. Lessee shall provide written notification to the Lessor, at least thirty (30) days prior to the expiration of the lease, that Lessee wishes to extend the lease. The parties will, at that time, renegotiate the lease price and the comprehensive general liability insurance coverage amount. If a mutually acceptable price and coverage amount can not be agreed upon, the extension of the lease will fail.

**9. Notices Directed to:** Notices required or permitted under this lease shall be direct to:

Lessor:

City of McMinnville  
Attn: Wastewater Manager  
3500 NE Clearwater Drive  
McMinnville, OR 97128  
(503) 434-7313  
(503) 434-7438 (Fax)

Lessee:

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

**10. Use of the Premises:** The Premises will not be used in any way prohibited by law or governmental regulation. In this event the lease will automatically terminate immediately.

In connection with the use of the Premises, Lessee will conform to all applicable laws and regulation of any public authority affecting the premises and the use, and correct, at Lessee's own expense, any failure of compliance created through Lessee's fault or by reason of Lessee's use. Lessee shall refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Lessor from taking advantage of any available reduction in insurance rates unless Lessee pays the additional cost. Lessee shall refrain from any use that would be reasonably offensive to owners or tenants or users of neighboring premise or that would tend to create a nuisance.

Lessee shall not cause or permit any hazardous substances or contaminants to be spilled, leaked, disposed of, or otherwise released on the Premises without strict environmental controls satisfactory to Lessor. Lessee shall comply with all environmental laws (including federal, state, and local laws, and any judicial or other governmental orders pertaining to the protection of health, safety, or the environment) and exercise the highest degree of care in handling hazardous substances or contaminants and shall take all practicable measures to minimize the quantity and toxicity of hazardous substances on the Premises. Upon the expiration or termination of this agreement, Lessee shall remove all hazardous substances or contaminants from the Premises.

**11. Special Conditions of Use:** The Lessee further agrees to:

- (a) Farm and cultivate the premises in a judicious manner; to keep the fences, hedges, buildings and improvements thereon in as good condition and repair as the same are now or may be put in by either party hereto, ordinary wear and tear and damage by fire, flood, unavoidable casualty and the elements alone excepted;
- (b) Not allow noxious weeds to go to seed on the premises, but to destroy the same, and to keep out the weeds and grass on roads within and adjoining the premises;
- (c) Haul out and spread on fields to be agreed on at least once per year all manure and compost produced on the premises;
- (d) Not burn any straw or crop residues except as permitted by law, and then only with Lessor's permission;
- (e) Follow standard treatment for diseases of all seed sown on the premises and to pay the cost thereof;
- (f) Take proper care of all trees, vines and shrubs and to prevent injury to same and, except when needed for fences, not to cut down any live trees except with Lessor's permission;
- (g) Keep all ditches clean, open and free from brush and growth;

- (h) Allow no stock on the premises except the stock of Lessee;
- (j) Not plow pastures or meadow-land without Lessor consent;
- (k) Not allow damage or waste to Lessor's property;
- (l) At all times keep livestock, equipment and crops on the premises insured up to their fair value against loss or damage by fire with extended coverage, naming Lessor as an additional insured party;
- (m) Pay all expenses of delivering crops to market;
- (n) Not permit the production or sale on the premises of any alcoholic beverages;
- (o) Not assign this lease, nor sublet or permit any person(s) other than members of Lessee's family and employees to occupy the same without consent of Lessor being first obtained in writing; and
- (p) Plant only annual crops, or perennial crops that would allow the application of biosolids and abstain from planting any crop that could prohibit the application of biosolids.

**12. Access:** Lessor also grants vehicular and pedestrian egress and ingress across adjacent Lessor owned properties at 3500 NE Clearwater Drive, McMinnville Oregon. Lessee is required to coordinate with the lessee(s) of the adjacent properties (if any) and minimize the disruption or damage caused. Any cost associated with damage or alteration to adjacent properties related to this lease will be paid by the Lessee.

**13. Maintenance:** Lessee shall have full responsibility for maintenance of the Premises. Lessee shall keep the Premises clean and in good appearance. Lessee shall make no physical alterations without permission of the Lessor.

**14. Indemnification:** Lessee shall indemnify and defend Lessor from any claim, loss, or liability arising out of or related to any activity of Lessee on the Premises or any condition of the Premises in the possession or under the control of Lessee. Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Lessor's negligence or breach of duty under this agreement.

**15. Damage to or Destruction of the Premises:** If the Premises are partially damaged, they shall be repaired as soon as practicable at Lessor's expense. If the Premises are destroyed or damaged to the extent that the cost of repair exceeds 25% of the value of the Premises before the destruction or damage, either party may elect to terminate this lease as of the date of the destruction or damage by written notice to the other party not more than thirty (30) days following the date of the destruction or damage. In such circumstances, the rights and obligations of the parties will cease as

of the date of the termination and Lessee shall be entitled to reimbursement of any prepaid lease amount, prorated. If neither party elects to terminate, Lessor shall, as soon as practicable, restore the Premises to substantially the same condition as before the destruction or damage. Lessee shall be reimbursed a pro rated amount of lease payments for any period during which the Premises are not usable.

**16. Warranties:** Lessor warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances. Lessor will defend Lessee's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

**17. Assignment, Mortgage, Subleases:** No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without prior written consent of Lessor. This provision shall apply to all transfers by operation of law, including a transfer of a majority voting interest in stock or partnership interest of Lessee. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole and arbitrary discretion. Lessor shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances. Lessor shall not unreasonably delay consent.

**18. Termination of Lease by Agreement:** If the Lessee desires to terminate this lease agreement a request must be submitted in writing to the Lessor within thirty (30) days of the intended termination date. If the request for early termination of the lease agreement is granted the Lessee will quit and deliver the Premises to the Lessor by the agreed upon termination date, peaceably and in as good an order and condition as the Premises are now or may in the future be put by Lessor.

**19. Default and Remedies:** The following events shall constitute default:

Failure of Lessee to pay any lease payments within thirty (30) days after written notice that such payment is due.

Failure of Lessee to comply with any term or condition or fulfill any obligation of this agreement (other than the payment of lease payments) within twenty (20) days after written notice from the Lessor specifying the nature of the default with reasonable particularity. If the default is of a nature that cannot be completely corrected within twenty (20) days, this provision shall be complied with if Lessee commences correction within twenty (20) days (or as soon as practicable) and proceeds with reasonable diligence and in good faith.

Insolvency of the Lessee, an assignment by Lessee for the benefit of creditors, filing by Lessee of a voluntary petition of bankruptcy, an adjudication that Lessee is bankrupt or the appointment of a receiver for the properties of Lessee, filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing, attachment of or the levying of execution on the leasehold



interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution with ten (10) days.

Failure of the Lessee to occupy the Premises for the purposes permitted under this agreement for the period of one (1) year.

In the event of a default, this agreement may be terminated at the option of the Lessor by written notice to Lessee. Whether or not the lease is terminated by the election of Lessor, Lessor shall be entitled to recover damages from Lessee for the default and Lessor may re-enter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender. Following re-entry or abandonment, Lessor may re-let the Premises, or any part thereof, but Lessor shall not be required to re-let.

In the event of termination or re-taking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future lease payment or until the date fixed for expiration of the lease, the following amounts as damages:

The loss of lease payments from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying.

The reasonable costs of re-entry and re-letting, including without limitation the cost of any cleanup, removal of Lessee's property and fixtures, and any other costs or expenses incurred through Lessee's default.

Any excess of the value of the rent and all of Lessee's other obligations under this agreement over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the premises are re-let, and continuing through the end of the term.

Lessor may sue periodically to recover the damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

The above remedies are in addition to and shall not exclude any other remedy available to Lessor under applicable law.

The limitations on remedies shall not preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set out in this agreement or for causing physical damage or injury to persons or property.

**20. Strict Performance:** Waiver by either party of strict performance of any provision of this agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**21. Attorney Fees:** If suit or action is instituted in connection with any controversy arising out of this agreement, the prevailing party shall be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

**22. Successors and Assigns:** Subject to the above-stated limitations on transfer of Lessee's interest, this agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**23. Recording:** This agreement shall be recorded at the expense of Lessor.

**24. Lessor's Rights:** Lessor shall have the right to enter upon the Premises at any time to determine Lessee's compliance with the terms of this agreement, and, in addition, shall have the right, at any time during the last year of the term of the lease, to place and maintain upon the Premises notices for leasing or selling the Premises.

**25. Time of the Essence:** Time is of the essence of the performance of each of Lessee's obligations under this agreement.

**26. Arbitration:** If any dispute arises between the parties, either party may request arbitration and appoint as an arbitrator an independent real estate appraiser having knowledge of leased properties comparable to the premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within ten (10) days of the choosing of the prior arbitrator, then either party may apply to the presiding judge for the judicial district where the premises are located to appoint the required arbitrator. The arbitrators shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in Yamhill County. Costs of the arbitration shall be shared equally by the parties, but each party shall pay its own attorney fees incurred in connection with the arbitration.

\_\_\_\_\_  
(LESSEE)  
(Title)

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved as to Form

## EXHIBIT C

### Statement of Legal Status and Financial Capability

*For official and confidential use by the City of McMinnville*

**Purpose/Instructions:** The following information will be used by the City in determining whether or not the identified Proposer has, in the opinion of the City, the financial capability to lease the Lease Parcel.

**NOTE: In accordance with ORS 192.502(4), the City considers this information as a public record exempt from disclosure under ORS 192.410 to 192.505.**

If space on this form is inadequate for any requested information, please furnish on attach pages with a reference to the appropriate question number on this form.

#### A. Proposer Information

1. Official Company/Entity Name: \_\_\_\_\_ (hereinafter "Proposer")
2. Mailing Address: \_\_\_\_\_  
State/Zip: \_\_\_\_\_
3. If at this address less than 1 year, prior address: \_\_\_\_\_
4. Primary contact regarding this information: \_\_\_\_\_
5. Telephone Number: \_\_\_\_\_
6. Email Address: \_\_\_\_\_

#### B. Proposer Entity. The Proposer named above is:

- ☐ A sole proprietorship — Soc. Sec. # \_\_\_\_\_
- ☐ A corporation — FID # \_\_\_\_\_
- ☐ A nonprofit or charitable institution or corporation — FID # \_\_\_\_\_
- ☐ A partnership — FID # \_\_\_\_\_
- ☐ A business association or a joint venture — FID # \_\_\_\_\_
- ☐ A limited liability company — FID # \_\_\_\_\_
- ☐ A Federal, State, or local government or instrumentality thereof
- ☐ An individual - Soc. Sec. # \_\_\_\_\_
- ☐ Other / explain: \_\_\_\_\_

**C. Date and State of Organization.** If the Proposer is not an individual or a government agency or instrumentality:

1. Date of organization: \_\_\_\_\_

2. State of organization: \_\_\_\_\_

**D. Proposer Principals.** Names of owners, officers, directors, trustees, and principal representatives of the entity

Name, Title, Address, ZIP Code	Description of interest/relationship	% of Ownership Interest

**E. Affiliations.** Is the Proposer a subsidiary or parent of or affiliated with, any other corporation or corporations or any other firm or firms? ☐ Yes ☐ No

**If Yes,** provide the following information:

Corporation / Firm	Relationship to Proposer	Common Officers/Directors/Owners/ Trustees/Representatives
Name Address		
Name Address		

If the Proposer is different than the parent corporation or firm, will the parent corporation or firm guarantee performance under this proposal?

☐ Yes ☐ No

**F. Bankruptcy.** Has the Proposer or the parent corporation (if any), or any subsidiary or affiliated corporation of the Proposer or said parent corporation, or any of the Proposer's officers or principal members, shareholders or investors filed for bankruptcy, either voluntary or involuntary, within the past 10 years? ☐ Yes ☐ No

**If Yes,** provide the following information:

Name	Court	Date	Status

- G. Loan Defaults.** Has the Proposer or the parent corporation (if any), or any subsidiary or affiliated corporation of the Proposer or said parent corporation, or any of the Proposer's officers or principal members, shareholders or investors defaulted on a loan or other financial obligation? ☐ Yes ☐ No

**If Yes, explain:**

- H. Criminal Litigation.** Is the Proposer or the parent corporation (if any), or any subsidiary or affiliated corporation of the Proposer or said parent corporation, or any of the Proposer's officers or principal members, shareholders or investors party to any past or pending criminal litigation? ☐ Yes ☐ No

If Yes, provide the following information, and attach any additional information or explanation deemed necessary:

Date Filed	Court	Charge/Current Status

- I. Civil Litigation.** Is the Proposer or the parent corporation (if any), or any subsidiary or affiliated corporation of the Proposer or said parent corporation, or any of the Proposer's officers or principal members, shareholders or investors party to any pending civil litigation that could potentially impact the financial capability of the Proposer to complete the proposed development? ☐ Yes ☐ No

**If Yes, provide the following information, and attach any additional information or explanation deemed necessary:**

Date Filed	Court	Current Status

- J. Conflict of Interest.** Does any member or employee of the City of McMinnville have any direct or indirect personal interest in the Proposer or in the redevelopment or rehabilitation of the property being proposed by the Proposer? ☐ Yes ☐ No

**If Yes, explain:**

- K. Financial Condition.** Attach to this statement a **certified financial statement** showing the assets and the liabilities, including contingent liabilities, of the Proposer fully itemized in accordance with accepted accounting standards and based on a proper audit. If the date of this certified financial statement precedes the date of this submission by more than nine months, also attach an interim balance sheet not more than 60 days old.
- L. Additional Information.** Attach any additional evidence deemed helpful to demonstrate the Proposer's financial capacity and capability to complete the proposed transaction.

### CERTIFICATION

I \_\_\_\_\_ certify under penalty of perjury under the laws of the State of Oregon that I am authorized to submit this information on behalf of the Proposer and that the statements made in this Statement of Qualifications are true and correct.<sup>1</sup>

I further authorize the City, or any employee or agent acting on behalf of the City, to undertake any investigation deemed appropriate to verify the information contained herein.

**Printed Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

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<sup>1</sup> ORS 162.055 to 162.425 makes it a crime to knowingly make a false statement to a public servant with regard to a material issue. Such false statement is a Class C Felony punishable by up to 5 years in prison and/or a fine of \$100,000.