

RESOLUTION NO. 2024-62

A Resolution Awarding the Contract for Professional Services for the Southwest Area Plan Project to HHPR.

RECITALS:

Whereas, the City of McMinnville amended its urban growth boundary (UGB) by adopting the McMinnville Growth Management and Urbanization Plan (MGMUP, [MGMUP 2003 UGB Remand Project | McMinnville Oregon](#)) (Ordinance No. 5098, December 8, 2020); and

Whereas, the MGMUP amended McMinnville's UGB by 924 gross buildable acres. Most of this acreage was placed into an Urban Holding (UH) comprehensive plan designation; and

Whereas, the unincorporated areas in the southwest portion of the UGB which have UH plan designations include approximately 650 gross acres; and

Whereas, all land within a UH comprehensive plan designation needs to undergo an area planning process prior to annexation into the city limits, rezoning and development. Area planning can be initiated by the City or by private property owners; and

Whereas, each area plan is adopted as a supplement to the McMinnville Comprehensive Plan, completed by the City and adopted by the City Council as a guiding land use document. Area plans must embody the development principles of the MGMUP, MGMUP Framework Plan, McMinnville Comprehensive Plan and any other applicable City land use policies and standards; and

Whereas, the Southwest Area Plan is a budgeted plan in the FY 24/25 budget - Long Range Planning Fund, the main revenue source being the general fund; and

Whereas, the City issued a Request for Proposals (RFP) for professional services for the Southwest Area Plan, received responsive proposals, and evaluated those proposals. HHPR was identified as the Successful Proposer, and the City issued a Notice of Intent to Award the project to HHPR. No protests of the procurement were received by the deadline specified in the RFP. The City subsequently worked with HHPR to refine the scope of work as provided for in the RFP.

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

1. That HHPR is hereby awarded the contract for Professional Services for the Southwest Area Plan project, with a contract not to exceed \$325,000 and an approximate 18 month timeline for completion of the scope of work.
2. That the City Manager is hereby authorized and directed to execute the contract.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 10th day of December, 2024 by the following votes:

Ayes: Menke, Chenoweth, Garvin, Payne, Peralta, Geary

Nays: _____

Approved this 10th day of December 2024.

RL

MAYOR

Approved as to form:

proved as to form:

Daryl
y Attorney

City Attorney

Attest:

Claudia Cisneros

City Recorder

EXHIBITS:

A. Draft Contract with Attached Scope of Work

CITY OF McMINNVILLE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) for the Southwest Area Plan Project (“Project”) is made and entered into on this 23rd day of December 2024 (“Effective Date”) by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and Harper Houf Peterson Righellis Inc., an Oregon Corporation (hereinafter referred to as “Consultant”).

RECITALS

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

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

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

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

AGREEMENT

Section 1. Scope of Work

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

Section 2. Term

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than June 30, 2026, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 3. Consultant’s Services

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

3.2. Consultant will not be deemed to be in default by reason of delays in performance

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

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

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

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant a not-to-exceed amount of THREE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$325,000) for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

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

4.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant 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 Consultant as promptly as is reasonably possible.

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

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe

benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 5. City's Rights and Responsibilities

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

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2024-25. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 14**.

Section 6. City's Project Manager

The City's Project Manager is Tom Schauer, Senior Planner. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 7. Consultant's Project Manager

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

Section 8. Project Information

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

Section 9. Subcontractors and Assignments

9.1. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant,

provided Consultant advises the City of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. The City hereby agrees that Consultant will contract with DKS Associates, Walker Macy, Leland Consulting, and JLA Public Involvement for specialized services including transportation planning and analysis, urban design, economic analysis, and public involvement services, which are a critical part of this Agreement. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

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

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

Section 10. Consultant Is Independent Contractor

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

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

10.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also

comply with, and be subject to, the provisions of this **Section 10** and meet the same insurance requirements of Consultant under this Agreement.

Section 11. Consultant Responsibilities

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

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

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

Section 12. Indemnity

12.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this

Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Consultant 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 Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

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

12.3. Indemnification for Claims for Professional Liability. Notwithstanding any contrary provision herein, with regard to claims for professional liability (as opposed to general liability or automobile liability), it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the indemnitees shall only apply if and when and to the extent that a court or other forum of competent jurisdiction has determined the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

Section 13. Insurance

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

13.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum

amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

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

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

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

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

13.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City

of McMinnville, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

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

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

Section 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 Consultant by mail or in person; or

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

14.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure

the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

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

14.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 18**, for which Consultant 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 Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

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

any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 17. Access to Records

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

Section 18. Property of the City

18.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation. Upon the City's written approval, and provided the City is identified in connection therewith, Consultant may include Consultant's work in its promotional materials. Drawings may bear a disclaimer releasing Consultant from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

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

Section 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: Tom Schauer, Senior Planner
231 NE Fifth Street
McMinnville, OR 97128
Tom.Schauer@mcminnvilleregon.gov

To Consultant: Harper Houf Peterson Righellis Inc.,
Attn: Brad Kilby, Planning Manager
205 Spokane Street SE, Suite 200
Portland, OR 97202
bradk@hhpr.com

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. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

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

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 Consultant 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 Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether

judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

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 Consultant and the City hereby warrants actual authority to bind their respective party.

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

CONSULTANT:

Harper Houf Peterson Righellis, Inc.

By: Brad Kilby
Digitally signed by Brad Kilby
DN: cn=US, E=bradk@hpr.com, O="Harper
Houf Peterson Righellis, Inc.",
OU=Planning, CN=Brad Kilby
Reason: I am the author of this document
Date: 2024.12.23 10:03:14-08'00'

Print Name: Brad Kilby, AICP

As Its: Project Manager

Employer I.D. No. 931045332

CITY:

CITY OF McMINNVILLE

By: Jeff Towery
Print Name: Jeff Towery

As Its: City Manager

APPROVED AS TO FORM:

David Ligtenberg
City Attorney
City of McMinnville, Oregon

SOUTHWEST AREA PLAN REVISED PROJECT APPROACH

Project Approach

PHASE 1: PROJECT START-UP

Task 1.1: Kickoff Meeting

Initiating the start of the project, the consultant team, in partnership with City Staff, will review the scope of work, overall project schedule, project management and roles, and discuss communication protocols along with additional expectations within the scope.

Deliverables: Agenda, project schedule, and meeting summary.

Task 1.2: Public Engagement Plan

First impressions make a big difference—even with long term projects. Understanding that, our team is prepared to support the City with kicking off the project successfully by developing a thoughtful public engagement plan that involves key stakeholders and the greater community at large throughout each major project phase. The engagement plan will ensure that the project is led by the Project Advisory Committee (PAC) with technical advisory from the Project Management Team (PMT). Discussion and decision making of the PAC will be informed by broader community outreach including feedback from stakeholder focus groups, Community Design Workshops, and online surveys. The engagement plan itself will be informed by the City's Public Engagement Charter and Equity Lens using best practices to identify any project specific need for multi-lingual engagement. Our team will approach public engagement by:

- **Maintaining open communication and providing project information** in ways that are understandable and speak to why the community cares about the project, as well as responding to community questions and concerns as they arise so people feel heard.
- **Reducing participation fatigue by combining public meetings** with other City project events when possible.
- **Reaching people who may be reluctant to engage with government** by meeting them where they already gather, and developing creative and community-centered engagement activities.

Deliverables: Agenda, project schedule, and meeting summary.

Task 1.3: Data Collection and Plan Review

The consultant team will review existing planning documents adopted by the City and current planning efforts impacting the Southwest study area to ensure consistency with the findings, goals, and policies adopted in these documents, including state and regional planning frameworks. The consultant team will ensure the Great Neighborhood Principles adopted in Comprehensive Plan Policies 187.10 through 187.50 and McMinnville's Traditional Neighborhood act as a model for future neighborhood development. The relevant planning documents include:

- City Comprehensive Plan
- McMinnville Growth Management and Urbanization Plan
- McMinnville Transportation System Plan
- 1995 McMinnville Westside Bicycle and Pedestrian Plan
- Parks, Recreation and Open Space Plan
- McMinnville Municipal Code and Zoning Ordinance
- 2002 Highway 18/99W South Interchange Area Management Plan
- Oregon Department of State Lands Statewide Wetlands Inventory
- Oregon Department of Fish and Wildlife Compass Tool
- Concurrent planning efforts that are forecasted to overlap with the Southwest Area Plan

Deliverables: Existing conditions memorandum summarizing consultant's findings and any key issues that could impact the planning process.

Task 1.4: Project Advisory Committee (PAC) Orientation

Initiating Consultant team will meet with the selected PAC members, introduce the project, establish ground rules for engagement, and facilitate a guided tour of the study area to collectively identify key features that need to be considered.

Deliverables: Orientation agenda and guided tour of the study area with PAC members, project team, and City Staff.

Task 1.5: Site Analysis

Walker Macy will work with HHPR to obtain base information and set up new base mapping for the team's use, including feedback received during the guided tour and site visit. With the base mapping completed, Walker Macy will prepare summary site analysis diagrams including:

- Parcelization and ownership
- Slope analysis
- Existing natural features (soils, hydrology, vegetation, and views)
- Adjacent development and available utilities
- Circulation
- Regional sense of place and contextual influences.

Deliverables: Base map and summary site analysis diagrams.

Task 1.6: Economic Analysis

Leland Consulting Group (LCG) will conduct market research of socioeconomic, economic, and real estate data to inform two core aspects of the plan:

- **Residential:** LCG will evaluate McMinnville's residential demand drivers and real estate conditions to identify feasible residential typologies that are likely to be built in the SW Area. While market-driven, the analysis will also consider McMinnville's Housing Needs Analysis so that recommended housing types, quantities, and locations reflect the need to achieve housing affordability for residents of a wide range of incomes both in the near term and over time.
- **Commercial:** LCG will evaluate McMinnville's commercial real estate market to identify the scale, location, and character of neighborhood activity centers that are viable in the study area. This will involve detailed market research of commercial and mixed-use areas in McMinnville today coupled with an analysis of future demand within the study area and how that demand will translate into supportable retail and services. The analysis will consider the timing of likely development so that the plan can anticipate future commercial demand if it is not feasible in early phases of development.

For both the housing and commercial analysis, research will include case studies of similar projects around Oregon and the Northwest, as well as one-on-one interviews with developers, landowners, and real estate practitioners to validate market data and gather insights into the investment market. The analyses will consider and describe the locational opportunities and constraints for each use and will identify implementation strategies that address phasing and intensifying development over time. The result of this analysis will be one or more development programs for the residential and commercial areas that detail the quantity, scale, and character of supportable land uses to be used in the concept planning process.

Deliverables: Economic analysis memorandum.

Task 1.7: Project Website and Launch

Initiating working with City Staff, HHPR will prepare text content supported by maps and visual graphics for the City's website. The initial website content will clarify what this project is, what topics will be considered in each phase, and how people can provide their thoughts. The consultant team recognizes the need to communicate clearly throughout the process to make sure the community has every opportunity to understand what is being planned and participate in collaborative conversations. As such, the team will keep in mind:

- Creating highly visual communications, including graphics that explain the concepts being presented.
- Considering the use of mixed media to present information without relying heavily on text information that can be shared on social media and other platforms within the community.

- Always offering an online engagement option in conjunction with in-person engagement, providing ways for people to receive information and provide their thoughts.

Deliverables: Website content including project overview, background, goals, objectives, project schedule, and information on how to stay connected. Updates will be regularly provided throughout the project.

PHASE 2: DEVELOP AND EVALUATE ALTERNATIVES

Task 2.1: Initial Public Engagement

Gather additional information about the project and study area from the public including non-technical data (e.g. ideas, assets, issues, concerns) to better understand constraints and public sentiment. Utilizing public input from the online comment form, Walker Macy will prepare an Opportunities and Constraints Diagram that summarizes the opportunities for various land uses, development patterns, building relationships, open spaces, natural features, and potential connections, as well as any key constraints that would need to be overcome in order to realize those opportunities. As identified in the public engagement plan, the consultant team will begin developing content for additional public outreach. Public engagement materials will be highly graphic, easily legible, and translated into Spanish to provide equal opportunities for community members to provide input.

Deliverables: Opportunities and constraints diagram, draft content for online public outreach, database of comments received, draft survey questions, and other agreed-upon public engagement materials. Spanish translations provided.

Task 2.2: PAC Meeting #1 – Introduction, Input, and Identification of Issues

The consultant team will present the information prepared from Task 2.1 and the vision statement. Our team is prepared to get the most out of the regular meeting with the Project Advisory Committee and know how to keep productive conversations moving even when committee members have conflicting goals for a project. These meetings will be an opportunity to bring options for discussion about tradeoffs and to uncover community assets or concerns. This meeting will provide discussion topics to further identify issues within the study area based on stakeholder input and feedback and share public comments received.

Deliverables: Agenda, meeting presentation, and meeting summary.

Task 2.3: Stakeholder Focus Groups

The consultant team, in coordination with City staff, will prepare for and conduct up to three focus groups meetings to understand the perspective of closely involved stakeholders including property owners, public agencies, nearby residents, and developers. Stakeholders will be identified at the kickoff meeting and focus groups will be sorted based on common interests, in order to allow more focused and detailed questions. HHPR and Leland Consulting will facilitate two stakeholder focus groups, and JLA will be facilitating one Spanish-speaking focus group.

Deliverables: List of questions and notes summarizing each focus group. Some stipends to overcome/offset barriers to participation.

Task 2.4: Community Design Workshop #1 – Land Use and Circulation

JLA and Walker Macy will lead a Community Design Workshop to engage stakeholders, citizens, and City Staff through an interactive design session discussing potential land uses suitable for the study area and circulation between potential land uses. The workshop will include discussion of opportunities for pedestrian connections and the location and amount of park land needed in the Southwest Area based on the MGMUP Framework Plan, as revised. Walker Macy will develop preliminary concepts with public input to be prepared in Task 2.5.

Deliverables: Agenda, meeting presentation, meeting materials, base maps, and meeting summary.

Task 2.5: Develop Land Use and Circulation Concept Alternatives

Based on the input of the workshop, Walker Macy will prepare three (3) land use alternatives for the study area. Each will be illustrated in plans, sections, diagrams, supporting text, and precedent imagery from influential projects and similar developments. Alternatives will include calculations of density and areas dedicated to streets, trails and open space. Given the sensitivity to locating parks on specific private parcels, these can be conceptual locations. Each alternative will also show options for suitable locations of neighborhood activity centers as well as potential school sites.

Deliverables: Three (3) land use and circulation alternatives.

Task 2.6: Trip Generation Estimates

DKS will coordinate with the Transportation Planning & Analysis Unit (TPAU) at the Oregon Department of Transportation Analysis regarding the transportation analysis assumptions. DKS will request land use data, trip generation rates, vehicle trip growth rates, and trip distribution rates from TPAU from the regional travel demand model. This information will be compared to the previous analysis assumptions, including those used in the Fox Ridge Road Area Plan transportation study and will be used to perform the analysis.

Deliverables: Coordination meeting with ODOT and the City Staff, memo.

Task 2.7: PAC Meeting #2 – Discussion of Public Comments and Alternatives

The consultant team will present the PAC with the summary of comments and feedback collected from the in-person and virtual open house. The PAC will review the three (3) land use alternatives and engage in a facilitated discussion to determine the strengths and weaknesses of each alternative and provide possible revisions.

Deliverables: Agenda, meeting presentation, and meeting summary.

Task 2.8: Planning Commission and City Council Project Update #1

The consultant team and City Staff will provide the project overview, introduce the information prepared in Phase 1, present the opportunities and constraints diagram, and share a draft vision statement for the Southwest Area planning process. The consultant team and City Staff will share the results of Community Design Workshop #1 and PAC Meeting #2 and obtain feedback before moving into Phase 3.

Deliverables: Meeting presentation and meeting summary of key issues identified by the Planning Commission and City Council.

PHASE 3: SELECT PREFERRED CONCEPTS

Task 3.1: Community Design Workshop #2: Land Use Concept Selection

JLA and Walker Macy will lead a second Community Design Workshop to engage stakeholders, citizens, and City Staff by presenting the three (3) land use alternatives that were developed based on input from the first workshop and obtain feedback on which alternative or concepts of the alternatives are preferred. Discussion will be held on the pros and cons of each alternative.

Deliverables: Agenda, meeting presentation, meeting materials, meeting summary.

Task 3.2: Develop Preferred Concept

Walker Macy will develop a preferred concept plan and any supplemental diagrams based on the feedback received from Task 3.1. The developed preferred concept plan will incorporate input from the public and PAC, and guidance from the Planning Commission and City Council.

Deliverables: Preferred Concept plan and diagrams.

Task 3.3: PAC Meeting #3 - Discussion of Preferred Concept and Guidance

With City Staff, the project team will review public input to determine the direction for the Preferred Alternative, which will be illustrated in plan, section and diagrams. The Preferred Alternative will include land use and circulation, a calculation

of density and diagrams of areas dedicated to streets, trails and open spaces. The plan will be computer-drafted with an illustrative aerial view.

Deliverables: Agenda, meeting presentation, and meeting summary.

Task 3.4: Planning Commission and City Council Project Update #2

HHPR will prepare for and attend a Planning Commission and City Council Joint Work Session to share results of Community Design Workshop #2, the draft preferred concept, and guidance from the PAC in order to seek additional direction for refinement from the Planning Commission and City Council.

Deliverables: Update memorandum and project presentation.

Task 3.5: Traffic Analysis

As part of this task, DKS will conduct intersection operations analysis during the PM peak hour. These intersections may include, but are not limited to, the following: SW Hill Road/SW Fellows Street, SW Hill Road/SW Alexandria Street, and SW Hill Road/SW Peavine Road. Intersection analysis will be conducted under existing conditions and 20-year conditions, which will allow DKS to identify a list of future anticipated transportation deficiencies and needs for all modes of travel. Based on the transportation analysis findings, the DKS team will establish transportation mitigations that would address those future multimodal needs as well as satisfy the Transportation Planning Rule (TPR) requirements. DKS will document the analysis methodology, analysis results, Goal 12 findings, and recommendations into a transportation study report.

Deliverables: Draft and final Transportation Study; draft Goal 12 findings.

PHASE 4: REFINE PREFERRED CONCEPT

Task 4.1: Develop Refined Concept (Land Use and Circulation Plan, Local Street and Trail Connectivity)

Walker Macy will further refine the preferred concept plan and update supplemental diagrams based on previous input and guidance from tasks in Phase 3. Refinement of the concept plan will require an in depth review and development of a land use and circulation plan, as well as considerations for local street and trail connectivity within the plan area.

Deliverables: Refined Preferred Concept plan and updated diagrams.

Task 4.2: PAC Meeting #4 – Discussion of Refined Concept

HHPR will present the refined Preferred Concept plan to the PAC for discussion. Walker Macy will finalize based on input.

Deliverables: Agenda, meeting presentation, and meeting summary.

Task 4.3: Draft Area Plan Document

HHPR will prepare the preliminary draft of the plan including project overview, background information, public engagement, and goals and policies based on public input. The text portions of the draft will incorporate visual diagrams, photos, and graphics created throughout the process.

Deliverables: Draft area plan document for initial review.

Task 4.4: PAC Meeting #5 – Goals and Policies

HHPR will prepare for and present the proposed goals and policies to the PAC for discussion and direction on development of site and area specific goals and policies.

Deliverables: Agenda, meeting presentation, and meeting summary.

PHASE 5: PREPARE DRAFT AMENDMENTS AND IMPLEMENTATION MEASURES

Task 5.1: Technical Review and Draft Area Plan

HHPR will distribute the draft Area Plan to members of the consultant team and technical reviews at the City of McMinnville for review prior to revision.

Deliverables: Draft Area Plan document to consultant team and technical reviewers.

Task 5.2: PAC Meeting #6 – Draft Area Plan Document Review

HHPR will present the draft Area Plan document to the PAC for review and discuss feedback and possible revisions prior to the adoption phase, and potential implementation measures.

Deliverables: Agenda and meeting summary.

Task 5.3: Implementation Measures

The consultant team will evaluate current plans, policies, and regulations to determine implementation measures for the preferred alternative. Additional amendments or updates that may be necessary will be identified and prepared for review by the City's technical reviewers.

Deliverables: Draft implementation measures memorandum.

Task 5.4: Preferred Concept Public Event

The Consultant team will present the Preferred Concept and how public feedback was considered at a community meeting with a brief presentation and informational displays. This 2-hour event will allow the community to provide final feedback before the finalization and adoption of the Area Plan document. Two (2) Public Involvement consultants will staff this 2-hour event along with technical team members who can speak to the Preferred Concept plan. The Consultant will design up to six (6) display boards with the technical team's support and provide a meeting summary of all feedback received.

Deliverables: Event plan, meeting materials including a comment form or survey, display boards, and meeting summary.

PHASE 6: ADOPTION

Task 6.1: Finalize Document and Translations

The consultant team will incorporate feedback received throughout Phase 4 to prepare a revised “adoption-ready” draft of the Area Plan document, consistent with locally adopted planning documents, regulations, and Statewide Planning Goals. After final review, the document will be professionally translated by IRCO to be provided in both English and Spanish.

Deliverables: Adoption-ready draft Area Plan document in both English and Spanish translations.

Task 6.2: Compliance Findings

HHPR will prepare findings for compliance with Oregon Land Use Planning Goals, the goals and policies of the McMinnville Comprehensive Plan, and city regulations.

Deliverables: Findings document.

Task 6.3: Hearings and Adoption

HHPR will prepare and present the final Southwest Area Plan at a Planning Commission hearing and a City Council hearing for adoption.

Deliverables: Project presentations, updated findings and plan document reflecting revisions resulting from Planning Commission and City Council meetings and decision-making.

PROJECT SCHEDULE

[illegible]