



Kent Taylor Civic Hall  
200 NE Second Street  
McMinnville, OR 97128

**City Council Meeting Agenda**  
**Tuesday, April 13, 2021**  
**5:30 p.m. – Work Session Meeting**  
**7:00 p.m. – Regular Council Meeting**

*Welcome! The public is strongly encouraged to participate remotely but there is limited seating at Civic Hall for those who are not able to participate remotely. However, if you are not feeling well, please stay home and take care of yourself. In accordance with Governor Kate Brown's **new face-covering mandate**, **all who wish to attend public meetings must wear a face mask or some kind of face-covering is required while in the building and you must maintain six feet apart from others.***

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

[www.mcm11.org/live](http://www.mcm11.org/live)

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/95642206461?pwd=OGNVeHhia3JzNFZmS2w5eEt0QzhCUT09>

Zoom ID: 956-4220-6461

Zoom Password: 908887

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

ID: 956-4220-6461

**5:30 PM – COUNCIL WORK SESSION – VIA ZOOM & COUNCIL CHAMBERS**

1. CALL TO ORDER & ROLL CALL
2. CONTINUED GOAL SETTING WITH WENDY STASSENS
3. ADJOURNMENT

**7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM & COUNCIL CHAMBERS**

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. INVITATION TO CITIZENS FOR PUBLIC COMMENT – *The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. The Mayor may limit comments to 3 minutes per person for a total of 30 minutes. The Mayor will read comments emailed to City Recorded and then any citizen participating via Zoom.*
4. ADVICE/ INFORMATION ITEMS
  - a. Reports from Councilors on Committee & Board Assignments
  - b. Department Head Reports
5. CONSENT AGENDA
  - a. Consider the Minutes of the February 25, 2020 City Council Regular Meeting.
  - b. Consider the Minutes of the March 10, 2020 City Council Regular Meeting.

## 6. RESOLUTIONS

- a. Consider **Resolution No. 2021-20**: A Resolution of the City of McMinnville Authorizing the City Manager to Execute a Third Amendment to the Personal Services Agreement with Ballard\*King & Associates, Ltd. to continue the Facilities and Recreation Master Plan and Feasibility Study Project
- b. Consider **Resolution No. 2021-21**: A Resolution Awarding the Contract for the construction of the NE High School Sanitary Sewer Rehabilitation Project (Project No. 2019-7).

## 7. ADJOURNMENT

**Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice:** Kent Taylor Civic Hall is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made a least 48 hours before the meeting to the City Recorder (503) 435-5702 or [Claudia.Cisneros@mcminnvilleoregon.gov](mailto:Claudia.Cisneros@mcminnvilleoregon.gov).



**City of McMinnville  
Administration**  
230 NE Second Street  
McMinnville, OR 97128  
(503) 435-5702

[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## MEMORANDUM

**DATE:** April 7, 2021  
**TO:** City Council  
**FROM:** Claudia Cisneros, City Recorder  
**SUBJECT:** Continued Goal Setting with Wendy Stassens Meeting #4

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### **Summary:**

Wendy Stassens kicked off the City Council Goal Setting at the January 12<sup>th</sup>, 2021 Work Session outlining the outcomes trying to achieve as follows:

- Create a shared vision among City Leaders (City Council and Department Heads) and begin the work of creating a congruent team acting in alignment with the shared vision for the benefit of the City.
- Utilize the 2032 Strategic Plan and the results from the 1-25-2019 Work Session to create 2021 SMART (Specific, Measurable, Attainable, Realistic and Time Coupled) Goals.
- Create an action plan for tracking our success using the measurable goals as our scorecard.

The structure of the meeting will be as follows:

**Meeting 4:** Present proposed City of McMinnville SMART goals

- (1) Review proposed goals
- (2) Guided Council discussion and feedback provided
- (3) Approve if Council is ready or provide feedback for bringing back final goals in next meeting

### **Attachments:**

None

CITY OF McMinnville  
MINUTES OF CITY COUNCIL MEETING  
Held at the Kent L. Taylor Civic Hall on Gormley Plaza  
McMinnville, Oregon

Tuesday, February 25, 2020 at 7:00 p.m.

Presiding: Kellie Menke, Council President

Recording Secretary: Claudia Cisneros

Councilors: Present Excused Absence  
Mayor Scott Hill  
Remy Drabkin  
Adam Garvin  
Sal Peralta  
Wendy Stassens  
Zack Geary

Also present were City Manager Jeff Towery, Interim City Attorney Walt Gowell, Chief of Police Matt Scales, Planning director Heather Richards, Parks & Recreation Director Susan Muir, Human Resources Manager Kylie Bayer-Ferterrer, Community Development Director Mike Bissett, Tom Henderson News-Register and Jerry Eichten, McMinnville Community Media.

1. CALL TO ORDER: Council President Menke called the meeting to order at 7:05 p.m. and welcomed all in attendance.

PLEDGE

Councilor Garvin led the Pledge of Allegiance.

3. INVITATION TO CITIZENS FOR PUBLIC COMMENT: Council President Menke invited the public to comment.

Sid Freidman, McMinnville resident, spoke on behalf of Friends of Yamhill County and 1000 Friends of Oregon regarding the Urban Growth Management efforts. Attended last Thursday's Planning Commission Work Session meeting which had good discussion on missing middle housing, design standards, and implementations of House Bill 2001. Really good work being done by City staff and Planning Commission commends their work. Mentioned the meeting ended with Planning Director stating the topic coming before City Council in executive session for next steps including possible resubmission of the 2003 Urban Growth Boundary (UGB) Amendment that was Remanded at the Court of Appeals and possible pursuit of special legislation to except McMinnville from the UGB amendment process. Also attended the City Council January Work Session where possible next steps were discussed and wanted to share a few points for

Council's consideration. First, at the January meeting Council expressed a strong desire for robust public input on what path the City should take for next steps but going into Executive Session to discuss next steps seems antithetical to what was previously expressed and can cause distrust and skepticism. He also mentioned Executive Session is limited by law to a narrow set of circumstances and doesn't feel the old litigation or UGB discussion falls within those Executive Session circumstances. He also pointed out at this work session there was inaccurate information/ it needs context such as stating that the city has been plagued with constant challenges and appeals, the city has been growth planning for 25 years and actively challenged for 20 of those years. In their views feels like that is a bit of a stretch. A slide was shown of what Friends of Yamhill County and 1000 Friends of Oregon had agreed to be added to the UGB during a 2009 mediation effort. Orally describe the area as exceptional lands, the lands agreed to in mediation were 350 buildable acres of mostly high-value farmland.

- 4.
- 4.a.

#### ADVICE/ INFORMATION ITEMS

##### Reports from Councilors on Committee & Board Assignments

Councilor Geary stated the Landscape Review Committee met the previous week and discussed a few exciting developments. A commercial building being placed over by Tommy's and reviewed landscape for the Tiny Homes over by Alpine. Historic Landmarks meets on Thursday. Kids on the Block (KOB) Technical Advisory Committee is still waiting on the joint School Board Meeting. MacPac off and running has a second meeting coming up to discuss how to be more equitable in their programming.

Councilor Stassens stated the McMinnville Urban Renewal Advisory Committee (MURAC) meeting was canceled for this month will probably have a report by next meeting.

Councilor Peralta stated the Mid-Willamette Valley Council of Governments (MWVCOG) had its annual meeting and proud to present awards to Sheridan, Willamina, and Confederative Tribes of Grand Ronde for great wave finding projects they have been working on. Council of Governments is also in the process of hiring a new director and that's also going well.

Councilor Garvin stated he attended the Yamhill Communications Agency (YCOM) meeting but there was no quorum, so they did not discuss anything. The Airport Commission meeting is set for a week from today at 6:30 pm at Civic Hall for anyone who would like to attend and looking forward to the KOB meeting with the School Board.

Councilor Drabkin stated the McMinnville Affordable Housing Task Force will be meeting tomorrow morning with Stuart Ramsing the Building Official and also be receiving an update on House Bill 4001 which is the State's Emergency Shelter bill. There are a couple of things not coming to Council for formal Task Force recommendation but have been discussed with

members of the Affordable Housing. First, misinformation about HB 4001 that the City of McMinnville turned down a million and a half dollars. Note that the City of McMinnville did not do such a thing. Also, there is conversation happening to bring to Council about having a moratorium on any new vacation rental. The Gospel Rescue Mission has an approved max occupancy of 13 beds but have room for 17 beds and they have submitted a request to the Council to change the terms of their conditional use permit and allow them to provide those three extra beds. Lastly, a conversation that is happening is wanting to have a more thorough conversation with Council and the Planning Department about what an Emergency Ordinance looks like for the City and this conversation should happen rather immediately.

Councilor Geary asked when they should talk about the maximum beds at the Gospel Rescue Mission and the short-term rental moratorium as he is ready to talk about the topics.

Planning Director Richards provided background on the topic, stating there is a conditional use permit application that was submitted by the Gospel Rescue Mission as a land-use process and they requested to build a shelter that accommodates 17 beds, the land use decision put a condition that only allows them 13 beds based on the size of the building they provided at the time of application and it is a building code issue. What needs to be done is find out if the building code still pertains to the built environment and if it does then it's a moot point as you cannot supersede the building code however if it's not a building code issue then it's an amendment to the conditional use permit application. She will be working with Legal Counsel to look at the condition of approval on the land use application and see if they can have that revised without going through a land-use process again.

Council President Menke stated there is an Urbanization Pac Meeting on Thursday from 4:30 pm to 6 pm. On Visit McMinnville Board the Councilors have a piece of current advertising from Visit McMinnville. She pointed out wine has the most growth in Oregon over the entire county of those areas producing wine in this particular last year and they will be hosting the Yamhill Fondo bike race more information to come.

4.b.

#### Department Head Reports

##### 1. Campaign Finance Disclosure Ordinance

City Attorney Gowell stated this was a staff report coming back to the Council from a brief discussion on this topic. The purpose of the presentation is to provide basic information about the issue of Campaign Finance in Oregon current initiatives, litigations that are underway, the current statewide joint resolution that is going to the ballot in November, and two bills passed in June of 2019. He stated that 25 years ago Oregonians through the initiative process brought Measure 9 to the ballot and passed it which was the initial Campaign Finance Measure that limited the amount of permissible campaign expenditures by campaigns, it limited third party expenditures not approved by candidates, it limited candidates use of out of district contributions, and

required candidates to except or not except voluntary limits of campaign expenditures to have their elections published. It ended up being appealed after it passed going to the Oregon Supreme Court in 1997 case called *Fred Vannatta v. Phil Keisling*. The Oregon Supreme Court interpreted the Constitution's provision permitting the regulating and conduct of elections and prohibiting all undue influence therein from power, bribery, tumult, or other improper conduct. The Court ruled in Vannatta that political contributions constitute "expression" a form of expression entitled to protection, also there is a difference between the authority for regulation of elections and the authority to regulate campaigns. Also, stated limits on campaign contributions are unconstitutional limits on free expression and geographical limitations on donors are impermissible. Finally, the courts upheld the publications in the voter's pamphlet of a candidate's decision to accept or reject voluntary limits on campaign expenditure as not being improperly coercive as a form of regulation. On November 2016 Multnomah County voted on a Charter Amendment to establish a candidate contribution would be limited to \$500, established independent expenditures limits for individuals to \$5,00, and limits for independent political committees to \$10,000. Imposed registration requirements for committees expending over \$750. Imposed disclosure requirements on campaign communications of five largest donors over \$500. County put the measure out and it passed then put it before the Circuit Court of Multnomah County in a Validation Proceeding and which struck down the contributions limits, struck down the expenditure limits, struck down the disclosure requirements, upheld the employee withholding contribution, and upheld the registration of political committee requirements. The County filed an appeal to the Circuit Court ruling which was certified directly to the Supreme Court in order to fast track the appeal. That decision is currently waiting on a decision by the Supreme Court. In November of 2018, the City of Portland filed a similar Charter amendment with similar provisions. The Charter amendment was reduced to an Ordinance and the Ordinance was appealed. The same Circuit Court Judge that ruled on the Multnomah County Validation Proceeding was the Judge in the Portland Proceeding with a ruling of struck down contribution limits, struck down expenditure limits, upheld disclosure requirement, upheld employee withholding contributions, and upheld the registration requirements. That decision at the Circuit Court level was appealed in a Validation Proceeding and currently at the Court of Appeals.

On November 2019 the Oregon Supreme Court heard an argument on the ruling of Multnomah Court and the Supreme Courts publication they put out called the statement of issues also known as an entry form stated the three issues:

<b>Statement of Issues:</b>	<p>(1) Do the restrictions in Section 11.60 and Ordinance No. 1243 on contributions and expenditures violate the rights of free expression under Article I, section 8, of the Oregon Constitution, or the First Amendment to the United States Constitution?</p> <p>(2) Do the disclosure requirements in Section 11.60 and Ordinance No. 1243 constitute impermissible compelled speech under either constitution?</p> <p>(3) Are the payroll deduction provisions of Section 11.60 and Ordinance No. 1243 preempted by ORS 652.610, which limits an employer's authority to make payroll deductions?</p> <p>These summaries of cases are prepared for the benefit of members of the media to assist them in reporting the court's activities to the public. Parties and practitioners should not rely on the summaries, or the statement of issues to be decided in the summaries, as indicating the questions that the Supreme Court will consider. Regarding the questions that the Supreme Court may consider, see Oregon Rule of Appellate Procedure 9.20.</p>
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Prior to Courts arguments on the Multnomah County Ordinance the Oregon Legislature weighed in and adopted Joint Resolution 18 and scheduled for a November 2020 statewide vote. The measure would add section 2 to section 8 of Article 2 of the Constitution which authorizes Cities, Counties, and Districts by empowering them to:

1. Limiting contributions made in connection with political campaigns in a manner that does not prevent candidates and political committees from gathering the resources necessary for effective advocacy;
2. Requiring disclosures of contributions or expenditures made in connection with political campaigns or to influence the outcome of any election;
3. Require that an advertisement made in connection with a political campaign or to influence the outcome of any election identify the person or entities that paid for the advertisements; and
4. Limiting expenditures made in connection with political campaigns or to influence the outcome of any election to the extent permitted under the Constitution of the United States.

These additions would amend the Oregon Constitution and bring it in line with the United States Constitution Campaign Finance limitations as it relates to expenditure limitations. The purpose, as explained in Legislative testimony was to avoid the preclusion by the Oregon Constitution of most Campaign Finance regulations on parts of Government within the State of Oregon. The language relating to contributions in a manner that does not prevent candidates and political activities to gather the necessary resources were placed to create a standard that was approved by the 9<sup>th</sup> Circuit. In 2019 the Oregon Legislature adopted two disclosure statutes:

1. House Bill 2716 regulating communications in support of Candidates by requiring disclosures on campaign communications of the five largest donors paying for the communication where aggregate



donations exceed \$10,000. It created certain exceptions for charitable donors.

2. House Bill 2983 regulates communications made in support of both Candidates and Measures by requiring disclosures of campaign donations, but it establishes a \$25,000 threshold for regulation of city measures for cities smaller than 60,000. Once the threshold was met it would require disclosure of donor's contribution to Candidates or Measure with aggregate donations which exceed \$10,000, the disclosure of the donation to be disclosed within seven days after making a campaign communication. It would also permit anonymous donations of over \$1,000 to be used for campaign communications.

A copy of the Portland Ordinance that was found to be largely accepted in the disclosure by Judge Bloch area was provided in the packet. Wanted to give Council those provisions to review. The ones he marked in green were accepted and the ones marked in red were ruled unconstitutional. Invited Dan Meek, an advocate for Campaign Finance Reforms for over the past 20/25 years and provide Council with some additional information.

Dan Meek, a volunteer attorney for an organization called Honest Elections Oregon, stated everything Mr. Gowell presented was an accurate summary of what's going on. Each Ballot Measure passed with over an 87% yes vote. Another important overview regarding the cases Mr. Gowell described, striking down various things none of them until 2018 addressed disclosures on political advertising. Oregon has had limits on campaign contributions and some required disclosures since the 1864 Corrupt Practices Act, which banned candidates from bribing voters. Then in 1908 Oregon voters enacted a sweeping statute that placed limits on campaign contributions, created the voter's pamphlet, and required political ads identify their sponsors. All these requirements were fully in place and enforced, not challenged un-Constitutional until 1973. In 1973 the Oregon Legislature repealed the limits on contributions, replaced them with only limits on overall spending. Since then the amount of money spent on political campaigns in Oregon has generally increased by a factor of ten. Legislative races are ten times more now than it was in 1996. In the Governor race, it is twenty times more than it was in 1996. The court in 1997 in the *Vannatta v. Keisling* decision ruled that political contributions constitute expression entitled to protection. That particular conclusion was countered remanded by the Court in 2009. In another case brought by *Fred Vannatta v. The Oregon Government Ethics Commission* about the limits on gifts, the lobbyist could give to Legislatures, other public officials, and candidates, and in 2007 Oregon Legislature limited gifts to \$50 per occasion. Lobbyists hired attorneys to challenge this ruling as they considered part of campaign contributions and in 2009 the Oregon Supreme Court said transfers of properties are not expression. In this case it was also stated limits on receiving transfers of property are acceptable while limits on giving might not be acceptable. As for the Multnomah County and Portland Ordinances and Charter Amendments, the limitations on contributions also has a special small-donor feature that anyone can form a small donor community and receive contributions only from individuals in

the amount of \$100 or less and can contribute the accumulated funds to any or candidates. The Important part of Judge Bloch's decision, the judge on the Multnomah County Circuit Court on the Portland measure in 2019 is that he upheld the disclosure and disclaimer requirements because he struck down the Multnomah County ones primarily because he thought they were too vague, they were only one sentence. Honest Elections of Oregon drafted its own measure as an initiative for Portland then it added about a page and a half of detail to that requirement and the Judge said it looked good. No Oregon Court, except Judge Bloch in the Multnomah County case has ever struck down a disclosure or disclaimer requirement. The Oregon Courts have never struck down such requirements. The Oregon Attorney General in 1999 issued an opinion saying that the requirements that Oregon voters adopted in 1908 to require political ads to identify their sponsors violates Oregon's Article I Section 8. Then Legislatures immediately took to repeal the disclaimer requirements in Oregon Law that had been in place for about 90 years. Now Oregon Legislature in the past session repudiated the Attorney General opinion as they adopted two Measures. He stated HB 2716 does not apply at all to ads that are placed by candidates or candidate committees it only applies to independent expenditures, in Oregon 95% of ads are placed by candidates or candidate committees and they can remain anonymous and that's one way they feel HB 2716 is deficient as they should require candidates to disclose their large contributors. HB 2983 only applies to internal transactions of a nonprofit corporation under previously existing law any nonprofit corporation could assemble money from any sources it wanted and then if they placed an ad they would not have to identify themselves. Under HB 2716 they would have to identify themselves but because this bill doesn't have a drill-down to the sources of the money it doesn't have to disclose anything else. So what HB 2983 does is require nonprofits to identify where their money is coming from but it doesn't require anything else so quite easy to avoid.

Mr. Meek started his slideshow beginning with stating Oregon is quite deficient when it comes to disclosures and disclaimer requirements in political ads. Oregon Legislature repealed a law requiring that political ads identify their sources in HB 2716. The Corporate Reform Coalition said that six states are worse than Oregon in disclosing independent expenditures grading Oregon an "F" and Washington an "A". Believes Oregon now will earn a better now because of the two new bills. After the Multnomah County Circuit Court upheld the tag line requirement in the Portland Charter Amendment, Multnomah County then adopted a new Ordinance for tag lines that use the exact language used in the Portland Charter Amendment. The kind of tag lines requirements that were adopted in Portland and in Multnomah County are also in place in various ways in 11 States the main difference is to what extent they require drill-downs to original sources. Last year the state of Washington copied the Portland Ordinance Charter Amendment of requiring any top five contributors is a committee then the ad must also disclose the top three contributors to the political committee. The primary example of effective taglines on political ads was what happened in the 2014 Election in Richmond, California. Within the city limits, there is a

Chron refinery company that was having accidents of realizing clouds of toxic gases so the Richmond City Council pushed for an Ordinance requiring Chevron to notify when toxic gases were being released to evacuate people. Chevron then decided to take over city government by recruiting candidates to run for Mayor and all City Council seats, they spent over \$3 million promoting its four candidates and outspending its other candidates by a factor of 50 to 1. California law requires that the ads identify their major funder so all their ads, billboards, etc. did include the name of Chevron Inc. All Chevrons candidates lost overwhelmingly. Another example more recently is the City of Seattle City Council race and might have heard that Amazon and other corporations got together and spend several million dollars in independent expenditures in those races because City Council was considering various kinds of taxes on Amazon large national corporations. The corporate candidates lost six of the seven races since Washington they have to identify all their top funders and the top three funders of the committees. Mr. Meek asked if any Councilor had any questions.

Mr. Gowell stated regarding Judge Bloch's ruling in the Portland matter his decision to uphold the disclosure requirements was very persuasive and well written.

Council President Menke asked if McMinnville was interested in also doing something similar to what Portland has done could this be enacted?

Mr. Gowell stated the Joint Resolution 18 has a specific final provision stating Subsection 2 of this Section applies to laws and ordinances enacted by the Legislature or Assembly or Governing Body of a city which are enacted or approved by the people through the initiative process on or after January 1, 2016 the effect of this is to retroactively approve Constitutional Measures which the ballot measure upholds if passed. This does not stop communities from adopting measures prior to the election if they choose or wish to do so. It doesn't mandate or require it but if Council wishes to wait until after the election to see what the voters have to say.

Mr. Meek agreed with Mr. Gowell and said there is no current pending challenge to any of the disclaimer requirements. Does not expect the Oregon Supreme Courts' forthcoming decision on the Multnomah County Measure will address the disclaimer requirement. In the Portland case at the Oregon Court of Appeals, none of the parties will argue that the disclaimer requirements are unconstitutional.

Councilor Peralta thanked Mr. Meek for the comprehensive testimony. Wanted to confirm the Portland City Charter, Multnomah County Charter, and State Laws relating to campaign finance disclaimers are going to be enforced for 2020 and to Mr. Meek's knowledge, there are no challenges on the horizon for those?

Mr. Meek stated Councilor Peralta was correct, stated both City of Portland and Multnomah County will be enforcing the disclaimer requirements. He

pointed out that there would probably be complaints filed in the near future about candidates who are not complying with the disclaimer requirements.

Councilor Peralta suggested to the Council that even though there will be a Constitutional Amendment the voters will vote on, that would allow them in addition to adopting the disclosure and disclaimer requirement suggests to also adopt contribution limits because the contribution limits are still subject to the voter approval they should probably leave those aside but still consider passing disclosure and disclaimer requirements similar or same ones adopted in Portland. Mentioned he emailed Council some materials that included the description of the Portland campaign finance disclosure requirements and a link to the City Auditors' description of the disclaimers written and we should adopt that campaign disclaimer pretty much in whole as a City for 2020. Stated even if the Council can't vote on this tonight he'd like to get the Council's thoughts.

Councilor Garvin said he would not be in favor of any contribution limits but open to the discussion of disclosures ahead of the current election cycle.

Councilor Drabkin said she's reviewed the timely disclosures of contributions and expenditures implemented by the City of Portland and would be in favor of implementing something similar or the same for the City.

Councilor Geary asked if this would come to the Council or be referred to the City voters.

Mr. Gowell stated it can go either way, Council could adopt its own Ordinance or can refer a proposed Ordinance to the voters, which would not hit the ballot until November or have it in a special election before November's.

Councilor Geary stated he liked the idea of the voters setting the rules for the elected officials that the voters make but knows it's a different process.

Council President Menke stated that special elections would probably cost the City around \$69,000.

Councilor Geary stated it should be added to the already set general election.

Mr. Gowell stated if Council is going to wait until the November election to add this to the ballot he would suggest waiting until after to adopt more comprehensive because they'll have the ability to adopt contributions and expenditure limits if Joint Resolution 18 passes.

Councilor Geary stated it seems like there is a slippery slope of having the current officeholders set the rules for future holders.

Councilor Peralta stated in his perspective if they were to do something more significant like campaign contributions limits that would significantly change how campaigns are run then he'd agree to send it to the voters. In this case, they are providing more information for the voters to make an informed choice when they get printed materials people sometimes don't realize what the source of the material is. This is the reason he supports it and voters deserve to have all the information in front of them when making a decision. This doesn't restrict anybody from making contributions or groups from engaging in the process or restrict candidates from accepting contributions in any amount.

Councilor Geary agreed with Councilor Peralta but wants to make sure they are the right people to make the rule and is in favor.

Councilor Stassens stated she's also in favor of the disclosure portion and waiting on the campaign finance until it's clear what's going to happen at the Legislative level.

Council President Menke asked if Council is interested in having the City Manager come back with a proposed Resolution or waiting to see what happens after elections?

Councilor Stassens stated thinks they could look at a Resolution on just the disclosure portion.

The consensus from Council was to have a Resolution be brought before them.

Mr. Gowell clarified this would be in a form of an Ordinance.

5. CONSENT AGENDA
  - a. Consider request from Growlers Tap Station LLC at 1036 NE Baker St. for an off-premises liquor license.
  - b. Consider the Minutes of the September 10, 2019 City Council Work Session and Regular City Council Meeting.
  - c. Consider the Minutes of the September 18, 2019 City Council Work Session Meeting.

*Councilor Drabkin MOVED to adopt the consent agenda as presented; SECONDED by Councilor Garvin. Motion PASSED unanimously.*

6. RESOLUTION

- 6.a. Consider Resolution No. **2020-09**: A Resolution authorizing the City Manager to enter into a contract to purchase real property from Yamhill County for affordable housing.

Planning Director Richards stated this was a recommendation coming from the Affordable Housing Task Force it's a project they've been working on for maybe two years now and it's a partnership with Yamhill County. The chair of the task force and her went to meet with Commissioner Starrett a couple years ago to talk about opportunities associated with foreclosed residential properties in McMinnville and trying to leverage those for affordable housing projects. After some review, the County agreed to enter into an agreement with the City to sell those properties to the city in the amount of the taxes owed on the property. The City would then put out a Request for Proposal (RFP) for developers to sell those properties to them and have them invest in them and rehab them and put them into service of affordable housing for a certain number of years. This is the authorization for the City Manager to enter into a real estate transaction for the purchase of a property for \$14,945.31. Will go through 30 days due diligence process of the property. The funds are meant to come out of the Affordable Housing Trust Fund that was set up and authorized in the fiscal year budget.

Councilor Garvin asked as they move through this process what other expenses would the City be paying or is the applicant of the RFP incurring all the cost.

Ms. Richards stated the intent is to have the applicant in the RFP to incur all the costs. There are developers in this community that are interested in this property. The expectation because of the competitive process is someone would come in and bid below market value, put some money into rehabbing it, and dedicate it for a certain amount of years and then eventually becomes house marketing stock in our community.

Councilor Garvin asked in terms of management of the housing when in affordable housing if we have identified that provider,

Ms. Richards stated the intention would be that it would be managed by that partnership with the provider. The City would not be the manager. The city would work with a provider they select and the developer would have a contract with the provider for how long it's donated to them to use and the provider would manage the occupancy of it. Originally they talked about having the County do the RFP process but there is a statute that prevents them from doing it but they can sell it to another public agency and then engage in that process.

Councilor Garvin asked if they have identified a provider that has sustainable funding and capacity to manage the housing.

Ms. Richards stated they have had a discussion with several different providers.

*Councilor Stassens MOVED to adopt Resolution No. 2020-09; authorizing the City Manager to enter into a contract to purchase real property from Yamhill*

*County for affordable housing; SECONDED by Councilor Drabkin. Motion PASSED unanimously.*

- 6.b. Consider Resolution No. **2020-13**: A Resolution appointing Peter Hofstetter, Alison Seiler, and Wendy Phoenix as representatives of the City of McMinnville Budget Committee.

Finance Director Cuellar stated there are three open positions on the Budget Committee for a three-year term. They were five people that applied and the selection committee recommended the three names moving forward. This includes a reappoint of Peter Hofstetter, two new members Alison Seiler and Wendy Phoenix to the Budget Committee.

*Councilor Geary MOVED to adopt Resolution No. 2020-13; appointing Peter Hofstetter, Alison Seiler, and Wendy Phoenix as representatives of the City of McMinnville Budget Committee; SECONDED by Councilor Garvin. Motion PASSED unanimously.*

- 6.c. Consider Resolution No. **2020-14**: A Resolution establishing revised System Development Charges (SDCs) pertaining to parks and recreation, sanitary sewer, and transportation; and repealing Resolution No. 2019-09.

Community Development Director Mike Bisset referred Council to the staff report in the packet regarding the annual adjustment of system development charges to reflect the increase in construction cost. City Ordinances specify to use the Engineering News Record Construction index for Seattle Washington which is the nearest index for construction cost. The index grew by 0.9% in calendar year 2019 and resolution before them includes the 0.9% increase in the transportation parks and recreation and sanity sewer system development charges.

Council President Menke stated this is significantly less increase than prior year.

Mr. Bisset stated that was correct and this would apply to any building permit applied for after July 1<sup>st</sup>.

Councilor Geary stated we use the Seattle index do we take it as a whole or do we make any edits to it.

Mr. Bisset stated the Ordinance specifies we use that index and there are not any adjustments to it. It does have several components to it like labor goods, specific categories of goods and could provide more information about the index if Council would like. If there is interest by Council to use a different index that could be a topic for discussion.

Councilor Stassens stated she knows this is a way to determine how SDC are but how is this keeping up with costs and keeping us accurate in the right size and services and keeping us in an accurate range to recover cost and services.

Mr. Bisset stated that is a bigger question and the answer would vary depending on each of the system development charges. The parks and recreation system development charges are based on a current master plan from 1999, so the cost identified are not accurate at this point. The other consideration is the Community and Council has decided not to recover full costs of development through the system development charge so there is already a discounted these fees.

Councilor Stassens asked if there's part of the process that they are evaluating where we are on that and checking those assumptions if they are still reasonable.

Mr. Bisset stated that historically occurs during the master plan updates.

Councilor Peralta stated he sits on the Council of Governments board and knows that almost every jurisdiction uses the Seattle Consumer Price Index (CPI) to do its inflation adjustments

Councilor Garvin stated the index is widely accepted throughout and does not see the need to change it.

Councilor Geary asked if Mr. Bisset keeps track of those specific uses.

Mr. Bisset stated no but would have to work with the Planning Director's team to see what he could pull off the building permit system that would categorize those for him.

*Councilor Geary MOVED to adopt Resolution No. 2020-14; establishing revised System Development Charges (SDCs) pertaining to parks and recreation, sanitary sewer, and transportation; and repealing Resolution No. 2019-09; SECONDED by Councilor Drabkin. Motion PASSED unanimously.*

6.d. Consider Resolution No. **2020-15**: A Resolution appointing members to the McMinnville Urban Area Management Commission.

Ms. Richards stated the McMinnville Urban Area Management Commission is the hearings body that's assigned by both Yamhill County and the City Council to consider urban growth boundary amendments since having discussion recently she reached out to the County to have this up and rolling. It is assigned based on roles within Yamhill County and City Council and part of the Urban Growth Boundary Management Agreement put in place in 1981. The population of the committee is a Yamhill County Commissioner, two Yamhill County Planning Commissioners, a City Councilor from the City of McMinnville, a Planning Commissioner from the City of McMinnville, and an advisory committee but a few years back changed that the citizen's advisory committee so it's really two Planning Commissioners. They are all appointed and based on terms within their respective agencies they are representing and a citizen at-large is appointed to a four-year term. Every year Yamhill County



has updated its membership to this committee and the City has not since it has not seen action since the 2015 public hearing for the see ya later project which was eventually withdrawn. She reached out to the Planning Commission and there are two Planning Commissioners that want to participate, Robert Banagay and Gary Langenwalter and Mayor Hill would like to represent the City Council. The resolution is to officially appoint those members to the committee and then do an advertisement for the citizen at large.

*Councilor Stassens MOVED to adopt Resolution No. 2020-15; appointing members to the McMinnville Urban Area Management Commission; SECONDED by Councilor Drabkin. Motion PASSED unanimously.*

6.e. Consider Resolution No. **2020-16**: A Resolution Adopting Corrective Plan of Action for FY 2018-2019 Audit Findings.

Ms. Cuellar stated that on January 31, 2020 the Cities financial statements for the prior fiscal year were filed with the Secretary of State and also submitted the Comprehensive Annual Financial Report (CAFR) to the Government Finance Officers Association (GFOA) to maintain a streak for the Excellence in Financial Reporting award. Is also pleased to report that the Merina and Co. will issue an unmodified opinion, a clean opinion on our audit, but unfortunately there was a material weakness finding was received. When a municipality receives a material weakness finding it's required under statute to file a plan of action with the Secretary of State within 30 days. This resolution with the plan of action is based on a template the Secretary of State provides for Council approval. The action plan is attached to the packet detailing the elements with the descriptions of deficiency as well as details of the four specific ways she plans to address the issue going forward.

Councilor Peralta stated that essentially the audit found that due to turnover in management at the end of the year worksheets were not being reviewed.

Ms. Cuellar stated that the systems are set up to where there is a lot of handwork and reconciliation that goes into producing the financial statements from data that comes out of the financial system. The strong part was that there is nothing wrong with the accounting work being done through the year but rather taking that data and organizing it and presenting it in a way that's required by the standards body.

Councilor Peralta asked if there was a staffing issue or if we had adequate staff to meet the requirements.

Ms. Cuellar stated as a new employee she is concerned about how lean they are but this particular issue was not the primary issue. Stated it stretches back a few years ago the primary person who did utilize more heavily the CAFR moved on and no one within the Finance Department knew how it worked so they moved to a manual system which they've been using for two or three years.

Councilor Peralta asked if going forward there's a plan to have a primary staff trained and also have a backup staff trained.

Ms. Cuellar said it would be a challenge but there is an accountant working with her to get him more onboard.

*Councilor Stassens MOVED to adopt Resolution No. 2020-16; Adopting Corrective Plan of Action for FY 2018-2019 Audit Findings; SECONDED by Councilor Drabkin. Motion PASSED unanimously.*

- 6.f. Consider Resolution No. 2020-17: A Resolution approving the acquisition of property and/or temporary construction easements from Jackson Miller and Kathleen Spring, Gary and Paula Mackey, and Brandi Pointer for the Old Sheridan Road Improvements transportation bond project.

Mr. Bisset referred Council to the staff report in the packet from Engineering Services Manager Larry Sherwood as well as the attachments that provide information of the areas they are proposing to purchase. Two parcels of right-of-way and three temporary construction easements to facilitate the construction of the Old Sheridan Road corridor project which is scheduled to bid this Spring and be under construction this calendar year. The total purchase price for the parcels are \$18,900 plus closing and escrow fees.

*Councilor Drabkin MOVED to adopt Resolution No. 2020-17; approving the acquisition of property and/or temporary construction easements from Jackson Miller and Kathleen Spring, Gary and Paula Mackey, and Brandi Pointer for the Old Sheridan Road Improvements transportation bond project; SECONDED by Councilor Geary. Motion PASSED unanimously.*

Council President Menke stated Council be going into executive session after the meeting.

7. ADJOURNMENT: Council President Menke adjourned the Meeting at 8:42 p.m.

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Claudia Cisneros, City Recorder

CITY OF McMinnville  
MINUTES OF CITY COUNCIL MEETING  
Held at the Kent L. Taylor Civic Hall on Gormley Plaza  
McMinnville, Oregon

Tuesday, March 10, 2020 at 7:00 p.m.

Presiding: Scott Hill, Mayor

Recording Secretary: Claudia Cisneros

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

Also present were City Manager Jeff Towery, Police Chief Matt Scales, Finance Director Jennifer Cuellar, Community Services Director Mike Bisset, Planning Director Heather Richards, Human Resources Manager Kylie Bayer, Information System Director Scott Burke, Fire Chief Rich Leipfert, Parks and Recreation Director Susan Muir, Senior Planner Chuck Darnell, City Attorney Spencer Parsons, and member of the News Media – and Jerry Eichten, McMinnville Community Media.

1. CALL TO ORDER: Mayor Hill called the meeting to order at 7:00 p.m. and welcomed all in attendance.
2. PLEDGE  
  
Councilor Garvin led the Pledge of Allegiance.
3. INVITATION TO CITIZENS FOR PUBLIC COMMENT: Mayor Hill invited the public to comment.  
  
There were no public comments.
4. ADVICE/ INFORMATION ITEMS
- 4.a. Reports from Councilors on Committee & Board Assignments

Councilor Geary said the McMinnville Community Media annual meeting would be held this Monday. The LED lighting project in studio was completed. The Historic Landmarks Committee met and discussed removal of an existing property from the rolls. Regarding Kids on the Block Technical Advisory Committee, there was progress made on a joint meeting

with Council and School Board. The MacPAC had their second meeting of 18 and discussed equity and inclusion.

Councilor Garvin said YCOM would meet on Thursday and the Airport Commission met last Tuesday. They were starting a commercial standards and airport rules review which would be done through a community outreach approach. They wanted to standardize the rules and make sure they were equitable across all airport users.

Councilor Drabkin said Commissioner Kulla testified in support of HB 4001, however the legislature closed due to Covid and it had not moved forward.

Council President Menke said Visit McMinnville would be meeting next Wednesday. MURAC met and heard a presentation from Victory Garden on plantings for Alpine Avenue and received an update on the Third Street Plan for housing and MURAC's five year Strategic Plan. She attended Commissioner Kulla's housing solutions meeting about the Providence project in Newberg.

Councilor Drabkin met with the CDC last week and they really emphasized making sure people were washing their hands properly.

Mayor Hill had traveled to Washington, D.C. with John Dietz from McMinnville Water & Light for the annual American Public Power Association Conference. They had discussed making sure Bonneville Power Administration continued to function correctly, G5 small cells legislation, and Columbia River Treaty with Canada.

4.b. Department Head Reports

Police Chief Scales said the final graduate from the Police Academy would be graduating this Friday. Internally they were working on contingency staffing planning due to Covid. They would be having weekly meetings with Public Health, EMS, and Fire for sharing of information.

Planning Director Richards said four more youth applications had been submitted for City committees and commissions. The Mayor and Council President would interview them and bring them back to appoint. There would be land use training on Saturday with John Morgan.

Parks and Recreation Director Muir said she and the City Manager met with the School District Superintendent regarding the Kids on the Block joint meeting which would be held at a later date.

Councilor Peralta said advice from the CDC was for non-essential employees to work remotely where possible. Had there been discussions about City employees working remotely?

Information System Director Burke said they had spent some time over the last few weeks looking over the inventory and taking stock of what the City had for laptops and resources for remote workers. There was enough hardware, but the question was making sure that the employees would have remote access to do their work. They were geared up and ready to respond to the needs.

Fire Chief Leipfert spoke about the preparations for Covid-19 being made at the Fire Department. They were participating in OHA and CDC meetings. YCOM had implemented a screening for calls to get information about people with potential symptoms. They were operating under their exotic disease protocols which designated certain types of disinfections they needed to do after certain types of incidents and the type of PPE they had to wear and questions they had to ask. They were working on internal staffing solutions in the event the Mayor had to declare an emergency and staff had to be quarantined. They were working on quarantine protocols and would be using Station 12 if an ambulance treated or transported a patient so it would not contaminate the entire fire station and resources. They had appropriate PPE available. Regarding the feasibility study, three departments had completed all the data acquisition required. The other departments were almost there and they were working with YCOM on mapping solutions. They were still on track for the April stakeholder meetings and council and boards input sessions.

Councilor Peralta asked about Oregon Health Authority inspections of senior care facilities and if it would put a demand on Fire Department staff.

Chief Leipfert said they would not be participating in those inspections. He did not know when they would be scheduled for McMinnville.

Finance Director Cuellar said the Finance Department was gearing up for employees to work from home as well as the Municipal Court. It was balancing the need to protect staff and the public.

Human Resources Manager Bayer was working on a policy for Covid-19 preparation.

City Manager Towery said there was currently 20% of the City's workforce already authorized to work from home, and they were pushing to go beyond that. He thought 40% would be able to work remotely. They also made decisions with the janitorial services provider to do deeper cleaning and provide disinfecting services on a regular basis in high traffic and public meeting areas. They would continue to share information with the community and encouraged people to contact the Oregon Health Authority. He would be attending a conference next week and Community Development Director Bisset would be the contact while he was out of town.

5. CONSENT AGENDA

- a. Consider request from Guillen Family LLC at 2803 NE Orchard Ave for winery second location liquor license.

*Council President Menke MOVED to adopt the consent agenda as presented; SECONDED by Councilor Peralta. Motion PASSED unanimously.*

6. ORDINANCES

- 6.a. Consider first reading with possible second reading of **Ordinance No. 5084**: An Ordinance Amending the Comprehensive Plan Map Designation of the Property at the Northeast Quadrant of the Intersection of NW Hill Road and NW Baker Creek Road from a Commercial Designation to a Mix of Residential and Commercial Designations.
- 6.b. Consider first reading with possible second reading of **Ordinance No. 5085**: An Ordinance Approving a Zone Change of the Property at the Northeast Quadrant of the Intersection of NW Hill Road and NW Baker Creek Road from a Mix of R-1 (Single Family Residential) and EF-80 (Exclusive Farm Use) to C-3 (General Commercial) and R-4 (Multiple Family Residential).
- 6.c. Consider first reading with possible second reading of **Ordinance No. 5086**: An Ordinance Approving a Planned Development Amendment to Amend the Conditions of Approval and Reduce the Size of an Existing Planned Development Overlay District at the Northeast Quadrant of the Intersection of NW Hill Road and NW Baker Creek Road.
- 6.d. Consider first reading with possible second reading of **Ordinance No. 5087**: An Ordinance Approving a Planned Development Overlay District to Allow for the Development of a 280 Lot Residential Subdivision with Modifications from the Underlying Zoning Requirements at the Northeast Quadrant of the Intersection of NW Hill Road and NW Baker Creek Road.
- 6.e. Consider first reading with possible second reading of **Ordinance No. 5088**: An Ordinance Approving a Tentative Subdivision for a 280 Lot, Phased Single-Family Detached Residential Development at the Northeast Quadrant of the Intersection of NW Hill Road and NW Baker Creek Road.
- 6.f. Consider first reading with possible second reading of **Ordinance No. 5089**: An Ordinance Approving a Landscape Plan and Street Tree Plan for the Baker Creek North Subdivision.

Senior Planner Darnell said the Baker Creek North land use applications had been continued from the January meeting. The location was on Baker Creek Road in the northwest corner of the City. He gave an overview of the proposed development plan. The primary portion of the site would be zoned R-4 resulting in 280 single family residential lots. There would be a variety of lot sizes that would reduce in density as they moved from Baker Creek

Road to the north of the site which was more environmentally sensitive. Some of the unique components were the alley loaded design for the smaller lots, private open spaces in the front, and commercial component. The Development Plan amendment included dedication of both public and private open spaces and an extension of the BPA Trail and City park. The public hearing process included a neighborhood meeting in November, Planning Commission public hearing in December, and City Council public hearing in January. The Council closed the public hearing in January, but left the record open for submittal of additional written testimony until February 4, rebuttal testimony until February 11, and final applicant written arguments until February 18. The applicant provided an extension of the 120 day decision deadline to March 10. Twenty items of additional written testimony were received between January 29 and February 4. There were two items of rebuttal testimony, one from the applicant. Two items were received after the February 4 deadline and were not currently included in the public record. Several emails were sent to the City Council after the February 4 deadline. Council did not read those and forwarded them to staff.

City Attorney Parsons said regarding the items received late, the reason staff recommended that they not be included in the record was they set a process in place for public comment and for each item that did not come in during the applicable deadline, it would require extending the other deadlines and gummed up the system the Council put in place. It was the Council's decision, however, if they wanted to accept the additional testimony into the record. He recommended rejecting the late received testimony.

*Councilor Drabkin MOVED to not allow the late testimony to be included in the record; SECONDED by Council President Menke. Motion PASSED 5-1 by the following vote:*

*Ayes – Councilor Drabkin, Garvin, Geary, Stassens, Menke  
Nay – Councilor Peralta*

City Attorney Parsons said several Councilors received direct emails which were forwarded to staff. To the extent that those were timely received and forwarded to staff, they had been placed in the record. He asked if the Council had any other ex parte contacts outside of those emails to declare.

Councilor Geary received an email this morning, but by the time he logged in there was already chatter about not reading the email and he did not read it. It would not affect his ability to render an impartial vote.

Council President Menke also received an email this morning, but she only read the first sentence and did not read the rest. It would not affect her ability to render an impartial vote.

Senior Planner Darnell said the concerns raised in the testimony were related to transportation and traffic impact on Baker Creek Road, density, reduced

setbacks, and lot sizes, allowance of apartments on the commercial site, design diversity in single dwelling unit subdivision, and commercial business in the northwest area of the City.

Community Development Director Bisset said Oregon Statewide Planning Goal 12 stated cities would adopt transportation system plans to plan for street and transportation networks. McMinnville's TSP was adopted in 2010 and was approved by the state. It was based on the 2003 McMinnville Growth Management and Urbanization Plan which planned for a transportation network for full build out of the Urban Growth Boundary with a build out population of 46,220 in 2023. The community had not grown as fast as anticipated, but the infrastructure plan was still built around that build out population. The TSP included system wide traffic modeling for build out conditions based on the 2003 MGMUP. The 2003 MGMUP identified a neighborhood activity center in the location of Baker Creek North. The TSP set the functional classification for Baker Creek Road as a minor arterial (two travel lanes, center turn lane, bike lanes, planter strips, and sidewalks). Minor arterials were planned to have a maximum average daily traffic of 20,000 vehicles per day. The TSP also set the mobility standard for City street intersections at a volume to capacity ratio of 0.90. Significant items of note in the TSP:

- Page 3-5: "East-west minor arterials like Baker Creek Road and Old Sheridan Road are expected to see significant growth in traffic"
- Page 3-9: By build out "traffic congestion of many of McMinnville's major east-west routes will present a challenge. Baker Creek Road, 2<sup>nd</sup> Street, Fellows Street, and Old Sheridan Road will all experience higher levels of congestion"

Community Development Director Bisset said the total number of planned units was less than the 2003 MGUMP density assumptions used to develop the TSP. A traffic study (provided by a professional traffic engineer) indicated that area intersections (except Baker Cr Rd/Michelbook Lane) would meet the TSP mobility standard of v/c ratio < 0.90 at build out. The planned 280 single family units in Baker Creek North would generate about \$730,000 in transportation system development charge revenues at the current rates. The traffic study indicated that with or without the Baker Creek North development, a traffic signal would be needed at the Baker Creek Rd/Michelbook Lane intersection by 2029. The traffic signal installation was in the adopted TSP, and the costs to cover the project could be funded via transportation system development charge revenues. Staff thought the proposal was consistent with the TSP and that the applicant had demonstrated with the information in the record that the traffic generated by the development was not in conflict with the TSP.

Council President Menke asked if there was going to be an overhaul of Baker Creek and 99W in the next year. Community Development Director Bisset said ODOT was currently working on a traffic safety improvement project to



upgrade several of the signals on the 99W corridor. Construction for that project would start next calendar year.

Councilor Peralta asked how much it would cost to put in the traffic signal. Community Development Director Bisset said it would depend on the amount of pedestrian improvements needed. He thought it would cost around \$400,000.

Councilor Peralta asked if using the \$400,000 for this signal would create a deficit for other transportation infrastructure in the subdivision itself. Community Development Director Bisset said the transportation system development charge ordinance that was in place outlined a list of projects that were system development charge expense eligible and the signal was one of those projects. When the system development rate was approved by Council, it was not full cost recovery and some of the projects in the plan would need other funding to complete.

Councilor Peralta asked if it was possible to install the signal without this project using existing funds. Community Development Director Bisset said it was a high priority project and he thought it would be funded.

Councilor Garvin asked about the difference between the two traffic studies that had been submitted. Community Development Director Bisset said the applicant provided a traffic study that included intersection analysis and a volume to capacity ratio for intersections. The additional information provided by the public included traffic counts of average daily traffic along the corridor on two separate days in January, not an analysis of the volume to capacity ratio. The public thought the counts were a higher level of traffic than the basis for the applicant's traffic study. There was rebuttal indicating the applicant's traffic study was based on the p.m. peak which was consistent with the Transportation System Plan. The p.m. peak traffic in the study had higher traffic counts than the data provided by the opponents of the proposal.

Councilor Stassens asked about a turn lane on Baker Creek or other improvements to alleviate the concerns. Community Development Director Bisset said the Baker Street corridor was striped last calendar year from Elm to Hill Roads to add the turn lane anticipated by the Transportation System Plan. The intersection of Baker Creek and Michelbook would experience delay in excess to the volume to capacity ratio and a traffic signal was needed to bring that intersection back down within the mobility standard. It would be needed with or without the traffic generated by this development in the future.

Councilor Stassens asked about the roundabout that had been added. Community Development Director Bisset said when the Hill Road corridor was put together, there was a significant amount of traffic work and study to ensure that the improvements were consistent with the build out condition that was in the TSP. They essentially prepared the corridor for the traffic that

was expected. There was some testimony in the record that the roundabout was not large enough, but the design of the roundabout was vetted by a traffic consultant to ensure it was designed properly. Staff also met with a number of area farmers to ensure the design of the roundabout would accommodate any specialized equipment that they had. He did not think the testimony about the size of the roundabout was accurate.

Councilor Stassens clarified all of these improvements were designed for capacity above what they had currently. Community Development Director Bisset said yes, however the 2<sup>nd</sup> Street/Hill Road intersection would still need traffic control and the TSP anticipated that all of the east/west corridors would be more congested as they grew.

Councilor Geary asked about school crossings for Baker Creek and safety of kids walking to school. Community Development Director Bisset said the safe routes to school analysis was based on children living a certain distance from the school. There was not a school near Baker Creek that would necessitate walking to school. If that changed in the future, then a supplemental analysis would be done to make sure all of the corridors for walking were addressed. With the completion of this project, there would be sidewalks on both sides of the corridor. As far as specific crossings, he anticipated looking at crossing enhancements as traffic increased. The crossings were done on a case by case basis as there was need. He noted marked crosswalks without traffic control were more dangerous than unmarked crosswalks because the markings did not provide protection for pedestrians and had very little impact on driver behavior. A marked crosswalk could result in a false sense of security. There was significant research that said if markings were going to be put down, other enhancements would need to be included.

Councilor Geary said the planning horizon in the plan was to 2023, at what point did they update the plan? Community Development Director Bisset said the Planning Department anticipated updating the Transportation System Plan as a priority with the growth work that was being done.

Councilor Garvin noted there were students crossing Baker Creek going to Memorial Elementary School. He asked if the traffic counts in the 2003 TSP took into account the new school being built in this area. Community Development Director Bisset said the analysis was based on build out of the entire Urban Growth Boundary per the 2003 Urbanization Plan. Some of those areas were pulled out of the UGB and if anything some of the infrastructure plans were conservative.

Senior Planner Darnell said staff analyzed the proposed density against what was assumed in the 2003 MGUMP. The gross density that was being proposed in the R-4 area was 5.75 units per acre and in the C-3 area was 18.12 units per acre. Those numbers added up to less density than what was considered in the 2003 MGUMP neighborhood activity center. The density in the R-4 zone was somewhat low for a high density zone. The lot sizes within

the proposal were very close to the minimum lot size in the R-4 zone which was 5,000 square feet. The applicant had requested revisions to Condition #18 in PD 1-19 regarding driveway width and Condition #20 in PD 1-19 and Condition #11 in S 1-19 regarding the design standards for single dwelling units. Staff met with the applicant and reviewed the Planning Commission recommended conditions in detail. They discussed revisions that staff believed were not significant and did not change the intent of the design standards. Those changes were included in the Council packet and he reviewed the suggested revisions which would better clarify the driveway widths for what was allowed on the private lots and those on the public rights-of-way.

Councilor Peralta thought there was concern about the lack of parking on the street due to the wider driveways and that had not been addressed. Senior Planner Darnell said that was why they kept the language that required driveway widths not to exceed the 40% maximum of the lot width. He thought the lack of parking had to do with the lot size and the form that was being proposed as well as the driveway width. They were proposing that the lots follow the current maximum standards. The request for the wider driveways on the lots was to provide driveway space for parking as well and ensuring there was off street parking. Where it would be most impactful was on the medium size lots of 40 feet width that would have a 20 foot driveway. He clarified the applicant had proposed that the driveway width be wider than the 40% of the lot width which would allow for less on street parking. Staff recommended keeping it at that 40% maximum of the lot width.

Planning Director Richards explained there was no revision to the condition that changed this standard. It was moving language from one paragraph to another to make it clearer. The applicant did not like the condition as they wanted wider driveway widths but staff had come back with the same condition. In the rebuttal testimony, the applicant stated they would still like wider driveway widths.

Senior Planner Darnell reviewed the revised conditions regarding the design standards for single dwelling units. These were minor changes that did not result in the loss of the intent of the design standards. These were more for clarity and to be easily interpreted. There would need to be horizontal elements across the facades, there was a minimum size for the trim on the windows, and a color palette to allow for different types of materials to count as a color rather than paint. The front porches had to be at least 36 square feet in area with a minimum depth of 4 feet as measured from the front door. If columns were included, they had to be a minimum size of 6 inches by 6 inches. Regarding the roof design, an elevation could have one single continuous ridgeline or eave over the main portion of the roof structure, but must also have another roof ridgeline or eave, such as a gable or hip roof, that extended perpendicularly or at a lower elevation from the larger roof ridgeline. For garage door types, an “or” was removed in the language and it was clarified that transom windows would be allowed or sidelight windows

or both. There were also a number of questions regarding the commercial site, especially regarding a possible food store. Staff recommended Condition #3, which limited the uses in that commercial area to be those permitted in the C-1 zone plus “restaurant.” “Food store, retail” was listed in the C-1 zone, but was not defined. It was uncommon for other cities to define food store or differentiate between different types of food stores or retail stores. He discussed the different definitions for convenience store, grocery store, and supermarket. Staff also recommended Condition #5 which would prohibit any retail commercial use from occurring from 1:00 a.m. to 5:00 a.m. If there was interest in limiting the intensity to neighborhood scale, they could reduce the maximum size of the retail uses in Condition #3 with the following wording: For the purposes of this Planned Development Overlay District, the allowed neighborhood commercial uses were defined as those that were permitted in the C-1 (Neighborhood Business) zone in Section 17.27.010 of the MMC. In addition, “restaurant” shall be permitted as a neighborhood commercial use in this Planned Development Overlay District. No retail uses should exceed 5,000 square feet in size. The applicant may request any other use to be considered permitted within the Planned Development Overlay District at the time of the submittal or detailed development plans for the site. The recommended conditions did not prohibit a drive-through facility. The current conditions included site design and building architecture standards that focused on pedestrians and human scale. If followed, it could accommodate a drive-through facility. Findings would be required if there was interest in limiting drive-through facilities for this site. The findings could be related to:

- Intent to include neighborhood commercial uses
- Comprehensive Plan policies: 25.00 (minimize conflicts with adjacent land uses), 26.00 (heavy traffic-generating uses), and 27.00 (neighborhood oriented businesses)

Council could consider limiting stand-alone drive-through facilities or allowing drive-throughs only as end-caps within a commercial or mixed use building. Parking on the commercial site would meet the requirements in Chapter 17.60 (off street parking and loading). Current conditions included site design and building architecture standards that minimized the impact of parking in the neighborhood commercial area. These included parking behind buildings, maximum surface parking of 110% of the minimum requirements, buildings oriented toward streets, and pedestrian connections between streets and the BPA trail.

Councilor Peralta asked how the parking density compared to the rest of the site. Senior Planner Darnell said parking took up a lot of space and generally developers were not putting in more parking than what was required. They generally met the minimum off street parking requirements.

Planning Director Richards said the bigger developments in town were mostly over-parked. The concern people had about neighborhood

commercial was seeing a large parking lot in a neighborhood. The way they wrote the design standards for this was the maximum was 110% of the minimum parking requirements. They also encouraged shared parking and they would allow requests for reduced parking standards.

Councilor Peralta asked if there was a state law for cities to reduce the percentage of overall parking in the city over time. Planning Director Richards said not at this time, but there were a lot of discussions with the housing bills about parking.

Councilor Drabkin asked about the possible change to Condition #3 regarding reducing the maximum size of retail uses from 10,000 square feet to 5,000 square feet. Planning Director Richards said they surveyed smaller businesses in the City to see what their square footage was and if reducing it to 5,000 square feet would prohibit the types of businesses people would like to see in these neighborhoods. All of them said no, the 5,000 square feet was a good standard.

Councilor Peralta asked for an example of a 10,000 square foot business compared to a 5,000 square foot. Senior Planner Darnell said Harvest Fresh would be close to 10,000 square feet. Community Development Director Bisset said the Community Development Center was 10,000 square feet.

Councilor Garvin noted that the building behind Sandwich Express was about 6,000 square feet. Planning Director Richards said most restaurants, small retail, and convenience stores were under 5,000 square feet. She assumed that when the drive-through for the Laughing Bean Bistro went in that there was discussion about stand alone and end cap drive-throughs and impact to neighborhoods. It was a deliberate end cap drive-through and she did not think that most businesses would be interested in that type of development.

Senior Planner Darnell said the Planning Commission recommended approval of the six land use applications with conditions. Staff recommended revising a few of those conditions. The public hearing was closed, and they were at the point of Council deliberation. They would then need to hold the first and second readings to take action on each of the six items individually. The Council could approve the applications as recommended by the Planning Commission with the minor revisions suggested by staff or deny the applications by providing findings of fact and directing staff to include the findings in the decision document. The 120 day deadline was today, March 10, 2020.

City Attorney Parsons clarified if the first reading was not approved unanimously, the second reading could not happen this evening. They would need to ask the applicant to extend the 120 day deadline to conduct the second reading. If the deadline was not extended, they did not hit the time clock or they could consider a motion to deny the applications.

Councilor Garvin asked about the density thresholds for R-4 and R-5. Senior Planner Darnell said the current code did not have an R-5 zone, and the R-4 density was slightly higher than what was being proposed at 8-30 units per acre. The gross density proposed was 5.75 units per acre but it was not uncommon in McMinnville to have lower densities in the R-4 zone because they did allow single family dwellings. In those cases, they based it on lot size and the minimum lot size was 5,000 square feet. The proposal was coming in with an average lot size of just under that at 4,950 which resulted in a density of 5.75.

Councilor Garvin was concerned in Baker Creek East and West that they used Baker Creek East numbers to get below density requirements for Baker Creek West and it seemed like they were doing the same thing here. Senior Planner said they did use a larger area to result in lowering their density in terms of units per acre. This one was opposite as they came in with the R-4 zone. The gross density was the result of their plan and following the average lot size of 5,000 square feet. It resulted in a lower density than what the R-4 zone would typically allow for.

Planning Director Richards said the code allowed the developer to do an average density across the Planned Development which allowed for a variety of lot sizes and housing types. A couple of the subdivisions were built with larger lot sizes and there was an opportunity to do some averaging across the whole Planned Development to make some smaller lot sizes in one subdivision phase versus the larger ones in the other subdivision phase. In terms of this development, the 5.75 units per acre was more similar to the R-2 zone and was less than the targeted density was for the City's new Housing Strategy that was being developed right now. It was not a high density unit number per acre. They had asked for more open space tracts than they would in a regular subdivision which also contributed to the average density.

Councilor Garvin asked why they wanted to put apartments in the commercial zone. Planning Director Richards said the request was made to open it up for apartments. The Housing Needs Analysis showed there was a deficiency of multi-family apartment units in the community. The C-3 zone did allow multi-family and the Planning Commission recommended to allow it. If they did not limit the multi-family on that acreage through this application, a lot more than the 120 units would be allowed. Senior Planner Darnell said it would be closer to 180-185 units. They were also preserving the commercial use by requiring 5 acres of commercial instead of going down to 2 as requested by the applicant.

Councilor Garvin asked if the Housing Needs Analysis included all of the new apartments being built in the City. Planning Director Richards said yes. The multi-family in this area was in the 2003 Growth Management and Urbanization Plan as a neighborhood activity center. Looking at that community decision and the current need for multi-family development, the

Planning Commission made the recommendation to allow the 120 multi-family units.

Councilor Garvin said the analysis also showed a deficit of larger houses. Planning Director Richards said it showed a need for housing that served income levels of 120% or more and 40% of future housing need was sitting in that bucket. There was a subdivision plan already approved for 400 lots in the west hills. A lot of that could not be built out right now because it was in Water Zone 2 and there were infrastructure costs to provide the water reservoir for those homes and it was on slopes greater than 15%. Those would be more expensive housing units.

No Councilor present requested that the Ordinances be read in full.

City Attorney Parsons read by title only Ordinance Nos. 5084, 5085, 5086, 5087, 5088, and 5089.

*Council President Menke MOVED to pass Ordinance Nos. 5084, 5085, 5086, 5087, 5088, and 5089 to a second reading; SECONDED by Councilor Drabkin. Motion PASSED unanimously.*

City Attorney Parsons read by title only for a second time Ordinance Nos. 5084, 5085, 5086, 5087, 5088, and 5089.

Councilor Drabkin suggested excluding stand-alone drive-throughs.

Ordinance No. 5084 Discussion:

Councilor Garvin was concerned about reducing the amount of commercial. He questioned whether six acres would be enough as the commercial was meant to reduce trips into the core and reduce congestion on 99W.

Council President Menke thought six acres would be enough.

Councilor Peralta thought there would not be enough demand to sustain an 11 acre commercial area and was in favor of reducing it. He did not want a lot of empty storefronts or bare ground there. He understood there were citizens who did not want the commercial development because of the height with commercial and residential above it, but he thought it was a good use of the property and would add to the quality of life for those residents.

Councilor Stassens was also in favor. This was twice the size of the area on the corner of 2<sup>nd</sup> and Hill. They had a hard time filling the space on 2<sup>nd</sup> and Hill with neighborhood sized businesses. She thought it was the right size for a neighborhood commercial area.

*Councilor Stassens MOVED to adopt Ordinance No. 5084 amending the Comprehensive Plan Map designation of the property at the northeast*

*quadrant of the intersection of NW Hill Road and NW Baker Creek Road from a commercial designation to a mix of residential and commercial designations; SECONDED by Council President Menke. Motion PASSED 5-1 by the following vote:*

*Ayes – Councilors Drabkin, Garvin, Peralta, Stassens, and Menke  
Nay – Councilor Geary*

Ordinance Nos. 5085 and 5086 Discussion:

There was discussion regarding passing Ordinance Nos. 5085 and 5086 simultaneously as the rezone was contingent on the Planned Development amendment passing.

*Councilor Drabkin MOVED to consider Ordinance Nos. 5085 and 5086 simultaneously and vote on them simultaneously; SECONDED by Council President Menke. Motion PASSED 4-2 by the following vote:*

*Ayes – Councilors Drabkin, Peralta, Stassens, and Menke  
Nay – Councilors Geary and Garvin*

Planning Director Richards said the Council would need to add the amendments for the drive-through and the 5,000 square foot tenant space reduction in the motion.

*Councilor Drabkin MOVED to exclude stand-alone drive-through facilities; SECONDED by Council President Menke.*

Councilor Peralta asked what the objection was to a stand-alone drive-through facilities. Councilor Drabkin said it was the traffic impact on the neighborhood.

Councilor Peralta was skeptical that there would be more traffic. He thought people who lived in the area would use the facility, but others would not go out of their way to use it.

Council President Menke said there was still the opportunity to have a drive-through on the end cap.

Councilor Peralta did not think limiting the flexibility would gain much in changing traffic patterns.

Councilor Drabkin thought traffic was regularly impacted by stand-alone drive-through facilities. If a restaurant wanted a drive through option, by allowing end caps to remain still gave them that option.

Mayor Hill agreed the Laughing Bean which was on an end cap had very little impact on the neighborhood with noise and traffic. It was an enhancement and was utilized quite well.



Senior Planner Darnell noted that there needed to be findings to support the exclusion. It could relate to the Comprehensive Plan policies already mentioned.

Councilor Drabkin said the findings were related to Comprehensive Plan Policies 25.00, minimizing conflicts with adjacent land uses, and 26.00, heavy traffic-generating uses.

Councilor Garvin thought this would not make a difference with the use and would handcuff the property owner on what could go in. He did not think an end cap would reduce traffic.

*Motion PASSED 4-2 by the following vote:*

*Ayes – Councilors Drabkin, Geary, Stassens, and Menke*

*Nay – Councilors Peralta and Garvin*

Councilor Peralta discussed the option of reducing the tenant space from 10,000 square feet to 5,000 square feet.

Councilor Garvin was not in favor as he would like to see a grocery store go in the space.

There was consensus to keep the tenant space at 10,000 square feet.

Councilor Garvin suggested only allowing two story buildings as a maximum.

Council President Menke said there were three story apartment buildings nearby.

Councilor Drabkin said due to the City's long term needs she thought the height should not be reduced.

Planning Director Richards said in residential zones they were allowed to go up to 35 feet which could be three stories. All around that development they could go up to 35 feet. The multi-family complex being built on the corner of Hill and Baker Creek was 39 feet with a pitched roof. It was a variance so they could bring in a variety of pitched roofs. Senior Planner Darnell said the newest building constructed south of the Laughing Bean complex was a two story building and was under 30 feet in height.

Councilor Geary said a lot of projects had come back when the higher stories had not worked out economically.

Planning Director Richards said if the concern was to limit the height so it did not overwhelm the residential neighborhoods nearby, she thought the

easiest way would be to add a condition to allow a two story with a maximum height of 35 feet.

Councilor Peralta preferred not to include the 35 feet, but just to say two story maximum.

*Councilor Peralta MOVED to limit the height to two story maximum without a square footage limitation; SECONDED by Councilor Garvin. Motion PASSED 5-1 by the following vote:*

*Ayes – Councilors Peralta, Garvin, Geary, Stassens, and Menke  
Nay – Councilor Drabkin*

City Attorney Parsons thought these ordinances would need to be brought back to the Council for a second reading because they were not a unanimous vote and that the applicant should be asked if they would extend the 120 day deadline.

The applicant agreed to extend the 120 day deadline to the next Council meeting.

Councilor Garvin would like to remove the 120 multi-family units from the commercial zone. He thought they had enough apartments being built and they were running close to capacity on what the Transportation System Plan allowed. He thought it would affect livability.

Council President Menke said they needed the housing and density.

Planning Director Richards said that would need a finding with a legal basis associated with it. If the finding was the Transportation System Plan's maximum allocation of trips was inappropriate for the City, that would establish a precedent.

Councilor Peralta thought the closer they got to the upper limit, the more discretion people had in terms of the impact to neighborhoods. In both this application and a previous one it was very reasonable to say that once they started getting to the upper limits of transportation capacity that it merited consideration.

Councilor Garvin thought they could use the safe routes to schools as a finding. The walkability of Baker Creek Road was being reduced for school age children. Planning Director Richards said that would mean any street carrying whatever the science said this development would put in terms of trips on the street was too much within a one mile radius of an elementary school.

City Attorney Parsons said regarding bumping the ceiling, if they were going to refute some of the preliminary findings, they had to identify substantial

evidence in the record to show how the suggested findings and evidence they were pointing to was incorrect.

Councilor Stassens said the experts told them that they were not bumping up against the maximum. The Transportation Plan had designed the road improvements to meet an amount of growth that wasn't happening because the Urban Growth Boundary had not been expanded. They would have to come up with findings that stated that was not correct.

Councilor Peralta said the experts did say that they were bumping up against the limits for Baker Creek and Michelbook and did not include the intersection at 99W and Baker Creek. He thought that meant they could not approve a development to this scale until those were taken care of.

Councilor Garvin said in the rebuttal testimony, the applicant acknowledged that the intersection of Baker Creek and Michelbook and the west bound lane of Baker Creek might exceed 1.00. The City's threshold was .90 v/c ratio. He thought that showed that they were bumping up against the limits.

Council President Menke said that was at total build out, but by that point in time the work on those intersections would be done.

Community Development Director Bisset said the foundation of the Transportation System Plan was that these corridors would have congestion. This area could be developed denser than proposed.

Councilor Geary thought they should be updating the TSP assumptions every five years. Community Development Director Bisset said there was no statute or municipal code that required an update every five years. The City had not grown like they thought and he did not know if there was an urgency. It was a policy level decision by Council to staff to conduct those exercises and not germane to the applications before Council.

Councilor Drabkin said she had heard staff say they were below the threshold.

Councilor Stassens said if they took out the residential, the commercial would drive traffic as well and the commercial traffic was more. Taking out the residential did not save them from more congestion. Planning Director Richards said the traffic analysis that was done assumed there would be commercial development on all of the acres. Multi-family would generate less trips than the commercial development. If it was mixed use, it would come in under the mixed use product and they would have to study it based on what was intended. There was a condition of approval to require this development go back to the Planning Commission for the site plan and that an analysis be done at that time including looking at the traffic impact. If the finding was the system could not accommodate the trips, did that put a moratorium on any development in this area above that trip cap?

Councilor Peralta did not think they should be swapping residential for commercial. It would not reduce the number of trips. He thought the last application the Council saw had more traffic problems and impact to adjacent neighborhoods than this one did. His main concern about this application was Michelbook and Baker Creek and Baker Creek and 99W. One way to get the funding to fix the intersection at Michelbook was to get SDCs out of the project to help subsidize the cost. The state was working on the other intersection and it would be done next year. He did not think the traffic impacts were enough to deny the applications even though he knew there were issues on Baker Creek due to the lack of left hand turn lanes.

Councilor Garvin said regarding swapping residential for commercial, they had already reduced the commercial land from almost 12 acres to 6 acres and the only true commercial would be 2 acres and the other would be residential.

Councilor Peralta said there was a greater need for residential than there was for commercial. They had to have affordable housing for people in the City.

Councilor Geary wanted to add a condition that the traffic impact analysis for the future development of this property include the Michelbook/Baker Creek and Baker Creek/99W intersections.

Planning Director Richards said the finding for that could be the fact that the current analysis showed failure at those intersections.

*Councilor Geary MOVED to amend Condition #7 for PDA 2-19 to include the intersections of Baker Creek and Michelbook and Baker Creek and 99W in the traffic impact analysis to be done prior to any development of the commercial site per the finding that the current analysis showed failure at those intersections; SECONDED by Councilor Drabkin. The motion PASSED unanimously.*

*Councilor Drabkin MOVED to adopt Ordinance No 5085 approving a Zone Change of the property at the northeast quadrant of the intersection of NW Hill Road and NW Baker Creek Road from a mix of R-1 (Single Family Residential) and EF-80 (Exclusive Farm Use) to C-3 (General Commercial) and R-4 (Multiple Family Residential) and Ordinance No. 5086 approving a Planned Development amendment to amend the conditions of approval and reduce the size of an existing Planned Development Overlay District at the northeast quadrant of the intersection of NW Hill Road and NW Baker Creek Road with the amendments as voted on and approved; SECONDED by Councilor Stassens. The motion PASSED 4-2 by the following vote:*

*Ayes – Councilors Drabkin, Peralta, Stassens, and Menke  
Nay – Councilors Geary and Garvin*

Ordinance No. 5087 Discussion:

Councilor Geary thought this was not a high density project, but instead they were packing the same standard big houses closer together. He did not see enough value in the sheer quantity of this development to give them everything they were requesting. Any other development would have dedicated the same amount of open space. The design standards had to be forced upon the applicant and there was no offering of a greater housing package in this. He was not in support.

Councilor Garvin thought it was designed for high profit not livability. It would not be affordable housing or high density.

Council President Menke said the applicant would be maintaining the parks until 2032 and was willing to put in the infrastructure for the parks.

Councilor Peralta said most of the housing products being built were targeting people who were moving here, not the people who living here currently. He was skeptical about the quality of life because of the increased density and focus on single family housing to achieve that goal. However, the overall proposal met the City's requirements and he would be voting in support.

Councilor Drabkin said they were not necessarily achieving some of their housing goals through this application. It seemed to be high density, but it really wasn't. There were things that the City was getting in exchange.

Council President Menke did not think McMinnville was ready for rowhouses. This was a transitional development that would have a high density look. These were starter homes and they had to think about what people were willing to accept at this point.

Councilor Geary did not agree this was high density. This was not bringing anything new or innovative to the table, but packing in the same type of homes together.

Councilor Stassens said because this was quasi-judicial, they were bound by the definitions and criteria.

Councilor Geary did not think they were getting an equal value to what they were waiving in the variances. He did not think the application met all of the criteria, specifically 132.45.00 supplemental street design standards, 132.46.10, 132.54.00, 132.55.00 safe routes to schools, 132.56.00 bike lanes, 132.56.10 barrier to bicycle travel, 132.56.30, 132.56.45 safe routes to schools, 132.57.00 no public transit, 132.60.10 development should mitigate impacts on the transportation system, 132.62.05 adequately accessible and safe for all travel methods, 132.62.25 validity of the TSP if not updated every five years, 166.00 the close proximity of these homes was in violation of the open spaces and natural areas, 169.00 protection of drainage ways, 171.00

there was no discussion regarding energy efficiency or reliance on vehicle transit, 179.00, 132.40.05, and 132.35.00. He did not think there was enough to support the judicial discretion in the Planned Development and was not in favor of the variances they were allowing for what they were getting with this Planned Development.

Senior Planner Darnell said the applicant provided a list of eleven things that they were intending to do and were included in the development that warranted the departures from the code. That was the overarching discretionary language that was allowed in the Planned Development. That was currently serving as the findings. They talked about parks being provided, both public and private, variety of lot sizes and types of housing, and design standards that would apply to the housing.

City Attorney Parsons clarified that the items Councilor Geary listed would not fall under the requirements of Chapter 17.51, but the resulting development was inconsistent with the Comprehensive Plan objectives under 17.510.030, specifically C-1.

*Councilor Drabkin MOVED to adopt Ordinance No. 5087 approving a Planned Development Overlay District to allow for the development of a 280 lot residential subdivision with modifications from the underlying zoning requirements at the northeast quadrant of the intersection of NW Hill Road and NW Baker Creek Road; SECONDED by Council President Menke. The motion PASSED 4-2 by the following vote:*

*Ayes – Councilors Drabkin, Peralta, Stassens, and Menke  
Nay – Councilors Geary and Garvin*

Ordinance No. 5088 Discussion:

Councilor Garvin asked if the street design standards in the Comprehensive Plan that Councilor Geary discussed would be applicable to this ordinance. Planning Director Richards said yes.

*Council President Menke MOVED to adopt Ordinance No. 5088 approving a tentative subdivision for a 280 lot, phased single-family detached residential development at the northeast quadrant of the intersection of NW Hill Road and NW Baker Creek Road; SECONDED by Councilor Drabkin. The motion PASSED 4-2 by the following vote:*

*Ayes – Councilors Drabkin, Peralta, Stassens, and Menke  
Nay – Councilors Geary and Garvin*

Ordinance No. 5089 Discussion:

*Councilor Drabkin MOVED to adopt Ordinance No. 5089 approving a Landscape Plan and Street Tree Plan for the Baker Creek North subdivision;*

*SECONDED by Council President Menke. The motion PASSED 5-1 by the following vote:*

*Ayes – Councilors Drabkin, Peralta, Garvin, Stassens, and Menke  
Nay – Councilor Geary*

Mayor Hill said the ordinances would be brought back to the next Council meeting on March 24, 2020.

7. ADJOURNMENT: Mayor Hill adjourned the meeting at 10:24 p.m.

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Claudia Cisneros, City Recorder

DRAFT



**City of McMinnville  
Parks and Recreation**  
600 NE Evans Street  
McMinnville, OR 97128  
(503) 434-7310  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** April 5, 2021  
**TO:** Mayor and City Councilors  
**FROM:** Susan Muir, Parks & Recreation Director  
**SUBJECT:** Resolution No. 2021-20 Third Amendment to Personal Services Agreement with Ballard\*King & Associates, Ltd.  
**STRATEGIC PRIORITY & GOAL:**



### **GROWTH & DEVELOPMENT CHARACTER**

Guide growth & development strategically, responsively & responsibly to enhance our unique character.

**OBJECTIVE/S:** Strategically plan for short and long-term growth and development that will create enduring value for the community.

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#### **Report in Brief:**

This is the consideration of Resolution No. 2021-20, to amend the existing personal services agreement with Ballard\*King & Associates, Ltd. to continue the current work on the Library and Recreation Master Plan and Feasibility Study Project.

#### **Background:**

To date, the City Council has discussed and given staff direction to:

- Study replacing the aging Community Center and Aquatic Center with one joint facility (Phase I).
- Include the Library and other aging facilities, particularly City Hall and Fire Administration, in the study.
- Under the umbrella of Mac-Town 2032, recruit an advisory committee to give feedback throughout the next phase of the study.
- Pursue the next phase of the study (Phase II).



A year ago, the Parks & Recreation Department and Library partnered to form the Enrichment Services Advisory Committee (now known as MacPAC) to assist in developing enrichment services and facilities for the City of McMinnville.

The committee has reviewed the [Phase 1 Final Report](#) of the Facilities & Recreation Master Plan & Feasibility Study from Ballard\*King and the Mac-Town 2032 report as part of their engagement with Parks & Recreation and Library staff in bringing forward community-driven programming and services. The committee has been engaging with City staff regarding future recreation facilities and library as they relate to programming, services, and community interest. In addition, MacPAC has developed a Diversity, Equity and Inclusion lens for their future work. Through the March 2021 MacPAC meeting, the committee has also moved to take the following recommendation to the next step, which will include some preliminary design and building massing work:

- Site the new rec center on Linfield University property that includes sport courts, fitness areas, indoor track, child care area, indoor rec/family pool that includes a lazy river, vortex, zero depth entry, hot tub, 50 m x 25 yard competitive pool and an outdoor water play area (pool or a splash pad).
- Construct a new, freestanding library on the Upper City Park site after the new pool is constructed. This will include a one level library layout. The existing library buildings would be renovated for other public uses.
- Make improvements to the Senior Center addressing safety issues, increasing functionality and adding an indoor greenhouse that can be used for classes and events, as well as additional improvements to the surrounding area at Wortman Park.

Staff has negotiated an amendment to the original contract and recommends approval to keep this project moving. Phase II of the Facilities & Recreation Master Plan & Feasibility Study will expand on the work conducted by MacPAC and City staff to include;

- continued engagement with MacPAC; and
- illustrations of possible future municipal facilities
- conceptual floor plans
- operational plans for the new recreation facility
- cost projects for capital costs on the 3 buildings
- a final report that addresses the process and summary of MacPAC's

**Discussion:**

The consultant team from Ballard\*King & Associates and Opsis Architecture will continue to lead this work and has brought on an additional architect with expertise in libraries.

**Attachments:**

1. Resolution No. 2021-20

**Fiscal Impact:**

This planning project was funded through the FY 20-21 budget process. To date this fiscal year there has been one approved bridge contract for \$25,000.00 and a second bridge contract for \$50,000.00. At this time we are requesting a third bridge for \$96,900. It is anticipated that approximately 75% of bridge three will occur in FY 20-21 and the remaining approximate 25% will occur in FY 21-22. This action requires Council approval as the dollar amount for the overall consultant work done to date puts us over the dollar amount to be able to administratively sign the third bridge.

This total amount is broken down and can be tracked as follows:

- \$ 74,650.00 Original contract amount for Phase I Report (FY 19-20)
- \$ 25,000.00 Bridge contract 1 (FY 20-21)
- \$ 50,000.00 Bridge contract 2 (FY 20-21)
- \$ 96,900.00 Bridge contract 3 (FY 20-21 and FY 21-22)
- \$246,550.00 Spent so far on this project over the past 2 years

**Recommendation:**

It is recommended that the Council move to approve Resolution No. 2021-20 to amend the personal services agreement with Ballard\*King & Associates, Ltd.

## RESOLUTION NO. 2021 – 20

A Resolution of the City of McMinnville Authorizing the City Manager to Execute a Third Amendment to the Personal Services Agreement with Ballard\*King & Associates, Ltd. to continue the Facilities and Recreation Master Plan and Feasibility Study Project.

### RECITALS:

**WHEREAS**, the City of McMinnville (“City”) undertook a competitive procurement process pursuant to OAR 137-048-0210 (“Procurement”) to obtain professional services for the Facilities and Recreation Master Plan and Feasibility Study Project (“Project”); and

**WHEREAS**, Ballard\*King & Associates, Ltd. was the successful proposer (“Consultant”) and entered into a Personal Services Agreement (“Agreement”) with the City on August 1, 2019; and

**WHEREAS**, the Procurement contemplated a potential Phase II of the Project wherein the City could elect to have the Consultant perform concept planning for certain new or expanded facilities/amenities; and

**WHEREAS**, the City and the Consultant entered into a First Amendment to Personal Services Agreement on September 21, 2020 and a Second Amendment to the Personal Services Agreement on October 27, 2020 to finalize the Recreation/Aquatic Center program with MacPAC and other related tasks; and

**WHEREAS**, the City desires to further amend the Agreement for Consultant to continue this second phase of the Project.

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

1. The City of McMinnville incorporates the above-stated findings as if fully set forth herein.
2. The City of McMinnville, acting as the Local Contract Review Board, authorizes the Manager to enter into and execute, on behalf of the City of McMinnville, a Third Amendment to the Personal Services Agreement with Ballard\*King & Associates, Ltd. for a stated value of \$96,900, in substantially similar form as attached hereto as **Exhibit 1**.
3. This Resolution takes effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a meeting held April 13<sup>th</sup>, 2021 by the following votes:

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

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

Abstain: \_\_\_\_\_

Approved this 13<sup>th</sup> day of April, 2021

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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

EXHIBIT:

1. Third Amendment to Personal Services Agreement with Ballard\*King & Associates, Ltd.

**CITY OF MCMINNVILLE  
THIRD AMENDMENT TO PERSONAL SERVICES AGREEMENT**

**Facilities & Recreation Master Plan & Feasibility Study Project**

This Third Amendment to Personal Services Agreement (“Third Amendment”) is effective the 1<sup>st</sup> day of January 2021 (“Effective Date”), by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (“City”), and **Ballard\*King & Associates, Ltd.**, a Colorado corporation (“Consultant”), upon the terms and conditions set forth below.

**RECITALS**

WHEREAS, the City entered into a Personal Services Agreement (“Agreement”) with Consultant on August 1, 2019 relating to the Facilities & Recreation Master Plan & Feasibility Study Project (“Project”); and

WHEREAS, the City entered into a First Amendment to a Personal Services Agreement (“First Amendment”) on September 21, 2020; and

WHEREAS, the City entered into a Second Amendment to a Personal Services Agreement (“Second Amendment”) on October 27, 2020; and

WHEREAS, the City requires additional services which Consultant is capable of providing, under terms and conditions hereinafter described (“Third Amendment Additional Services”); and

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

WHEREAS, Consultant is prepared to provide such Third Amendment Additional 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**

The Agreement is amended as follows:

**Section 1. Additional Services To Be Provided**

Consultant will perform the Third Amendment Additional Services more particularly described in **Exhibit A**, attached hereto and incorporated by reference herein, for the Project pursuant to all original terms of the Agreement, except as modified herein.

**Section 2. Time for Completion of Additional Services**

The Third Amendment Additional Services provided by Consultant pursuant to this Third Amendment shall be completed by no later than August 31, 2021.

**Section 3. Compensation**

The City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed Ninety-Six Thousand Nine Hundred Dollars (\$96,900) for performance of the Third Amendment Additional Services (“Third Amendment Compensation Amount”).

**Section 4. All Other Terms**

All of the other terms and conditions of the Agreement, the First Amendment, and Second Amendment shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Agreement and the Second Amendment shall apply to this Third Amendment.

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

**CONSULTANT:**

**CITY:**

BALLARD\*KING & ASSOCIATES, LTD.

CITY OF MCMINNVILLE

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

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

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

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

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

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

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

APPROVED AS TO FORM:

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

# EXHIBIT A

## SCOPE OF WORK

### **McMinnville Civic Facilities Master Plan Scope and Fee for Professional Services**

#### **SCOPE OF WORK**

The Design Team understands the scope of work to be the following:

#### **SPACE PROGRAMMING**

The RAC space program is completed and will include 2 scenarios: one with a 25-yard stretch pool or 50-meter pool. Both options could be explored on the Linfield Property site. The Public Library space program and feasibility study narrative has been completed and assumes a total building area of 30,000gsf. A preliminary needs assessment memo was completed for the Senior Center.

#### **SITE SELECTION**

The specific RAC sites evaluated include the Upper City Park site with a test-fit of the space program and parking along with detailed site analysis for both the Linfield Property and Wortman Park. The Wortman Park site included a test-fit of the program and parking.

The Public Library will stay in its central McMinnville location within Upper City Park. This study will explore relocating the library to a new 30,000gsf facility on the site of the existing Aquatic Center. This approach is based on the direction of relocating the Aquatic Center to the RAC development on the Linfield Property. Consideration will be given to expanding the parking area with the possibility of integrating beneath the proposed library.

The Senior Center will stay in its current location and be rejuvenated through renovation / expansion with consideration for enhancing Wortman Park.

#### **CONCEPT DESIGN**

- Develop site layout and building conceptual floor plans for the RAC, Library, and Senior Center.
- The RAC building layout with parking and related open space will be developed as a prototype plan that establishes a framework to define the general development area requirements. The RAC layout will include possible phasing strategies with related project cost estimates for each phase of implementation. The specific location of the RAC facility on the Linfield site is not a part of this scope.
- Develop preliminary 3D exterior massing and character studies for the RAC and Library. Supportive imagery that illustrates the potential character of the RAC and Library will be included.
- Provide project cost estimates for the RAC and Library.
- Refine cost recovery projections to reflect the RAC concept design.

#### **MEETINGS / PRESENTATIONS**

Our efforts will be coordinated with and support the ongoing process the City of McMinnville has established. It will include participating in Project Management Team (PMT) strategy / review meetings, seven (7) MacPac meetings, one (1) Public Open House and one (1) City Council Presentation. Opsis and B\*K will assist the PMT in agenda setting and will participate in meetings. MacPac meeting dates and outline agendas below:

<b>Jan</b>	<b>RAC Sites &amp; Evaluation</b>
	MacPac process update
	Review guiding principles & site evaluation criteria

Overview of potential sites considered  
Linfield Property site analysis & discussion

- Feb RAC / Linfield Space Program Needs**  
Evaluate Wortman Park for RAC site  
RAC site selection
- Mar Review Space Program / Subcommittee Reports**  
Updates from Aquatics Subcommittee (competition pool recommendation)  
Update from Library Subcommittee  
Update of Senior Center space needs
- April Preliminary Concept Designs**  
Review RAC conceptual layout  
Review Library conceptual layout  
Review Senior Center conceptual layout
- May Preferred Concept Design**  
Review refined site development plans  
Review refined building layouts  
Review buildings massing, character, and imagery
- June Finance**  
Review cost estimates  
Review RAC operational estimate  
Adjust or modify as needed the program, design, and funding  
Review outline of the final report
- July Draft of Final Report**  
Review final concept designs  
Review financing plan  
Review draft of final report
- Aug Final Report Development**  
Incorporate public comments from July/early Aug. 'open house' into the Final Report  
Provide Final Report to MacPac for recommendation to City Council  
Prepare for City Council Presentation
- Sept. City Council Presentation of Final Recommendations**  
Present concept designs  
Present cost estimates & operational costs  
Review financing plan  
Overview of next steps (September 2021-November 2022)

## **FINAL REPORT**

In alignment with City of McMinnville's approach to this effort complementing the Phase-1 Report, we will produce a separate Phase-2 Report that documents the process, space program summary and concept designs for the Recreation / Aquatic Center (RAC), Senior Center, and Public Library.

The final report will include a summary of the planning process, project guiding principles, site evaluation criteria, RAC sites considered with site analysis, total project cost estimates for the RAC and Library (including an operational cost projection for the RAC), and concept design narrative and layouts for the three (3) civic facilities. 3D massing with exterior character renderings for the RAC and Library projects will



be supplemented with representative images of the exterior and interior character. Deliverables include three (3) hard copies of the final report with an electronic version.

**FEE**

The total maximum fee for this effort is \$96,900 plus reimbursables at \$1,000 for a maximum total of \$97,900. This proposal is inclusive of prior scope of work completed during December through the project completion in August 2021. We propose an hourly-not-to exceed fee for the activities outlined above. Opsis sub-consultants listed below will invoice directly to Opsis.

**Contract Prime**

Recreation/Operations Planning      Ballard\*King      \$10,000

**Architectural Services**

Architectural Planning/Design      Opsis Architecture      \$69,300

**Opsis Sub-Consultants**

Landscape Design      Lango Hansen      \$5,500

Library Planner      Johnston Architects      \$3,300

Cost Estimating      ACC Cost Estimating      \$8,800

**Total (hourly not-to-exceed)      \$96,900**

**PROJECT SCHEDULE**

We anticipate this scope of work will be initiated in December 2020 and completed by October 2021.

**REIMBURSABLES**

Reimbursable expenses include expenses incurred by B\*K, Opsis and Consultants directly related to the project such as transportation, printing, deliveries, and other similar project-related costs. A 10% mark-up is applied to reimbursable expenses for processing.

Project Reimbursable Allowance:      **\$1,000**

**INVOICING**

Invoices will be rendered once a month based on the expended hours and reimbursable expenses incurred. Payments are due and payable upon presentation.



## STAFF REPORT

**DATE:** April 13, 2021  
**TO:** Jeff Towery, City Manager  
**FROM:** Josh Adelman, Project Manager  
**SUBJECT:** NE High School Sanitary Sewer Rehabilitation Contract Award

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### **Report in Brief:**

This action is the consideration of a resolution to award a public improvement contract in the amount of \$2,674,254.00 to Emery & Sons Construction Group, LLC for the construction of the NE High School Sanitary Sewer Rehabilitation project, Project 2019-7.

### **Background:**

In a continuing effort to minimize infiltration and inflow (I&I) into the City's sanitary sewer conveyance system, this project will rehabilitate approximately 15,000 feet of sanitary sewer mainlines and 2,400 feet of service laterals using pipe bursting, pipe lining, and dig and replace techniques.

The project also includes pavement overlay and curb ramp upgrades on NE 17<sup>th</sup> Street, between NE Hembree Street and NE McDonald Lane. This overlay work will be completed following the sewer rehabilitation on 17<sup>th</sup> Street, and represents the last of the street repair and resurfacing projects identified in the voter approved 2014 transportation bond measure,

The project vicinity map (attachment 2) reflects the work areas covered by the contract.

### **Discussion:**

On Thursday, March 25, 2021, five bids were received, opened, and publicly read for the construction of the NE High School Sanitary Sewer Rehabilitation project. The bid results are as follows:

- |   |                |
|---|----------------|
| • Emery and Sons Construction Group LLC | \$2,674,254.00 |
| • Landis & Landis Construction          | \$2,746,838.50 |
| • Canby Excavating                      | \$2,903,839.00 |
| • The Saunders Company                  | \$3,448,888.00 |
| • James W. Fowler Co.                   | \$3,875,000.00 |

The construction estimate for this work was \$3,163,474.77

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

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

Four of the five bids were complete and met the City's requirements. A detailed breakdown of the received bids is on file in the Engineering Department.

The bid from Emery and Sons Construction Group LLC, in the amount of \$2,674,254.00, was deemed to be the lowest responsible and responsive bid.

The project work is expected to start in late April 2021 and be completed by April 30, 2022.

**Attachments:**

1. Resolution No. 2021-21
2. Project Vicinity Map
3. Project Bid Tabs
4. Public Improvement Contract

**Fiscal Impact:**

Project funding is included in the adopted FY21 and proposed FY22 Wastewater Capital Fund (77) budget for the sanitary sewer work, and the adopted FY21 and proposed FY22 Transportation Fund (45) budget for the street resurfacing work.

**Recommendation:**

Staff recommends that the City Council adopt the attached resolution awarding the public improvement contract for the construction of the NE High School Sanitary Sewer Rehabilitation project, Project 2019-7, in the amount of \$2,674,254.00, to Emery and Sons Construction Group LLC.

**RESOLUTION NO. 2021 - 21**

A Resolution Awarding the Contract for the NE High School Sanitary Sewer Rehabilitation Project, Project 2019-7, to Emery and Sons Construction Group, LLC.

**RECITALS:**

In a continuing effort to minimize infiltration and inflow (I&I) into the City’s sanitary sewer conveyance system, this project will rehabilitate approximately 15,000 feet of sanitary sewer mainlines and 2,400 feet of service laterals. The project also includes the pavement overlay of NE 17<sup>th</sup> Street, between NE Hembree Street and NE McDonald Lane.

At 2:00pm on March 25, 2021, five bids for the NE High School Sanitary Sewer Rehabilitation project, Project 2019-7, were publicly opened and read aloud. The bid from Emery and Sons, in the amount of \$2,674,254.00, met all of the bid requirements and should be considered the lowest responsible and responsive bid.

Project funding is included in the adopted FY21 and proposed FY22 Wastewater Capital Fund (77) budgets for the sanitary sewer work, and the adopted FY21 and proposed FY22 Transportation Fund (45) budgets for the street resurfacing work.

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

1. That entry into a public improvement contract with Emery & Sons Construction Group LLC, in the amount of \$2,674,254.00, with a substantial completion date of April 30, 2022 for the NE High School Sanitary Sewer Rehabilitation project, Project 2019-7, is hereby approved.
2. That the City Manager is hereby authorized and directed to execute the public improvement contract.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 13<sup>th</sup> day of April 2021 by the following votes:

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

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

Approved this 13<sup>th</sup> day of April 2021.

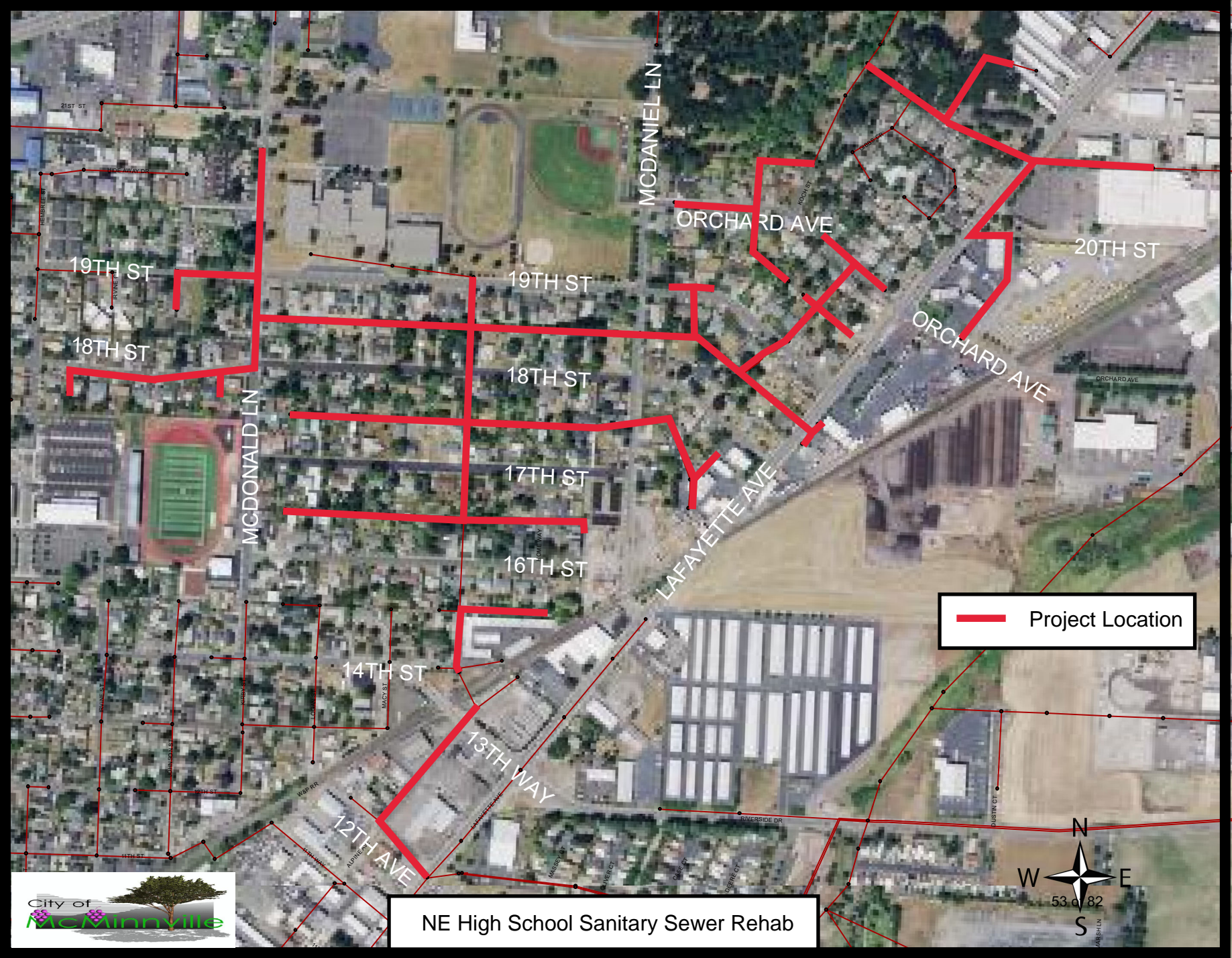
\_\_\_\_\_  
MAYOR


Approved as to form:

Attest:

\_\_\_\_\_  
City Attorney  
Resolution No. 2021-21  
Effective Date: April 13, 2021  
Page 1 of 1

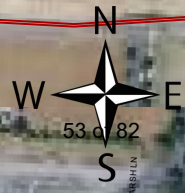
\_\_\_\_\_  
City Recorder



 Project Location



# NE High School Sanitary Sewer Rehab



21ST ST  
19TH ST  
18TH ST  
17TH ST  
16TH ST  
14TH ST  
13TH WAY  
12TH AVE  
MCDONALD LN  
ORCHARD AVE  
LAFAYETTE AVE  
20TH ST

**NE High School Sanitary Sewer Rehabilitation Project Project No. 2019-7**

BID TAB					Engineers Estimate		Emery & Sons		Landis & Landis		Canby Excavating		The Saunders Company		James W. Fowler		
ITEM NO.	ODOT/APWA SPEC.	SECTION	ITEM	UNIT	QTY	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE	UNIT COST	TOTAL PRICE
<b>SCHEDULE A - SANITARY SEWER IMPROVEMENTS</b>																	
<b>TEMPORARY FEATURES AND APPURTENANCES</b>																	
1	00210		Mobilization	LS	1	\$272,500.00	\$272,500.00	\$259,000.00	\$259,000.00	\$335,000.00	\$335,000.00	\$280,000.00	\$280,000.00	\$546,571.00	\$546,571.00	\$370,000.00	\$370,000.00
2	00225		Temporary Work Zone Traffic Control, Complete	LS	1	\$55,000.00	\$55,000.00	\$30,000.00	\$30,000.00	\$25,000.00	\$25,000.00	\$79,300.00	\$79,300.00	\$13,000.00	\$13,000.00	\$101,261.00	\$101,261.00
3	00280		Erosion Control	LS	1	\$27,500.00	\$27,500.00	\$8,000.00	\$8,000.00	\$15,000.00	\$15,000.00	\$22,000.00	\$22,000.00	\$3,500.00	\$3,500.00	\$20,000.00	\$20,000.00
4	00290		Pollution Control Plan	LS	1	\$1,520.00	\$1,520.00	\$1,850.00	\$1,850.00	\$2,000.00	\$2,000.00	\$1,000.00	\$1,000.00	\$500.00	\$500.00	\$2,000.00	\$2,000.00
<b>ROADWORK</b>																	
5	00310		Removal of Manholes	EA	35	\$1,700.00	\$59,500.00	\$1.00	\$35.00	\$550.00	\$19,250.00	\$700.00	\$24,500.00	\$3,300.00	\$115,500.00	\$700.00	\$24,500.00
<b>DRAINAGE AND SEWERS</b>																	
6	00405		Trench Foundation (if needed)	CY	50	\$72.00	\$3,600.00	\$70.00	\$3,500.00	\$40.00	\$2,000.00	\$50.00	\$2,500.00	\$50.00	\$2,500.00	\$70.00	\$3,500.00
7	00411		Pipe Bursting, 6 Inch	LF	42	\$80.00	\$3,360.00	\$83.00	\$3,486.00	\$77.00	\$3,234.00	\$300.00	\$12,600.00	\$80.00	\$3,360.00	\$375.00	\$15,750.00
8	00411		Pipe Bursting, 6 Inch to 8 Inch Upsize	LF	1142	\$85.00	\$97,070.00	\$84.00	\$97,088.00	\$88.00	\$101,264.00	\$52.00	\$59,384.00	\$85.00	\$97,070.00	\$175.00	\$199,850.00
9	00411		Pipe Bursting, 8 Inch	LF	2102	\$80.00	\$168,160.00	\$84.00	\$176,568.00	\$85.00	\$178,820.00	\$65.00	\$136,575.00	\$82.00	\$172,824.00	\$105.00	\$220,770.00
10	00411		Pipe Bursting, 10 Inch	LF	932	\$100.00	\$93,200.00	\$72.00	\$67,104.00	\$85.00	\$79,220.00	\$52.00	\$48,464.00	\$85.00	\$79,220.00	\$100.00	\$93,200.00
11	00411		Pipe Bursting, 12 Inch	LF	223	\$130.00	\$28,990.00	\$94.00	\$20,962.00	\$160.00	\$35,680.00	\$100.00	\$22,300.00	\$160.00	\$35,680.00	\$160.00	\$35,680.00
12	00411		Service Line Reconnections (HDPE)	EA	136	\$1800.00	\$244,800.00	\$2900.00	\$394,400.00	\$3400.00	\$462,400.00	\$1900.00	\$258,400.00	\$1350.00	\$183,600.00	\$3600.00	\$489,600.00
13	00412		CIPP Liner, 8 Inch	LF	3015	\$70.00	\$211,050.00	\$47.00	\$141,705.00	\$41.00	\$123,615.00	\$64.00	\$192,960.00	\$40.00	\$120,600.00	\$42.00	\$126,630.00
14	00412		CIPP Liner, 18 Inch	LF	860	\$159.40	\$137,084.00	\$58.00	\$49,880.00	\$51.00	\$43,860.00	\$115.00	\$98,900.00	\$50.00	\$43,000.00	\$55.00	\$47,300.00
15	00412		Service Line Reconnections (CIPP)	EA	44	\$2500.00	\$110,000.00	\$3000.00	\$132,000.00	\$2300.00	\$101,200.00	\$1900.00	\$83,600.00	\$1350.00	\$59,400.00	\$350.00	\$15,400.00
16	00412		Internal Service Lateral Reinstatement (if needed)	EA	5	\$450.00	\$2,250.00	\$530.00	\$2,650.00	\$600.00	\$3,000.00	\$400.00	\$2,000.00	\$500.00	\$2,500.00	\$550.00	\$2,750.00
17	00415		Post Construction Mainline Video Inspection	LF	15,034	\$2.50	\$37,585.00	\$1.00	\$15,034.00	\$2.75	\$41,343.50	\$3.50	\$52,619.00	\$3.00	\$45,102.00	\$3.50	\$52,619.00
18	00415		Post Construction Service Line Video Inspection, Push Camera	EA	221	\$250.00	\$55,250.00	\$80.00	\$17,680.00	\$50.00	\$11,050.00	\$115.00	\$25,415.00	\$75.00	\$16,575.00	\$200.00	\$44,200.00
19	00445		4 Inch Sanitary Sewer Pipe, Class A Backfill	LF	1144	\$70.00	\$80,080.00	\$42.00	\$48,048.00	\$15.00	\$17,160.00	\$72.00	\$82,368.00	\$160.00	\$183,040.00	\$110.00	\$125,840.00
20	00445		4 Inch Sanitary Sewer Pipe, Class B Backfill	LF	1,300	\$100.00	\$130,000.00	\$56.00	\$72,800.00	\$15.00	\$19,500.00	\$72.00	\$93,600.00	\$175.00	\$227,500.00	\$130.00	\$169,000.00
21	00445		6 Inch Sanitary Sewer Pipe, Class A Backfill	LF	54	\$86.50	\$4,671.00	\$50.00	\$2,700.00	\$120.00	\$6,480.00	\$72.00	\$3,888.00	\$165.00	\$8,910.00	\$120.00	\$6,480.00
22	00445		6 Inch Sanitary Sewer Pipe, Class B Backfill	LF	263	\$120.00	\$31,560.00	\$108.00	\$28,404.00	\$120.00	\$31,960.00	\$72.00	\$18,936.00	\$180.00	\$47,340.00	\$130.00	\$34,190.00
23	00445		8 Inch Sanitary Sewer Pipe, Class A Backfill	EA	1	\$130.00	\$130.00	\$85.00	\$85.00	\$105.00	\$105.00	\$116.66	\$116.66	\$85.00	\$85.00	\$300.00	\$300.00
24	00445		8 Inch Sanitary Sewer Pipe, Class B Backfill	LF	398	\$110.00	\$43,780.00	\$88.00	\$35,024.00	\$105.00	\$41,790.00	\$62.00	\$24,676.00	\$215.00	\$85,570.00	\$130.00	\$51,740.00
25	00445		12 Inch Sanitary Sewer Pipe, Class B Backfill	LF	27	\$160.00	\$4,320.00	\$175.00	\$4,725.00	\$155.00	\$4,185.00	\$100.00	\$2,700.00	\$230.00	\$6,210.00	\$150.00	\$4,050.00
26	00445		Service Line Reconnections (PVC)	EA	8	\$1200.00	\$9,600.00	\$450.00	\$3,600.00	\$3700.00	\$29,600.00	\$400.00	\$3,200.00	\$1350.00	\$10,800.00	\$400.00	\$3,200.00
27	00445		4 Inch Sanitary Sewer Cleanout with Frame - In Lin	EA	33	\$430.00	\$14,190.00	\$400.00	\$13,200.00	\$550.00	\$18,150.00	\$300.00	\$9,900.00	\$350.00	\$11,550.00	\$600.00	\$16,500.00
28	00445		6 Inch Sanitary Sewer Cleanout with Frame - In Lin	EA	6	\$665.00	\$3,990.00	\$650.00	\$3,900.00	\$700.00	\$4,200.00	\$700.00	\$4,900.00	\$650.00	\$3,900.00	\$800.00	\$4,800.00
29	00445		6 Inch Terminal Cleanout - CO J4-B-63EL (C314)	EA	1	\$860.00	\$860.00	\$580.00	\$580.00	\$3100.00	\$3,100.00	\$800.00	\$800.00	\$700.00	\$700.00	\$600.00	\$600.00
30	00445		8 Inch Terminal Cleanout - CO J4-B-65EL (C305)	EA	1	\$1300.00	\$1,300.00	\$860.00	\$860.00	\$3100.00	\$3,100.00	\$1100.00	\$1,100.00	\$850.00	\$850.00	\$300.00	\$300.00
31	00470		48 Inch Standard Sanitary Sewer Manhole	EA	34	\$5500.00	\$187,000.00	\$5400.00	\$183,600.00	\$3500.00	\$119,000.00	\$5500.00	\$187,000.00	\$5500.00	\$187,000.00	\$5000.00	\$170,000.00
32	00470		48 Inch Flat Top and/or Short Cone Sanitary Sewer M	EA	19	\$4,500.00	\$85,500.00	\$5,100.00	\$96,900.00	\$3,400.00	\$64,600.00	\$4,300.00	\$81,700.00	\$4,500.00	\$85,500.00	\$4,400.00	\$83,600.00
33	00470		Inside Drop Assembly	EA	6	\$126.00	\$756.00	\$110.00	\$660.00	\$2,200.00	\$13,200.00	\$210.00	\$1,260.00	\$900.00	\$5,400.00	\$2,000.00	\$12,000.00
34	00470		Spare 1-ft Manhole Barrel Sections for Field Fittinc	EA	5	\$400.00	\$2,000.00	\$550.00	\$2,750.00	\$1200.00	\$6,000.00	\$150.00	\$750.00	\$150.00	\$750.00	\$130.00	\$650.00
35	00470		Field Fit Manhole Core (if needed)	EA	5	\$600.00	\$3,000.00	\$800.00	\$4,000.00	\$500.00	\$2,500.00	\$500.00	\$2,500.00	\$1,150.00	\$5,750.00	\$1,200.00	\$6,000.00
36	00490		Extra for Manholes over Existing Sewer	EA	1	\$750.00	\$750.00	\$2,000.00	\$2,000.00	\$2,500.00	\$2,500.00	\$3,000.00	\$3,000.00	\$2,085.00	\$2,085.00	\$2,000.00	\$2,000.00
37	00490		Connection to Existing Structures	EA	49	\$1,854.00	\$90,846.00	\$550.00	\$26,950.00	\$1,800.00	\$88,200.00	\$2,300.00	\$112,700.00	\$450.00	\$22,050.00	\$1,100.00	\$53,900.00
38	00490		Filling Abandoned Structures	EA	33	\$1,400.00	\$46,200.00	\$1,100.00	\$36,300.00	\$950.00	\$31,350.00	\$750.00	\$24,750.00	\$1,750.00	\$57,750.00	\$1,000.00	\$33,000.00
39	00495		Trench Resurfacing	SY	733	\$85.00	\$62,305.00	\$82.00	\$60,106.00	\$70.00	\$51,310.00	\$128.00	\$93,824.00	\$140.00	\$102,820.00	\$75.00	\$54,975.00
<b>WEARING SURFACES</b>																	
40	00759		Concrete Curbs, Curb and Gutter, All Types	LF	150	\$60.00	\$9,000.00	\$83.00	\$12,450.00	\$55.00	\$8,250.00	\$65.00	\$9,750.00	\$75.00	\$11,250.00	\$44.00	\$6,600.00
41	00759		Concrete Driveways	SF	2420	\$22.00	\$53,240.00	\$17.00	\$41,140.00	\$19.00	\$45,980.00	\$18.00	\$43,560.00	\$20.00	\$48,400.00	\$22.00	\$53,240.00
42	00759		Concrete Walks	SF	280	\$15.50	\$4,340.00	\$13.00	\$3,640.00	\$18.00	\$5,040.00	\$18.00	\$5,040.00	\$15.00	\$4,200.00	\$19.00	\$5,320.00
<b>RIGHT-OF-WAY DEVELOPMENT</b>																	
43	01020		Landscape Restoration, Complete	LS	1	\$85,000.00	\$85,000.00	\$139,850.00	\$139,850.00	\$100,000.00	\$100,000.00	\$250,000.00	\$250,000.00	\$50,000.00	\$50,000.00	\$105,000.00	\$105,000.00
<b>SCHEDULE A TOTAL</b>						\$3,079,187.00		\$2,593,934.00		\$2,654,658.50		\$2,786,204.00		\$3,383,903.00		\$3,772,360.00	
<b>SCHEDULE B - GRIND AND OVERLAY PAVING</b>																	
<b>SPECIAL PROVISIONS</b>																	
44	SP B10		AC Grinding and Remova	SY	2795	\$3.73	\$10,425.35	\$4.00	\$11,180.00	\$4.00	\$11,180.00	\$5.00	\$13,975.00	\$3.00	\$8,385.00	\$3.00	\$8,385.00
<b>GENERAL CONDITIONS</b>																	
45	00140		Final Trimming and Cleanup	LS	1	\$780.00	\$780.00	\$2000.00	\$2,000.00	\$5500.00	\$5,500.00	\$7000.00	\$7,000.00	\$20000.00	\$20,000.00	\$10000.00	\$10,000.00
<b>TEMPORARY FEATURES AND APPURTENANCES</b>																	
46	00210		Mobilization/Bonds/Insurance	LS	1	\$3900.00	\$3,900.00	\$2000.00	\$2,000.00	\$2000.00	\$2,000.00	\$10000.00	\$10,000.00	\$17500.00	\$17,500.00	\$10000.00	\$10,000.00
47	00225		Temporary Protection and Direction of Traffic	LS	1	\$1560.00	\$1,560.00	\$500.00	\$500.00	\$7500.00	\$7,500.00	\$6000.00	\$6,000.00	\$5000.00	\$5,000.00	\$15000.00	\$15,000.00
<b>BASES</b>																	
48	00610		Fine Grading of Existing Base Rock (if needed)	SY	230	\$5.15	\$1,184.50	\$25.00	\$5,750.00	\$5.00	\$1,150.00	\$32.00	\$7,360.00	\$10.00	\$2,300.00	\$2.00	\$460.00
49	00610		Over-excavation (if needed)	CY	20	\$51.80	\$1,036.00	\$62.00	\$1,240.00	\$15.00	\$300.00	\$55.00	\$1,100.00	\$100.00	\$2,000.00	\$45.00	\$900.00
50	00610		Street Reconstruction (6" Level II WMAC, two 3" lifts)(if needed)	SY	250	\$56.65	\$14,162.50	\$41.00	\$10,250.00	\$40.00	\$10,000.00	\$77.00	\$19,250.00	\$50.00	\$12,500.00	\$44.00	\$11,000.00
51	00610		AC Plug as Required for Ramp Install (4" Thick Under Pavement Overlay)(if needed)	TN	3	\$113.30	\$339.90	\$350.00	\$1,050.00	\$400.00	\$1,200.00	\$300.00	\$900.00	\$200.00	\$600.00	\$110.00	\$330.00
<b>WEARING SURFACES</b>																	
52	00745		AC Paving 2" Lift - Level II WMAC	TN	305	\$82.40	\$25,132.00	\$91.00	\$27,755.00	\$90.00	\$27,450.00	\$90.00	\$27,450.00				

CITY OF McMinnville, OR

**NE HIGH SCHOOL SANITARY SEWER REHABILITATION**  
Project No. 2019-7

**PUBLIC IMPROVEMENT CONTRACT**

This Contract is between the CITY OF McMinnville, a municipal corporation of the State of Oregon (City) and Emery & Sons Construction Group, LLC (Contractor). The City's Project Manager for this Contract is Josh Adelman, Project Manager.

The parties mutually covenant and agree as follows:

**1. Effective Date and Duration.**

This Contract is effective on the date that it is fully executed. The Contract will expire, unless otherwise terminated or extended, on April 30, 2022.

**2. Statement of Work.**

The work required under this Contract is contained in Contract Documents entitled: NE HIGH SCHOOL SANITARY SEWER REHABILITATION; PROJECT NO. 2019-7. The Contractor shall comply in every way with the requirements of the Contract Documents that are made a part of this Contract by attachment and by this reference.

**3. Consideration.**

a. The City agrees to pay the Contractor, at the times and in the manner provided in the Contract Documents, the total sum of \$ 2,674,254.00. The total sum, however, is subject to increase or decrease in such proportion as the quantities named in the Bid are changed in conformance with the Contract Documents.

b. The City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Contract.

**CONTRACTOR DATA, CERTIFICATION, AND  
SIGNATURE**

Name (please print): \_\_\_\_\_  
Address: \_\_\_\_\_

Social Security #: \_\_\_\_\_ Business License # \_\_\_\_\_  
Federal Tax ID #: \_\_\_\_\_ State Tax ID #: \_\_\_\_\_  
Construction Contractors Board #: \_\_\_\_\_  
Citizenship: Nonresident alien \_\_\_\_\_ Yes \_\_\_\_\_ No  
Business Designation (check one): \_\_\_\_\_ Individual \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_ Partnership  
\_\_\_\_\_ Corporation \_\_\_\_\_ Government/Nonprofit

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions For Public Improvement Contracts and Exhibits A, B, C, and D are an integral part of this contract and agree to perform the work described in the Contract Documents in accordance with the terms and conditions of this contract; certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and certify I am an independent contractor as defined in ORS 670.600.

Signed by Contractor:

\_\_\_\_\_  
Signature/Title Date

*NOTICE TO CONTRACTOR: This contract does not bind the City of McMinnville unless and until it has been executed by the appropriate parties.*

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**CITY OF McMINNVILLE SIGNATURE**

By:

\_\_\_\_\_  
City Manager or Designee Date

Approved as to form:

\_\_\_\_\_  
City Attorney or Designee Date

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**CITY OF McMinnville**  
**STANDARD TERMS AND CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS**

**1. Contractor is Independent Contractor**

a. Contractor will perform the work required by this contract as an independent contractor. Although the City reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit C.

c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.

d. If Contractor is a contributing member of the Public Employees' Retirement System, City will withhold Contractor's contribution to the retirement system from Contractor's compensation or payments under this contract and make a corresponding City contribution. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments to Contractor under this contract, except as a self-employed individual.

**2. Subcontracts and Assignment**

Contractor will not subcontract any of the work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of the City. Contractor agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.

**3. No Third Party Beneficiaries**

City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

#### **4. Successors in Interest**

The provisions of this contract will be binding upon and will inure to the benefit of the parties, and their respective successors and approved assigns, if any.

#### **5. Contract Documents**

The Contract Documents, which comprise the entire Contract between the City and Contractor, consist of the Invitation to Bid, Bidders Checklist, Bid, First-Tier Subcontractor Disclosure Form, Public Improvement Contract, Payment Bond, Performance Bond, City of McMinnville General Conditions, Special Provisions, all attached hereto, together with the Oregon Standard Specifications for Construction (2015 edition), published by the Oregon Department of Transportation, incorporated by this reference.

All exhibits, schedules, and lists attached to the Contract Documents, or delivered pursuant to the Contract Documents, will be deemed a part of the Contract Documents and will be incorporated herein, where applicable, as if fully set forth herein.

#### **6. Contractor's Representations**

By executing this contract, the Contractor represents that:

- a. The Contractor has familiarized itself with the nature and extent of the Contract Documents, project work, site, locality, general nature of work to be performed by the City or others at the site that relates to the project work required by the Contract Documents, local conditions, and federal, state, and local laws and regulations that in any manner may affect cost, progress, performance, or furnishing of the project work.
- b. The Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) examinations, investigations, explorations, tests, and studies which pertain to the conditions (subsurface or physical) at or contiguous to the site or otherwise and which may affect the cost, progress, performance, or furnishing of the project work as the Contractor deems necessary for the performance and furnishing of the project work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents; and no additional or supplementary examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by Contractor for those purposes.
- c. The Contractor has given the City written notice of conflicts, errors, ambiguities, or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by the City is acceptable to the Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performing and furnishing the project work.

## **7. Drug Testing Policy**

The Contractor's signature on the Public Improvement Contract will certify that the Contractor has an employee drug testing program in place. Pursuant to ORS 279C.505, the City's performance under this Contract is conditioned upon this certification.

## **8. Notice to Proceed**

Written Notice to Proceed will be given by the City after the Contract has been executed and the performance bond and all required insurance documents have been approved. The Contractor will commence the project work within five (5) days of the date of the written Notice to Proceed.

## **9. Suspension of the Work**

The City, and its authorized representatives, may suspend portions or all of the project work due to causes including, but not limited to:

- a. Failure of the Contractor to correct unsafe conditions;
- b. Failure of the Contractor to carry out any provision of the Contract;
- c. Failure of the Contractor to carry out orders;
- d. Conditions, in the opinion of the City, which are unsuitable for performing the project work;
- e. Allowance of time required to investigate differing site conditions;
- f. Any reason considered to be in the public interest.

The Contract Time will not be extended, nor will the Contractor be entitled to any additional compensation, if the work is suspended pursuant to subsections (a), (b) or (c). If the project work is suspended pursuant to subsection (f), the Contractor is entitled to a reasonable extension of the Contract Time and reasonable compensation for all costs resulting from the suspension plus a reasonable allowance for overhead with respect to those costs. If the project work is suspended pursuant to subsections (d) or (e), the City may grant, at its sole discretion, a reasonable extension of the Contract Time and reasonable compensation for all costs resulting from the suspension plus a reasonable allowance for overhead with respect to those costs.

## **10. Early Termination**

- a. The City and the Contractor, by mutual written agreement, may terminate this Contract at any time.

b. The City may terminate the Contract in whole or in part whenever the City determines that termination of the Contract is in the best interest of the public. The City will provide the Contractor, and the Contractor's surety, seven (7) days prior written notice of a termination for public convenience. After this notice, the Contractor and the Contractor's surety will provide the City with immediate and peaceful possession of the Project site and premises, and materials located on and off the Project site and premises for which the Contractor received progress payment. In no circumstances will the Contractor be entitled to lost profits due to termination.

c. Either the City or the Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to termination, however, the party seeking the termination will give to the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

## **11. Payment on Early Termination**

a. If this Contract is terminated under 10(a) or 10(b), the City will pay the Contractor for work performed in accordance with the Contract prior to the termination date.

b. If this Contract is terminated under 10(c), by the Contractor due to a breach by the City, then the City will pay the Contractor as provided in subsection (a) of this section.

c. If this Contract is terminated under 10(c), by the City due to a breach by the Contractor, then the City will pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 12, Remedies.

## **12. Remedies**

a. In the event of termination under 10(c), by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, the Contractor will pay to the City the amount of the reasonable excess.

b. The remedies provided to the City under section 10 and section 12 for a breach by the Contractor are not exclusive. The City will also be entitled to any other equitable and legal remedies that are available.

c. In the event of breach of this Contract by the City, the Contractor's remedy will be limited to termination of the Contract and receipt of payment as provided in sections 10(c) and 11(b), respectively.

### **13. Access to Records**

The Contractor will maintain and the City, and its authorized representatives, will have access to all books, documents, papers and records of the Contractor which relate to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records will be made available upon request. Payment for cost of copies is reimbursable by the City.

### **14. Ownership of Work**

All work products of the Contractor, including background data, documentation, and staff work that is preliminary to final reports, and which result from this Contract, are the property of the City. Contractor will retain no ownership interests or rights in the work product. Use of any work product of the Contractor for any purpose other than the use intended by this Contract is at the risk of the City.

### **15. Compliance with Applicable Law**

Contractor will comply with all federal, state, and local laws and ordinances applicable to the work under this contract, including, without limitation, ORS chapter 279C, and specifically the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530, 279C.580, and 279C.830 as set forth on Exhibit A. In addition, the provisions of ORS 279C.570 and ORS 279C.600 – 279C.625 are incorporated by this reference as though fully set forth. Without limiting the foregoing, the Contractor expressly agrees to comply with: (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 (Pub L No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

### **16. Construction Contractor's Board License and Endorsement**

The Contractor certifies that the Contractor, and all subcontractors performing construction work under this Contract, hold a current license issued by the Oregon Construction Contractors Board and possess an endorsement as provided for in ORS 701.021, which is appropriate for the work to be performed in accordance with this Contract.

### **17. Progress Payments and Interest**

a. Each month, the Contractor will submit to the City a written request for a progress payment based upon the actual quantities of work completed to date, or in the case of lump sum items, an estimated percentage of the total work completed to date. The Contractor may also provide to the City an estimate of the amount and value of acceptable material, to be incorporated in the completed work, which has been delivered to the premises and acceptably stored.

The sum of these estimates is referred to as the “value of completed work.” With these estimates as a base, the City will make a progress payment to the Contractor, which will be equal to the value of the completed work, less those amounts that have been previously paid, less other amounts that may be deductible or owing and due to the City for any cause, and less the appropriate amount of retainage.

b. Progress payments will not be construed as an acceptance or approval of any part of the work, and will not relieve the Contractor of responsibility for defective workmanship or material.

c. The City will promptly make all payments due and owing to the Contractor.

d. Late payment interest will begin to accrue on payments due and owing on the earlier of 30 days after receipt of a progress payment request per section 17.a. above, or 15 days after City approval of the payment (the “Progress Payment Due Date”). The interest rate will equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

e. In instances when a progress payment request is filled out incorrectly, or when there is any defect or impropriety in the submitted progress payment, or when there is a good faith dispute, the City will notify the Contractor within 15 days, stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper progress payment request, if corrected by the Contractor within seven days of notification by the City, will not cause a payment to be made later than specified in this section unless interest is paid.

f. Final payment on the Contract, including retainage, will be due and owing no later than 30 days after the Contract completion and acceptance of the work. Late payment interest on the final payment will thereafter accrue at the rate of one and one-half percent per month until paid.

g. In the event of a dispute as to compensation due the Contractor for work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment will be added to, and not made part of, the settlement or judgment. The interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, will accrue from the later of the Progress Payment Due Date or thirty days after the Contractor submitted a claim for payment to the City in writing.

h. If requested in writing by a first-tier subcontractor, the Contractor, within 10 calendar days after receiving the request, will send to the first-tier subcontractor a copy of that portion of any progress payment request, or any pay document provided by the City to the Contractor, specifically related to any labor or materials supplied by the first-tier subcontractor.

## **18. Retainage**

The provisions of ORS 279C.570 relating to retainage are incorporated by this reference as though fully set forth.

## **19. Change Orders**

The Contractor agrees to complete this Contract in accordance with the attached specifications and requirements, including any change orders. A change order submitted by the City must be agreed upon by the Contractor and the City, and in the event the parties fail to agree, the City may proceed with any additional work in any manner the City may choose. A decision by the City to proceed to have work done by another party will in no way relieve either the Contractor or City of this Contract and neither will it be cause for collection of damages by either party from the other party.

## **20. Contractor/Subcontractor Payment Obligations**

Subject to the provisions of ORS 279C.580, the Contractor shall:

- a. Include in each subcontract for property or services the contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:
  1. A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the contracting agency pays to the contractor under the public improvement contract.
  2. A clause that requires the contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor.
  3. A clause that requires the contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor:
    - (A) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and
    - (B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
  4. An interest penalty clause that obligates the contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the contracting agency, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was

due is that the contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty:

(A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and

(B) Is computed at the rate specified in ORS 279C.515 (2).

b. Require in each subcontract that the first-tier subcontractors shall include a payment clause and an interest penalty clause that conforms to the standards of subsection (a) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

## **21. Inspection and Acceptance**

Inspection and acceptance of all work required under this Contract will be performed by the City. The Contractor will be advised of the acceptance or of any deficiencies in the deliverable items.

## **22. Liquidated Damages**

The City and the Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the project work is not completed within the times specified in Section 1 of this Contract, plus any extensions allowed in accordance with the Contract Documents. They also recognize the delays, expense, and difficulties involved in proving in a legal or other dispute resolution preceding the actual loss suffered by City if the project work is not completed on time. Accordingly, instead of requiring proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor will pay the City five-hundred dollars (\$500.00) for each and every day that elapses in excess of the Contract Time or the final adjusted Contract Time.

Any sums due as liquidated damages will be taken out of any money due or which may become due to the Contractor under this Contract. Payment of liquidated damages will not release the Contractor from obligations in respect to the fulfillment of the entire Contract, nor will the payment of liquidated damages constitute a waiver of the City's right to collect any additional damages which may be sustained by failure of the Contractor to complete the work on time.

Permitting the Contractor to continue and finish the project work, or any part thereof, after the Contract Time or adjusted Contract Time has expired will in no way operate as a waiver on the part of the City of any of its rights under this Contract.

The City may in its discretion grant the Contractor an extension of time upon a showing by the Contractor that the work has been unavoidably delayed by conditions beyond the Contractor's control.



### **23. Indemnity and Hold Harmless**

- a. Except for the professional negligent acts covered by paragraph 23.b., the Contractor will defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract.
- b. The Contractor will defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions arising out of the professional negligent acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents under this contract.

### **24. Insurance**

Contractor will provide insurance in accordance with Exhibit B. It is specifically understood that the City will be named as an additional insured under Contractor's policy and that Contractor's insurance shall be primary and non-contributory.

### **25. Bonds**

Contractor will provide bonds in accordance with Exhibit D.

### **26. One Year Maintenance and Warranty**

- a. In addition to and not in lieu of any other warranties required under the Contract, Contractor will make all necessary repairs and replacements to remedy, in a manner satisfactory to the City and at no cost to the City, any and all defects, breaks, or failures of the work occurring within one year following the date of substantial completion when those defects, breaks, or failures are due to faulty or inadequate materials or workmanship. The one-year maintenance period required will, with relation to the required repair, be extended one year from the date of completion of the repair.
- b. If the Contractor, after written notice, fails within ten days to proceed to comply with the terms of this section, the City may have the defects corrected, and the Contractor and Contractor's surety will be liable for all expense incurred. In case of an emergency where, in the opinion of the City, delay would cause serious loss or damage, repairs may be made without notice being given to the Contractor and the Contractor or the Contractor's Surety will pay the cost of repairs. Failure of the City to act in case of an emergency will not relieve the Contractor or the Contractor's Surety from liability and payment of all costs.

### **27. Waiver**

The failure of the City to enforce any provision of this Contract will not constitute a waiver by the City of that or any other provision.

## **28. Errors**

The failure of the City to enforce any provision of this Contract will not constitute a waiver by the City of that or any other provision.

## **29. Governing Law**

The provisions of this Contract will be construed in accordance with the laws of the State of Oregon and ordinances of the City of McMinnville, Oregon. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Yamhill County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it will be brought and conducted in the United States District Court for the District of Oregon.

## **30. Severability**

If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held invalid.

## **31. Attorney's Fees**

If a suit or action is filed to enforce any of the terms of this Contract, the prevailing party will be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees.

## **32. Merger Clause**

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING, SIGNED BY BOTH PARTIES. ANY WAIVER, CONSENT, MODIFICATION, OR CHANGE, IF MADE, WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**EXHIBIT A**  
**COMPLIANCE WITH APPLICABLE LAW**  
**PUBLIC IMPROVEMENT CONTRACT**

**279C.505 Conditions concerning payment, contributions, liens, withholding, drug testing.** (1) Every public improvement contract shall contain a condition that the contractor shall:

(a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

(2) In addition to the conditions specified in subsection (1) of this section, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place. [2003 c.794 §138; 2005 c.103 §27]

**279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.** (1) Every public improvement contract must contain a clause or condition that, if the contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the proper officer that represents the state or a county, school district, municipality or municipal corporation or a subdivision of the state, county, school district, municipality or municipal corporation may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.

(2) Every public improvement contract must contain a clause or condition that, if the contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

(3) Every public improvement contract and every contract related to the public improvement contract must contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

(4) Paying a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to an unpaid claim. [2003 c.794 §140; 2005 c.103 §28; 2012 c.4 §1]

**279C.520 Condition concerning hours of labor; compliance with pay equity provisions; employee discussions of rate of pay or benefits.** (1) Every public contract subject to this chapter must provide that:

(a) A contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the contractor shall pay the employee at least time and a half pay for:

(A)(i) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(ii) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(B) All work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540.

(b) The contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause.

(c) The contractor may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(2) A contractor shall give notice in writing to employees who work on a public contract, either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(3) A public contract for personal services, as defined in ORS 279C.100, must provide that the contractor shall pay the contractor's employees who work under the public contract at least time and a half for all overtime the employees work in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) A public contract for services at a county fair, or for another event that a county fair board authorizes, must provide that the contractor shall pay employees who work under the public contract at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. A contractor shall notify employees who work under the public contract, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(5)(a) Except as provided in subsection (4) of this section, a public contract for services must provide that the contractor shall pay

employees at least time and a half pay for work the employees perform under the public contract on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) A contractor shall notify in writing employees who work on a public contract for services, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work. [2003 c.794 §141; 2005 c.103 §29; 2015 c.454 §6]

**279C.530 Condition concerning payment for medical care and providing workers' compensation.**

(1) Every public improvement contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract subject to this chapter shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §143; 2005 c.103 §30]

**279C.580 Contractor's relations with subcontractors.**

(1) A contractor may not request payment from the contracting agency of any amount withheld or retained in accordance with subsection (5) of this section until the contractor has determined and certified to the contracting agency that the subcontractor has determined and certified to the contracting agency that the subcontractor is entitled to the payment.

(2) A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract under subsection (3) or (4) of this section does not constitute a dispute to which the contracting agency is a party. The contracting agency may

not be included as a party in any administrative or judicial proceeding involving such a dispute.

(3) Each public improvement contract awarded by a contracting agency must include a clause that requires the contractor to include in each subcontract for property or services the contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the contracting agency pays to the contractor under the public improvement contract.

(b) A clause that requires the contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor.

(c) A clause that requires the contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor:

(A) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and

(B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) An interest penalty clause that obligates the contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the contracting agency, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty:

(A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and

(B) Is computed at the rate specified in ORS 279C.515 (2).

(4) A public improvement contract that the contracting agency awards shall obligate the contractor, in each of the contractor's subcontracts, to require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (3) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

(5)(a) The clauses required by subsections (3) and (4) of this section do not impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

(A) Permit the contractor or a subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions the parties to the subcontract agree upon, giving such recognition as the parties consider appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(B) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract; and

(C) Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

(i) A notice that conforms to the standards of subsection (8) of this section has been previously furnished to the subcontractor; and

(ii) A copy of any notice a contractor issues under sub-paragraph (i) of this subparagraph has been furnished to the contracting agency.

(b) As used in this subsection, "good faith dispute" means a documented dispute concerning:

(A) Unsatisfactory job progress.

(B) Defective work not remedied.

(C) Third-party claims filed or reasonable evidence that claims will be filed.

(D) Failure to make timely payments for labor, equipment and materials.

(E) Damage to the contractor or subcontractor.

(F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(6) If, after applying to a contracting agency for payment under a public improvement contract but before paying a subcontractor for

the subcontractor's performance covered by the application, a contractor discovers that all or a portion of the payment otherwise due the subcontractor is subject to withholding from the subcontractor in accordance with the subcontract, the contractor shall:

(a) Furnish to the subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable after ascertaining the cause for the withholding, but before the due date for payment to the subcontractor;

(b) Furnish to the contracting agency, as soon as practicable, a copy of the notice furnished to the subcontractor under paragraph (a) of this subsection;

(c) Reduce the progress payment to the subcontractor by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (a) of this subsection;

(d) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency;

(e) Make such payment within:

(A) Seven days after correction of the identified subcontract performance deficiency unless the funds for the payment must be recovered from the contracting agency because of a reduction under paragraph (f)(A) of this subsection; or

(B) Seven days after the contractor recovers the funds from the contracting agency;

(f) Notify the contracting agency upon:

(A) Reduction of the amount of any subsequent certified application for payment; or

(B) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:

(i) The amounts of the progress payments withheld under paragraph (a) of this subsection; and

(ii) The dates on which the withholding began and ended; and

(g) Be obligated to pay to the contracting agency an amount equal to interest on the withheld payments computed in the manner provided in ORS 279C.570 from the 11th day after receiving the withheld amounts from the contracting agency until:

(A) The day the identified subcontractor performance deficiency is corrected; or

(B) The date that any subsequent payment is reduced under paragraph (f)(A) of this subsection.

(7)(a) If a contractor, after paying a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor a written notice asserting a deficiency in the first-tier subcontractor's performance under the public improvement contract for which the

contractor may be ultimately liable and the contractor determines that all or a portion of future payments otherwise due the first-tier subcontractor is subject to withholding in accordance with the subcontract, the contractor may, without incurring an obligation to pay a late payment interest penalty under subsection (6)(e) of this section:

(A) Furnish to the first-tier subcontractor a notice that conforms to the standards of subsection (8) of this section as soon as practicable after making the determination; and

(B) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(b) As soon as practicable, but not later than 10 days after receiving satisfactory written notice that the identified subcontract performance deficiency has been corrected, the contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to the first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to the first-tier subcontractor computed at the rate specified in ORS 279C.570.

(8) A written notice of any withholding must be issued to a subcontractor, with a copy to the contracting agency, that specifies:

(a) The amount to be withheld;

(b) The specified causes for the withholding under the terms of the subcontract; and

(c) The remedial actions the subcontractor must take in order to receive payment of the amounts withheld.

(9) Except as provided in subsection (2) of this section, this section does not limit or impair any contractual, administrative or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving a contractor's late payment or nonpayment or a subcontractor's deficient performance or nonperformance.

(10) A contractor's obligation to pay a late payment interest penalty to a subcontractor under the clause included in a subcontract under subsection (3) or (4) of this section is not an obligation of the contracting agency. A contract modification may not be made for the purpose of providing reimbursement of a late payment interest penalty. A cost reimbursement claim may not include any amount for reimbursement of a late payment interest penalty. [2003 c.794 §151; 2005 c.103 §34; 2012 c.4 §2]

**279C.830 Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of**

**prevailing wage; bond.** (1)(a) Except as provided in paragraph (e) of this subsection, the specifications for every contract for public works must contain a provision that states the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation that the contractor or subcontractor or other person who is a party to the contract uses in performing all or part of the contract. If the prevailing rates of wage are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.

(b) If a public agency under paragraph (a) of this subsection must include the state and federal prevailing rates of wage in the specifications, the public agency shall also require the contractor to pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works.

(c) Every contract and subcontract must provide that the workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

(d) If a public works project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, every contract and subcontract must provide that workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage.

(e) A public works project described in ORS 279C.800 (6)(a)(B) or (C) is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for a contract for the public works must include the applicable prevailing rate of wage.

(2) The specifications for a contract for public works must provide that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). Every contract that a contracting agency awards must require the contractor to:

(a) Have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

(b) Require, in every subcontract, that the subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). [2003 c.794 §168; 2005 c.360 §10; 2007 c.415 §2; 2007 c.764 §37; 2007 c.844 §4; 2009 c.161 §2; 2011 c.265 §2]

**EXHIBIT B  
INSURANCE**

(The Project Manager must answer and initial 2, 3, 4, and 5 below).

During the term of this contract, Contractor will maintain in force at its own expense, each insurance noted below:

1. **Workers Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt under ORS 656.027). In addition to the statutory benefits described in ORS Chapter 656, the Contractor and all subcontractors will provide employers' liability insurance with limits of not less than: \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury for disease, \$500,000 policy limit for bodily injury by disease.

Required by City       I am exempt. Signed \_\_\_\_\_

2. **Professional Liability** insurance with a combined single limit of not less than  \$1,200,000,  \$2,000,000, or  \$3,000,000 each claim, incident, or occurrence. This is to cover damages caused by errors, omissions, or negligent acts related to the professional services to be provided under this Contract. The coverage must remain in effect for at least  one year  two years after the Contract is completed.

Required by City       Not required by City      By: JA

3. **General Liability** insurance, on an occurrence basis, with a combined single limit of not less than  \$1,200,000,  \$2,000,000, or  \$3,000,000 each occurrence for Bodily Injury and Property Damage. It will include contractual liability coverage, product and completed operations coverage, and personal and advertising injury coverage.

Required by City       Not required by City      By: JA

4. **Automobile Liability** insurance with a combined single limit, or the equivalent of not less than  \$1,200,000,  \$2,000,000, or  \$3,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles.

Required by City       Not required by City      By: JA

5. During construction, **Builders Risk** insurance to the extent of 100 percent of the value of the work for the benefit of the parties to the Contract as their interest may appear. Coverage will also include: (1) formwork in place, (2) form lumber on site, (3) temporary structures, (4) equipment, and (5) supplies related to the work while at the site.

Required by City       Not required by City      By: JA



6. **Notice of cancellation or change.** There will be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without priorwritten notice from the Contractor or its insurer(s) to the City.
  
7. **Certificates of insurance.** As evidence of the insurance coverages required by this Contract, the Contractor will furnish acceptable insurance certificates to the City at the time the Contractor returns the signed contracts. For general liability insurance and automobile liability insurance, the certificate will provide that the City, and its agents, officers, and employees, are additional insureds, but only with respect to the Contractor's services to be provided under this Contract. The certificate will include the cancellation clause, and will include the deductible or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies will be provided to the City. The Contractor will be financially responsible for all pertinent deductibles, self-insured retentions, and self-insurance.

**EXHIBIT C  
CERTIFICATION STATEMENT FOR  
INDEPENDENT CONTRACTOR**

(Contractor: Complete A or B below; Project Manager: Complete C below.)

**A. CONTRACTOR IS A CORPORATION**

**CORPORATION CERTIFICATION:** I am authorized to act on behalf of the entity named below, and certify under penalty of perjury that it is a corporation.

Entity	Signature	Date
--------	-----------	------

**B. CONTRACTOR IS INDEPENDENT.**

**Contractor certifies he/she meets the following standards:**

1. The individual or business entity providing services is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results,
2. The individual or business entity is licensed under ORS chapters 671 or 701 if the individual or business entity provides services for which a license is required by ORS chapters 671 or 701,
3. The individual or business entity is responsible for obtaining other licenses or certificates necessary to provide the services,
4. The individual or business entity is customarily engaged in an independently established business, as any three of the following requirements are met **(please check three or more of the following):**
  - \_\_\_ A. The person maintains a business location i) that is separate from the business or work location of the person for whom the services are provided or ii) that is in a portion of the person's residence and that portion is used primarily for the business.
  - \_\_\_ B. The person bears the risk of loss related to the business or the provision of services as shown by factors such as i) the person enters into fixed-price contracts, ii) the person is required to correct defective work, iii) the person warrants the services provided, or iv) the person negotiates indemnification agreements or purchases liability insurance, performance bonds, or errors and omissions insurance.
  - \_\_\_ C. The person provides contracted services for two or more different persons within a 12 month period or the person routinely engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  - \_\_\_ D. The person makes a significant investment in the business, through means such as i) purchasing tools or equipment necessary to provide the services, ii) paying for the premises or facilities where the services are provided, or iii) paying for licenses, certificates, or specialized training required to provide the services.
  - \_\_\_ E. The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

Contractor Signature	Date
----------------------	------

(Project Manager: Complete C below.)

**C. CITY APPROVAL**

**ORS 670.600 Independent contractor standards.** As used in various provisions of ORS chapters 316, 656, 657, 671, and 701, an individual or business entity that performs services for remuneration will be considered to perform the services as an “independent contractor” if the standards of this section are met. The contractor meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the services, subject only to the right of the City to specify the desired results,
2. The Contractor is responsible for obtaining licenses under ORS chapters 671 and 701 when these licenses are required to provide the services,
3. The Contractor is responsible for obtaining other licenses or certificates necessary to provide the services,
4. The Contractor has the authority to hire and fire employees to provide or assist in providing the services, and
5. The person is customarily engaged in an independently established business as indicated in B. 4 above.

Project Manager Signature

Date

**EXHIBIT D  
BONDS**

(The Project Manager must answer and initial 1 and 2 below).

At the time of executing this contract, the Contractor will provide to the City, at its own expense, each bond noted below:

1. **Performance Bond** approved by the City in an amount equal to the amount of the Contract based upon the estimate of quantities or lump sum as set forth in the Contract, conditioned upon a compliance with and fulfillment of all terms and provisions of the Contract, including, maintenance, repair, and replacement, and all applicable laws and prompt payment, as due, to all persons supplying labor and/or material for prosecution of the work.

Required by City     Not required by City    By: SA

2. **Payment Bond** approved by the City in an amount equal to the amount of the Contract based upon the estimate of quantities or lump sum as set forth in the Contract, conditioned upon a compliance with and fulfillment of all terms and provisions of the Contract, including, maintenance, repair, and replacement, and all applicable laws and prompt payment, as due, to all persons supplying labor and/or material for prosecution of the work.

Required by City     Not required by City    By: JA

CITY OF McMinnville, OREGON

**NE HIGH SCHOOL SANITARY SEWER  
REHABILITATION**

Project No. 2019-7

**PAYMENT BOND**

**BOND NO.** \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS:

that \_\_\_\_\_, hereinafter called  
CONTRACTOR (Corporation, Partnership or Individual) and

\_\_\_\_\_  
(Name of Surety)

and the City of McMinnville, located at 230 NE 2nd Street, McMinnville hereinafter called  
OWNER and unto all persons, firms and corporations who or which may furnish labor,  
or who furnish materials to perform as described under the contract and to their  
successors and assigns in the total aggregate penal sum of \_\_\_\_\_  
\_\_\_\_\_ in lawful money of the United States, for the payment of which sum well  
and truly to be made, we bind ourselves, our heirs, executors, administrators,  
successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the CONTRACTOR  
entered into a certain contract with the OWNER, dated the \_\_\_\_\_, a  
copy of which is hereto attached and made a part hereof for the NE HIGH SCHOOL  
SANITARY SEWER REHABILITATION, Project No. 2019-7.

NOW, THEREFORE, if the CONTRACTOR shall promptly make payment to all persons,  
firms, and corporations furnishing materials for, or performing labor in the prosecution of  
the WORK provided for in such contract, and any authorized extensions or modification  
thereof, including all amounts due for materials consumed or used in connection with the  
construction of such WORK, and for all labor cost incurred in such WORK including that  
by a SUBCONTRACTOR, and to any mechanic or materialman lien holder whether it  
acquires its lien by operation of State or Federal law; then this obligation shall be void,  
otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUB-CONTRACTORS, and persons, firms, and corporations having a direct contract with the CONTRACTOR or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or to the SPECIFICATIONS ACCOMPANYING the Contract shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the CONTRACTOR shall have given written notice to any two of the following: The CONTRACTOR, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which CONTRACTOR ceased work on said CONTRACT, is being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than twenty percent (20%), so as to bind the CONTRACTOR and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

**WITNESS WHEREOF**, this instrument is executed in \_\_\_\_\_ counterparts, each of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 2021

WITNESS:

\_\_\_\_\_

Principal

\_\_\_\_\_

Address

Phone Number

SURETY:

\_\_\_\_\_

Address

Phone Number

BY: \_\_\_\_\_  
Attorney-in-fact

\_\_\_\_\_

Address

Phone Number

**NOTE:** If CONTRACTOR is partnership, all partners should execute BOND.

**IMPORTANT:** Surety companies executing BONDS must be authorized to transact business in the State of Oregon.

CITY OF McMinnville, Oregon

**NE HIGH SCHOOL SANITARY SEWER  
REHABILITATION**  
Project No. 2019-7

**PERFORMANCE BOND**

BOND NO. \_\_\_\_\_

PREMIUM: \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we,

\_\_\_\_\_,  
as Principal, and \_\_\_\_\_ (“Surety”), a company  
duly organized and licensed to do business in the State of \_\_\_\_\_, and duly  
licensed to conduct business as a Surety under the laws of the State of Oregon, are held  
and firmly bound unto the City of McMinnville, as Oblige, in the penal sum of  
\_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) lawful money of the United States, for the payment of which sum  
well and truly to be made, we bind ourselves, our heirs, administrators, executors,  
successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT,  
WHEREAS, said Principal has entered into a contractual agreement, including all  
exhibits attached thereto and all documents incorporated by reference therein  
(collectively referred to herein as the “Agreement”), with said Oblige, which  
Agreement is identified as \_\_\_\_\_ (“Project”), pursuant to  
which said Principal undertakes and agrees to perform all labor and furnish all  
equipment and material, in accordance with all the terms and conditions set forth in  
said Agreement; and to save harmless the Oblige from any claim for damages or  
injury to property or persons arising by reason of said work, as set out more fully in  
said Agreement; and to do and perform all things in said Agreement as required, in  
the time and manner and under the terms and conditions therein set forth; and in  
conformity with all laws, state and national, applicable thereto.

NOW, THEREFORE, if the said Principal shall well and truly do and perform all the  
covenants and obligations of said Agreement on its part to be done and performed at  
the time and in the manner specified therein, and in all respects according to their  
true intent and meaning, and shall defend, indemnify, and save harmless the Oblige,  
its officers, agents, and employees, as therein stipulated, only then this obligation  
shall be null and void; otherwise, it shall be and remain in full force and effect. The  
completion of all such covenants and obligations shall only be considered to have  
occurred upon the written final acceptance of all Project work by Oblige and the  
expiration of any warranty period, as provided under the Agreement.

The Surety hereby stipulates and agrees that no change, extension of time, alteration,  
or addition to the terms of said Agreement or the specifications accompanying the  
same shall in any manner affect its obligations under this Bond and it does hereby



waive notice of any such change, extension, alteration, or addition to the terms of the Agreement or to the work or to the specifications.

If the Principal shall be declared to be in default in the performance of any part of the Agreement, the Surety must, within the same time frame allowed to the Principal, cure or cause to be cured the default or must otherwise immediately pay the entire penal sum of the Bond to the Obligee.

This obligation also includes the obligation to promptly pay, as due, payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention incidental to sickness or injury to the employees of said Principal, pursuant to the laws of Oregon, or collected or deducted from the wages of said employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such services, and shall do all things required of said Principal by the laws of Oregon.

The Surety acknowledges that the Surety shall not be entitled to assert any defense for failure of performance that the Principal might have by operation of law.

As a part of the obligation secured hereby, and in addition to the penal sum specified thereunder, there shall be included all reasonable costs, expenses, and fees ("Costs"), including reasonable attorney fees, incurred by the Obligee in enforcing the obligations described herein, all to be included in any judgment rendered, and which shall bear interest at the judgment rate then in effect until paid in full.

Except for Costs and attorney fees, which shall be in addition thereto, the Surety's obligation shall not exceed the penal sum of the Bond.

This Bond is given and received under the authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this Bond and made a part hereof.

Signed and sealed on \_\_\_\_\_, [year].

PRINCIPAL NAME:

\_\_\_\_\_

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

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

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

SURETY NAME:

\_\_\_\_\_

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

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

As Its: Attorney in Fact

The attorney-in-fact who executes this Bond on behalf of the surety company must attach a copy of his/her power-of-attorney as evidence of his/her authority.

To each executed original of this Bond, there must be attached a complete set of the contract documents, as the term is defined in the "Standard Specifications and Special Provisions," with all corrections, interlineations, signatures, etc., completely reproduced therein.