



## **REQUEST FOR PROPOSALS**

### **PROFESSIONAL SERVICES AND RELATED SERVICES Airport Administrator Services**

JANUARY 7, 2022

**Address Proposals to:**

City of McMinnville  
Attn: Anne Pagano  
230 NE Second Street  
McMinnville, OR 97128

**Proposals due: Friday, February 11, 2022, at 2:00 PM, Pacific Time**

Proposals must be plainly marked as follows: Request for Proposals – Airport Administrator Services,” and sent to the attention of Anne Pagano, Director of Public Works. Include the name and address of the Proposer. Proposers must submit a pdf Proposal to the following email address: [bids@mcminnvilleoregon.gov](mailto:bids@mcminnvilleoregon.gov). Faxed or printed Proposals will not be accepted. The City of McMinnville reserves the right to reject any or all Proposals.

Information about the RFP can be found and downloaded on the City’s website at: <http://www.mcminnvilleoregon.gov/rfps>

- This Page Intentionally Left Blank -

# Table of Contents

## Request for Proposals

I.	Project Description .....	3
II.	Scope of Work .....	3
	Term of Service .....	5
III.	Minimum Qualifications .....	5
IV.	Proposal Requirements .....	6
	Proposal Format.....	6
	Introductory Letter .....	7
	Project Understanding .....	7
	Project Approach .....	7
	Proposer's Experience .....	8
	Project Team Experience .....	9
	Supporting Information .....	9
V.	Proposal Submission .....	10
VI.	Proposal Evaluation and Selection .....	10
	Written Evaluation .....	10
	Interview Evaluation .....	11
	Successful Proposer Determination .....	11
	Award Protest.....	12
VII.	Schedule .....	13
VIII.	Pre-Proposal Meeting .....	13
.	RFP Documents .....	14
X.	Project Manager .....	14
XI.	RFP Questions.....	14
XII.	General RFP Information .....	15
	Changes to the RFP Solicitation by Addenda.....	15
	Confidentiality .....	15
	Cancellation .....	16
	Late Proposals .....	<b>Error! Bookmark not defined.</b>
	Disputes .....	16
	Proposer Certifications .....	16
	Nondiscrimination .....	17

Competition.....	18
RFP Protests and Change Requests.....	18
Proposal Liability .....	18
City Requests for Clarification, Additional Research, and Revisions .....	19
Rejection of Proposals .....	19
Modification or Withdrawal of Proposal by Proposer .....	20
Duration of Proposal .....	20
Local and Federal Requirements.....	20

## Attachment A

Sample Professional Services Agreement .....	A-1
--	-----

# Request for Proposals

The City of McMinnville, Oregon (the “City”) is requesting Proposals in order to select a qualified administrator to provide professional services for the Airport Administrator Services (“Project”). Proposers are invited to demonstrate their experience and qualifications in performing work directly related to the services required by responding to this **Request for Proposals (RFP)**. The anticipated negotiated fee for this Project is expected to exceed \$100,000; therefore, Proposals will be evaluated in accordance with the qualifications based selection procedures of OAR 137-048-0220. This Project ☐does ☒ does not involve federal funds. If federal funds are involved, special federal requirements are contained within the attached draft Professional Services Agreement and must be carefully reviewed and complied with.

## I. Project Description

The City seeks a service provider to serve as the City’s Airport Administrator to oversee the operations, budget, regulations, public meetings, and other supervisory needs for the McMinnville Municipal Airport (“Airport”). The Airport is located on a 650-acre site on Three Mile Lane (Highway 18) in McMinnville, Oregon. Proposers are encouraged to review the City’s Airport Layout Plan, Minimum Standards, and Code, all of which can be found at <https://www.mcminnvilleoregon.gov/airport>. The City is currently in the process of updating the Minimum Standards and Code and has plans to begin a new master planning process in the near future.

The City expects that the Airport Administrator will oversee the volunteer Airport Commission that serves as an advisory body to the City Council, as well as oversee the Airport Manager and also be available on-site for 1-3 days per week on average, as requested by the City.

## II. Scope of Work

Below is a general description of the services to be performed as part of the proposal submission. The Administrator shall:

- Supervise and oversee any and all activities at the Airport, including enforcement of the rules and regulations and leases currently in effect or hereafter adopted by the City.
- Make periodic inspections of all McMinnville Municipal Airport property and premises, including those leased to tenants to ensure that the tenants are

adhering to the terms of leases and requirements of insurance carriers of the City.

- When requested, inspect all runways, taxiways, and ramp areas with reference to matters affecting safety of operations, including the need for repair and maintenance thereof. The Administrator may be requested to check and inspect all runway approach and transition slopes to ascertain that they are free from obstructions.
- Be responsible for supervising and instructing the Airport Manager, all employees hired, all contractors, sub-contractors, and all other persons working on the Airport premises to ensure aviation safety in the performance of all types of Airport construction and maintenance on the McMinnville Municipal Airport. Manage and provide recommendation of payment for Airport Manager invoices.
- Be responsible for all aviation safety and shall coordinate construction with engineers, FAA, and other entities involved to ensure safe operations.
- Responsible for enforcement of Airport rules and regulations and leasing standards as such rules may apply to all Airport tenants and all persons providing aeronautical services to the public, to ensure that such rules and leasing standards are maintained and the City receives its proper fees and rentals.
- Run the bi-monthly Airport Commission meetings, prepare agendas, reports and presentations for City Council, Airport Commission and other public or private meetings and events.
- Represent the City at construction meetings, meetings with FAA, Oregon Department of Transportation personnel and other Airport-related meetings at such times and places as the City may request.
- Develop short- and long-range goals for the Airport and present them to the City Council and Airport Commission at least annually.
- Develop and administer City monies budgeted for annual airport operations.
- Coordinate with the City, lessees, and renters to ensure compliance with the terms of their current leases and/or rental agreements.

- Help coordinate, with the City and aviation groups, activities designed to promote increased general airport usage, and increased community awareness of the importance of the airport to the general City welfare.
- Research and pursue appropriate funding sources and opportunities (including state and federal grants), and coordinate the application process for such funding.
- Recommend, promote and continue marketing efforts that portray aviation in the region in a positive manner.
- Participate in development and review of the Airport Master Plan and accompanying Airport Layout Plan, and other forecasting plans and documents.
- Participate in development and review of future airport improvement projects. Assist in coordination with hangar lessees during improvement projects.
- Participate as an administrator in any critical incident, emergency or exercise related to airport operations; to include but not limited to coordinating/ assisting emergency response from local fire and police, air traffic control, emergency management, airport users and airport staff; assuming assigned role(s) as designated by the City and/or guidelines set forth by the National Incident Manager System (NIMS) Incident command System (ICS).
- Work with the administration and FAA to obtain grants and actively participate in all aspects of grant management, oversight and reimbursement.
- Other services as directed by the City.

#### Term of Service

The term of contract resulting from this RFP shall be for two (2) years with two (2) one-year options to renew.

### III. Minimum Qualifications

To be considered for award of the contract for this Project, each Proposer shall demonstrate the following minimum criteria as part of their Proposal.

1. Proposer shall demonstrate a minimum of five (5) years' experience providing the types of services described within the Scope of Work of this Request for Proposals for public agencies.
2. Proposer must be located in Oregon, or have the ability to regularly visit the Airport and attend meetings in order to complete the work described above.
3. Proposer shall not have a record of substandard performance, as verified by the City by communication with licensing authorities, former clients and references, and other means as the City deems appropriate.
4. Proposer shall be thoroughly familiar with all Federal Aviation Regulations applicable to operation of the Airport, and shall be primarily responsible for implementation of such regulations and all Airport Certification Specifications and inspections.

#### IV. Proposal Requirements

Proposers shall prepare and submit Proposals in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposals should provide a clear, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness, brevity, and clarity of content. Failure to comply with or complete any part of the RFP may result in rejection of the Proposal. The ability to follow these instructions demonstrates attention to detail. The successful Proposer's proposal will be utilized as the basis for developing a final scope of work for the resulting contract.

##### Proposal Format

Proposals shall be typewritten with a standard body text font (e.g. Calibri, Times New Roman, Garamond) of at least 12-point.

Proposals shall be organized in accordance with the listed Proposal contents and shall not exceed 10 total pages. Supporting Information, as defined below, shall be provided in a separate section at the end of the Proposal, and not counted in the page limit requirements. A front cover sheet and one-page table of contents are not counted in the page limit requirements.

Proposals exceeding the specified number of pages or text font size may be considered non-responsive and the Proposal may be rejected. Pages exceeding the maximum page limit may not be reviewed.



### Introductory Letter

The introductory letter should address the administrator's willingness and commitment, if selected, to provide the services offered and a description of why the Proposer believes it should be selected.

The letter shall be addressed to the City's Project Manager and include the name of the firm, as well as the printed name, title, telephone number, and email address of the officer authorized to represent the administrator in any correspondence, negotiations, and signing of any contract that may result. Include the address of the office that will be providing the service and the project manager's name, title, telephone number, and e-mail address. The Proposer's federal and state tax ID numbers and the state of incorporation, if applicable, shall also be included. The letter must be signed by the Proposer, if an individual, or by a legal representative of the Proposer's entity, authorized to bind the entity in contractual matters.

The letter of interest shall specifically stipulate the following statements:

*"Proposer has received and examined, as part of the Proposal, Addenda No. \_\_ through \_\_. Proposer accepts all terms and conditions contained in the Request for Proposal and the Professional Services Agreement, except as otherwise specifically noted as an Exception in the Proposal."*

*"The submitted Proposal is valid for a period of ninety (90) days from the time and date Proposals are due."*

*"All materials and documents acquired or produced by the administrator in conjunction with the resulting contract shall be delivered to and become property of the City of McMinnville, without restriction or limitation of future use."*

### Project Understanding

Proposals shall demonstrate the administrator's understanding of the Project by providing a clear and concise description of the Project, discussion of the anticipated primary issues and milestones, and identification of key stakeholders, based on the information provided in the RFP.

### Project Approach

Proposals shall clearly define the tasks and activities necessary to meet the objectives outlined in the Scope of Work of the RFP. Each Proposer should demonstrate knowledge of the type of work requested, ability to solve the anticipated Project issues,

and ability to offer innovative ideas. Proposer's ability to expeditiously complete the work should be made evident. The Proposal should include the following:

1. Describe overall approach to project management.
2. Describe approach to organize and accomplish each of the tasks and activities of this RFP, including addressing the anticipated primary issues.
3. Identify Proposer's specific team members, including key sub-consultants, and resources assigned to each task and activity of the RFP.
4. Describe Proposer's approach to complete the tasks and activities of this RFP in a timely manner and control costs.
5. Describe Proposer's approach to unanticipated issues that may arise during the Project.
6. Describe Proposer's quality assurance and quality control procedures to be implemented on this Project.
7. Describe Proposer's approach and abilities to interact and engage stakeholders.
8. Identify key points of input and review with City staff.

#### Proposer's Experience

Proposals shall provide a brief work history of administrator's and any key sub-consultant's projects entailing the same type of work being requested. Emphasis should be placed on local projects for public agencies where possible. The Proposal should include the following:

1. Describe the administrator's and key sub-consultant's firm size, office locations, and relevant capabilities and resources to be utilized on this Project.
2. Describe administrator and key sub-consultants' work experience that correspond with the Project needs, as identified in this RFP.
3. Provide at least three (3) examples of projects completed by Proposer for public agencies within the last five (5) years that best characterize Proposer's experience with the work being requested, work quality, and cost control, describing each by project name, type, location, and date.
  - Include the public agency name and the name, address, telephone number, and email of the current contact person for each project, where possible.

- Identify what role, if any, each team member who is proposed for this City Project (see Project Team Experience, below) played in each listed project.
- Identify original and final contract costs for each listed project. Explain any cost overruns and corrective actions taken.

### Project Team Experience

Proposals shall identify the team to be assigned to the Project by name, describing each member's qualifications and experience with completed projects relative to the requested services, including expertise regarding all tasks associated with the Scope of Work. Each Proposal should include the following:

1. Identify by name and title the project principal, project manager, key staff, and any sub-consultants or subcontractors to be assigned to this Project.
2. Describe education, training, qualifications, registrations, certification, and relevant individual work experience of all key personnel, including sub-consultants, to be assigned to this Project.
3. Identify the Project roles and responsibilities of all key personnel.
4. Describe any attributes or expertise of key personnel uniquely situated for the requested services.
5. Describe the extent of principal and project manager involvement.
6. Describe current and anticipated assignments and location of key personnel, including percentage of time devoted to other projects during performance of this Project.
7. Estimate the percentage of time key personnel will be devoted to this Project for the duration of the Project, based on a 40-hour work week.

### Supporting Information

Supporting materials may include graphs, full resumes, other references, charts, sample documents, and photos. However, pertinent information should be covered in the body of the Proposal. Supporting Information will not count toward the page limit, but brevity is encouraged. If there is no additional information to present in the Supporting Information, then state: *"There is no additional information we wish to present."*

Proposers should not include price proposals, hourly rates, or any other information related to cost in their proposals. Proposals that include any information of fees will not be considered.

## V. Proposal Submission

Proposers shall submit a pdf version of their written Proposals, plainly marked "Request for Proposals –Airport Administrator Services" and include the name and address of the Proposer. Proposals shall be addressed and submitted to the following email address by **2:00 p.m., Pacific Time, on Friday, February 11, 2022.**

City of McMinnville

Attn: Anne Pagano

Email address: [bids@mcminnvilleoregon.gov](mailto:bids@mcminnvilleoregon.gov)

Proposals must arrive at the email address on or before the listed time and date due. Late Proposals will not be considered. Faxed or printed Proposals will not be accepted.

## VI. Proposal Evaluation and Selection

A Selection Review Committee of at least three members will be appointed to evaluate the Proposals received. Each committee member will independently evaluate each Proposal in accordance with the criteria stated in the Proposal Requirements section of this RFP.

The City may also seek expert advice to help review Proposals. Advisors to the Selection Review Committee may attend evaluation meetings and administrator presentations, evaluate the Proposals, and lend any such expertise to the process as requested by the City. However, any such person that is contacted by the City for their expert advice shall not, from first being contacted until the RFP process is completed or otherwise brought to an end, have communications with any Proposers regarding their Proposals or the RFP process.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal.

### Written Evaluation

Based on their evaluation, each member of the Selection Review Committee will score each Proposal according to the following scoring criteria. Each member will rank, in descending order, each Proposal by total score.

#### **EVALUATION CRITERIA**

Criteria	Maximum Score
Introductory Letter	Required
Project Understanding	10

Project Approach	30
Proposer's Experience	20
Project Team Experience	40
Total	100 Points

In addition to the above weighted scoring criteria, feedback from provided references may also be considered and may be determinative in the selection process. References will not be scored but may be considered and may be a deciding factor.

#### Interview Evaluation

If determined to be necessary or desirable by the City, finalists from the written evaluation may be invited to participate in an additional interview evaluation process. The number of finalists will be determined by the Selection Review Committee. The interview evaluation process will provide an opportunity for Proposers to make a presentation to clarify their Proposal and for the Selection Review Committee to ask additional questions related to the Proposal and Scope of Work. The City will notify finalists of the interview evaluation time and location and allow for a reasonable period of time for finalists to prepare presentations.

After the interviews, each member of the Selection Review Committee will re-evaluate and re-score each finalist interviewed according to the Evaluation Criteria. Each member will rank, in descending order, each interview by total score.

#### Successful Proposer Determination

The Proposer with the highest overall ranking, as determined by the Selection Review Committee, shall be identified as the Successful Proposer. Depending on the number of Proposers and the point spread among Proposals, the Selection Review Committee may determine that an interview evaluation is needed to determine the Successful Proposer. Those Proposers selected for interviews will be based on the Proposals with the highest overall ranking.

If interviews are conducted, the Successful Proposer will be determined based on the adjusted post- interview score and ranking in accordance with the Evaluation Criteria. The Proposer with the highest overall adjusted ranking, as determined by the Selection Review Committee, shall be identified as the Successful Proposer.

The City reserves the right to perform additional investigations of any Proposer, including communication with licensing authorities, former clients and references, and other means as the City deems appropriate, and may reject any Proposal upon finding a record of Proposer's substandard workmanship.

The Selection Review Committee shall determine the final ranking of Proposers, and the Committee's decision is final. Upon determination of the Successful Proposer and performance of additional investigations, the City will issue a Notice of Intent to Award letter notifying all Proposers of the City's selection of a Successful Proposer and protest procedures.

The City reserves the right to negotiate a final contract that is in the best interest of the City. With regards to the Professional Services Agreement, the City will only negotiate those provisions that were noted as Exceptions in the Proposal. The City will attempt to reach a final agreement with the Successful Proposer. The City may, in its sole discretion, terminate negotiations and reject the Proposal in the event agreement cannot be reached. The City may then attempt to reach final agreement with the next highest ranked Proposer, and so on with the remaining Proposers, until an agreement is reached. In the alternative, the City may at any time elect to reject all Proposals and begin the RFP process over.

After the City has reached final agreement with the Proposer, the Selection Review Committee will make a recommendation to the McMinnville City Council, for contracts over \$100,000. The McMinnville City Council will then make the final contract award decision.

#### Award Protest

A Proposer believing to have been adversely affected or aggrieved by the selection of the Successful Proposer may submit a protest to the City in accordance with OAR 137-048-0240. The protest must be in writing and submitted to:

City of McMinnville  
Attn: Anne Pagano  
230 NE Second Street  
McMinnville, OR 97128

OR

Anne Pagano's Email: [Anne.Pagano@mcminnvilleoregon.gov](mailto:Anne.Pagano@mcminnvilleoregon.gov) Award protests shall include "Airport Administrator Services – Award Protest" in the subject line or written on the front of the envelope. The written protest must be received by the City no later than seven (7) calendar days after the date the Notice of Intent to Award letter was issued. The protest should demonstrate that all higher ranked Proposers failed to meet the requirements of the RFP or are not qualified to perform the services described in the RFP. Protests received after the submittal deadline will not be considered.

No contract associated with the RFP will be awarded until any protests have been resolved. The City will evaluate and resolve all award protests submitted before the deadline within a reasonable time following receipt of the protest. The City will promptly issue a written decision on the protest to the Proposer who submitted the protest. If the City's written decision on the protest results in a change to the RFP, the City shall cancel the Notice of Intent to Award, revise the RFP documents accordingly, and solicit for new Proposals. The City's decision regarding the protest is final and concludes the administrative appeals process.

## VII. Schedule

The following is the anticipated timeline for receiving and evaluating Proposals and awarding a contract to the most qualified firm or individual. This schedule is subject to change as additional time is needed.

Advertise Request for Proposals	January 7, 2022
RFP Change Request Deadline	February 4, 2022, 5:00 p.m.
RFP Question Submission Deadline	February 4, 2022, 5:00 p.m.
Addenda Issuance Deadline	February 8, 2022
Proposals Due	February 11, 2022, 2:00 p.m.
Evaluation of Proposals Complete	February 18, 2022
Interviews Scheduled ( <i>if required</i> )	February 21-25, 2022
Notice of Intent to Award	February 28, 2022
Award Protest Deadline	March 7, 2022, 5:00 p.m.
City Council Award ( <i>if over \$100,000</i> )	March 22, 2022, 7:00 p.m.
Notice of Award	March 23, 2022

## VIII. Pre-Proposal Meeting

There will be no pre-submittal meeting or site visit scheduled for this RFP.

## IX. RFP Documents

Request for Proposal (RFP) documents may be obtained at McMinnville City Hall, located at 230 NE Second Street, McMinnville, Oregon 97128. The City of McMinnville shall not be held responsible for the delivery of the documents.

## X. Project Manager

The City's Project Manager shall be the sole point of contact for all questions, concerns, and protests. The Project Manager for this Project is:

Anne Pagano  
Director of Public Works

Contact at:  
(503) 474-5138  
Project Manager Email  
Anne.Pagano@mcminnvilleoregon.gov

## XI. RFP Questions

Proposers shall direct all questions regarding RFP documents in writing or by email to:

City of McMinnville  
Attn: Anne Pagano  
230 NE Second Street  
McMinnville, OR 97128

OR

Anne Pagano's Email: Anne.Pagano@mcminnvilleoregon.gov

All questions shall include "Airport Administrator Services – RFP Questions" in the subject line and be submitted by email by **5:00 p.m., Pacific Time, on Friday, February 4, 2022**. Questions and answers will be provided by email to all firms on the RFP holders list.

Questions submitted after **5:00 p.m., Pacific Time, on Friday, February 4, 2022** will not be addressed.

For the sake of fairness, Proposers are not to contact any City staff or official other than the Project Manager concerning this RFP. Contact with any other City staff or official concerning this RFP will be grounds for disqualification.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning this RFP. Only answers to those questions responded to by the Project Manager via email or by written addendum may be relied upon.



## XII. General RFP Information

### Changes to the RFP Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addendum, which shall be issued by email format only to all those who have obtained the RFP documents by pick-up, standard mail, or at [mcminnvilleoregon.gov](http://mcminnvilleoregon.gov) by selecting "Business" and then selecting "Bids and Requests for Proposals."

All addenda shall have the same binding effect as though contained in the main body of the RFP and Scope of Work.

No addenda will be issued later than **Tuesday, February 8, 2022**, except by an addendum, if necessary, postponing the date for receipt of Proposals or withdrawing the RFP altogether.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal and shall acknowledge in the Proposal receipt of each addendum as part of the Proposal. Failure to acknowledge receipt of all addenda as part of the Proposal may result in rejection of the Proposal.

### Confidentiality

All information submitted by Proposers (excluding profit and loss statements supplied for review of Proposer's proposal, which should be marked confidential if the Proposer wishes it to be treated as such, and which shall remain the Proposer's property and be returned to Proposer) shall become and remain the property of the City and, as such, is considered public information and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which the Proposer requests exception from disclosure as being proprietary information exempt from disclosure, consistent with Oregon law. If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

*"This data constitutes a trade secret and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."*

Identifying the Proposal in whole as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret. Nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

The City will make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted. If a public record request is made for material marked as proprietary, the City will attempt to notify the impacted Proposer prior to the deadline for release of the material but will not defend against any legal challenge for release. Therefore, claims arising out of any public record request for such information shall be at the Proposer's sole expense, if the Proposer wishes to deny or withhold the information.

#### Cancellation

The City reserves the right to cancel this RFP or the contract award at any time before execution of the contract by both parties, if cancellation is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a contract award.

#### Late Proposals

All Proposals that are not received by the Proposal Due Date and Time will not be considered. Printed or faxed Proposals will not be accepted.

#### Disputes

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

#### Proposer Certifications

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. Proposer has carefully examined all RFP documents, including the draft Professional Services Agreement (attached as Attachment A), all addenda, and all other attachments, fully understands the RFP intent, is able to perform all tasks as described in the Scope of Work of this RFP, and the Proposal is made in accordance therewith. Except as otherwise noted as part of the Proposal, Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached Professional Services Agreement.
2. Proposer is familiar with the local conditions under which the work will be performed.

3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. Proposer accepts all of the terms of the City's Professional Services Agreement and warrants that Proposer will fully meet all of the insurance requirements contained therein. If Proposer wishes to amend or modify any terms of the Professional Services Agreement, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the draft Professional Services Agreement not stated at the time of Proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, Proposer may withdraw the proposed change or the entire Proposal and the City may elect to award to the next highest ranked Proposer.
5. Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable in whole or part by the City has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposer's response to this solicitation.
6. Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, the Proposer shall accept the contract documents thereto, unless substantive changes are made in same without the approval of the Proposer.
7. Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
8. Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.

Proposer shall also certify Proposer's state of residence.

#### Nondiscrimination

By the act of submitting a Proposal in response to this RFP, the Proposer certifies, under penalty of perjury, that ***the Proposer has not discriminated, and will not discriminate, against minorities, women, emerging small business enterprises, or business enterprises that are owned or controlled by or that employ a disabled veteran in obtaining any required subcontracts.***

### Competition

Prospective Proposers are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement within this RFP which the Proposer believes will inordinately limit competition.

### RFP Protests and Change Requests

A prospective Proposer may protest anything contained in the RFP documents and request a supporting change to any provision, specification, or contract term contained in the RFP documents by submitting a written request to:

City of McMinnville  
Attn: Anne Pagano  
230 NE Second Street  
McMinnville, OR 97128

OR

Anne.Pagano@mcminnvilleoregon.gov

All change requests shall include "Airport Administrator Services – Change Request" in the subject line or written on the front of the envelope and be submitted, in writing, by **5:00 p.m., Pacific Time, on Friday, February 4, 2022**. Each request for change must specify the provisions, specifications, or contract terms of the RFP in question and contain reasons for the requested change and any proposed changes.

All protests shall include "Airport Administrator Services– RFP Protest" in the subject line or written on the front of the envelope and be submitted, in writing, by **5:00 p.m., Pacific Time, on Monday, March 7, 2022**. Each protest must specify the provisions, specifications, or contract terms of the RFP in question and contain reasons for the protest.

The City will evaluate and resolve all protests and related change requests submitted before the listed time and date due within a reasonable time following receipt of the protest. The City will issue a written decision on the protest to the Proposer who submitted the protest. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP.

### Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements. The City is not liable for

any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

#### City Requests for Clarification, Additional Research, and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Proposer. Information may include, but shall not necessarily be limited to, current litigation and contracting references. All such documents, if requested by the City, become part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

#### Rejection of Proposals

The City reserves the right to reject any or all irregularities or omissions in Proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any or all Proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a Proposal in the format specified herein.
3. Failure of the Proposer to submit a Proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.
5. Failure to provide information that is specifically requested in this RFP.

The City may reject any Proposal not in compliance with all prescribed public procurement 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.

#### Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer following the time and date the Proposals are due. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, in writing, executed and signed by a duly authorized representative of the firm/individual submitting the Proposal. All such communication shall be so worded as not to reveal the contents of the original Proposal.

Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

#### Duration of Proposal

Proposal prices, terms, and conditions shall be firm for a period of at least ninety (90) days from the time and date Proposals are due. Proposals shall not be subject to future price escalation or changes of terms during the ninety (90) day period.

#### Local and Federal Requirements

The City of McMinnville intends to select an administrator in accordance with OAR 137-048-0220 and the City's municipal code. Selection of an administrator under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the Work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of McMinnville.

The selected administrator shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

The selected administrator is subject to the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires the provision of Workers Compensation coverage for all employees working under this contract. The City of McMinnville's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, disability, or political affiliation.

- This Page Intentionally Left Blank -



# ATTACHMENT A

## CITY OF McMinnville PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) for the Airport Administrator Services Project (“Project”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2022 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and \_\_\_\_\_, a(n) \_\_\_\_\_ [state] \_\_\_\_\_ [corporation/limited liability company, etc.] (hereinafter referred to as “Administrator”).

### RECITALS

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

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

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

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

### AGREEMENT

#### Section 1. Scope of Work

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

#### Section 2. Term

2.1. The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, whichever occurs first, but no later than two years from the Effective Date of this Agreement, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

2.2. Option to Renew. Upon written agreement by the parties, this agreement may be extended in one-year increments, not to exceed two (2) years.

### **Section 3. Consultant's Services**

3.1. All written documents prepared by Administrator in conjunction with the Services shall bear the signature, name, or logo of, or otherwise be identified as coming from, Administrator's authorized Project Manager.

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

### **Section 4. Compensation**

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

4.2. During the course of Administrator's performance, if the City, through its Project Manager, specifically requests Administrator to provide additional services that are beyond the Scope of Work described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 16**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Administrator will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Administrator as promptly as is reasonably possible.

4.4. Administrator's Compensation Amount is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

### **Section 5. City's Rights and Responsibilities**

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

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. 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 14**.

## **Section 6. City's Project Manager**

The City's Project Manager is Anne M. Pagano. The City shall give Administrator prompt written notice of any re-designation of its Project Manager.

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

Administrator's Project Manager is \_\_\_\_\_. In the event that Administrator's designated Project Manager is changed, Administrator shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Administrator'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 Administrator that is not from Administrator's designated Project Manager, the City may request verification by Administrator's Project Manager, which verification must be promptly furnished.

## **Section 8. Project Information**

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 9. Subcontractors and Assignments**

Administrator shall not subcontract with others for any of the Services prescribed herein. Administrator shall not assign any of Administrator's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

## **Section 10. Administrator Is Independent Contractor**

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

## **Section 11. Administrator Responsibilities**

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

11.2. Administrator must comply with all applicable Oregon and federal wage and hour laws. Administrator shall make all required workers compensation and medical care payments on time. Administrator 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. Administrator shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Administrator shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Administrator's responsibility. Administrator shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Administrator in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

## **Section 12. Indemnity**

12.1. Indemnification. Administrator acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Administrator's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Administrator's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Administrator shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Administrator of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Administrator's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Administrator shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Administrator. As used

herein, the term “Administrator” applies to Administrator and its own agents, employees, and suppliers.

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

### **Section 13. Insurance**

13.1. Insurance Requirements. Administrator shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Administrator’s activities or work hereunder. The amount of insurance carried is in no way a limitation on Administrator’s liability hereunder. The policy or policies maintained by Administrator shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

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

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

13.1.3. Business Automobile Liability Insurance. If Administrator will be using a motor vehicle in the performance of the Services herein, Administrator shall provide the City a certificate indicating that Administrator 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**.

13.1.4. Workers Compensation Insurance. Administrator and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Administrator 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.

13.1.5. Insurance Carrier Rating. Coverages provided by Administrator 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.

13.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Administrator'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.

13.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Administrator shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Administrator agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Administrator 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.

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

## **Section 14. Early Termination; Default**

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

14.1.1. By mutual written consent of the parties;

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

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

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

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

14.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Administrator or the City that accrued prior to such termination. Administrator shall surrender to the City items of work or portions thereof, referred to in **Section 18**, for which Administrator has received payment or the City has made payment.

## **Section 15. Suspension of Services**

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

the suspension is not within Administrator's control, then the City shall extend the time of completion by the length of the delay.

## **Section 16. Modification/Addendum**

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Administrator. A modification is a written document, contemporaneously executed by the City and Administrator, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Administrator and the City. If Administrator incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum to this Agreement.

## **Section 17. Access to Records**

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

## **Section 18. Property of the City**

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

## **Section 19. Notices**

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

To City:                      City of McMinnville  
                                     Attn: Anne M. Pagano  
                                     230 NE Second Street  
                                     McMinnville, OR 97128

To Administrator: \_\_\_\_\_  
                                 Attn: \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_



## **Section 20. Miscellaneous Provisions**

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

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

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

20.4. Adherence to Law. In the performance of this Agreement, Administrator 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 Administrator is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

20.5. 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.

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

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

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

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

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

20.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

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

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

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

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

20.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

20.17. Interpretation. As a further condition of this Agreement, the City and Administrator acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be

entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

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

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

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

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

**ADMINISTRATOR:**

**CITY:**

\_\_\_\_\_

CITY OF McMINNVILLE

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

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

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

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

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

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Amanda Guile-Hinman, City Attorney  
City of McMinnville, Oregon