



**City Council Meeting Agenda**

**Tuesday, September 14, 2021**

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

**EXECUTIVE SESSION – to immediately follow the Regular City Council Meeting (CLOSED TO THE PUBLIC)**

*Welcome! Based on continued public health concerns, Civic Hall will be closed to the public. Until improvements of COVID cases in Yamhill County improve meetings will be held via Zoom and live broadcast ONLY.*

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

- *Email at any time up to 12 p.m. the day of the meeting to [Claudia.Cisneros@mcminnvilleoregon.gov](mailto:Claudia.Cisneros@mcminnvilleoregon.gov);*
- *If appearing via telephone only please sign up prior to the meeting by emailing the City Recorder at [Claudia.Cisneros@mcminnvilleoregon.gov](mailto:Claudia.Cisneros@mcminnvilleoregon.gov) as the chat function is not available when calling in zoom;*
- *Join the zoom meeting; send a chat directly to City Recorder, Claudia Cisneros, to request to speak and use the raise hand feature in zoom to request to speak, once your turn is up we will announce your name and unmute your mic. **You will need to provide your First and Last name, Address, contact information (email or phone)***

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

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

**CITY COUNCIL REGULAR MEETING:**

*You may join online via Zoom Meeting:*

<https://mcminnvilleoregon.zoom.us/j/83583999430?pwd=Wlc4dVF2TWxRZ3pHZ2INMTIUSSttQT09>

*Zoom ID: 835 8399 9430*

*Zoom Password: 149125*

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

*ID: 835 8399 9430*

**7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM & LIVE BROADCAST ONLY**

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. INVITATION TO COMMUNITY MEMBERS 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. PRESENTATION
  - a. Five Year Review of Affordable Housing System Development Charge (SDC) Exemptions
5. ADVICE/ INFORMATION ITEMS
  - a. Reports from Councilors on Committee & Board Assignments
  - b. Department Head Reports

## 6. CONSENT AGENDA

- a. Consider request from Circle K Stores Inc. DBA: Circle K #9630 for Off-premises (change of ownership) OLCC Liquor License located at 1347 NE Baker Street.
- b. Consider request from Circle K Stores Inc. DBA: Circle K #9631 for Off-premises (change of ownership) OLCC Liquor License located at 1920 NE Lafayette Ave.
- c. Consider request from Circle K Stores Inc. DBA: Circle K #9633 for Off-premises (change of ownership) OLCC Liquor License located at 2835 N Hwy 99W.
- d. Consider request from Humble Spirit, LLC DBA: Humble Spirit for Full on-premises commercial OLCC Liquor License located at 411 NE 3<sup>rd</sup> Street.
- e. Consider Resolution No. 2021-49: A Resolution approving code compliance liens on properties to recover unpaid corrective action cost and civil penalty citations.
- f. Consider Resolution No. 2021-50: A Resolution awarding the contract for the WRF Admin Building Re-Roof, Project 2021-10, to Washington Roofing Company.

## 7. ADJOURNMENT OF REGULAR MEETING

### **EXECUTIVE SESSION – IMMEDIATELY FOLLOW THE CITY COUNCIL REGULAR MEETING - VIA ZOOM (NOT OPEN TO THE PUBLIC)**

1. CALL TO ORDER
2. **Executive Session pursuant to ORS 192.660(2)(h):** To conduct with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.
3. ADJOURNMENT

### 3.10.060 – MMC, SDC Exemptions

**Qualifying affordable housing projects receive an exemption from Transportation and Wastewater SDCs and 50% Permit Fee Reductions.**

#### **Qualifying Housing Projects:**

- **80% AMI or less**
- **Homeless Shelters**

**House needs to be retained for affordable housing for ten years.**

**A Certificate of Exemption is recorded on the property with the value of the exemption and the timeframe.**



# **Affordable Housing SDC Exemptions:**

**City Council Presentation**

**September 14, 2021**

# 2021 – Meant to Evaluate Program

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## **Section 3.10.060(B)(4):**

**The City of McMinnville city council will evaluate this program for its effectiveness, need and financial impact to the Transportation and Wastewater funds in 2021.**

**At that time, the McMinnville City Council will decide whether or not to continue to move forward with the exemptions or to sunset the program.**

# History of the Program

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## Ordinance Passed in 2016.

Prior to Ordinance adopting the program, City practiced the same program informally for non-profits building affordable housing.

- ❖ From 1996 – 2016 there were 36 projects that participated in the program. The two most active years were 2007 and 2008 when six permits were issued in each year, resulting in \$27,421.56 and \$27,323.10 respectively.
- ❖ Since 2017 there have been 40 projects equating to \$229,266.50 in grants to affordable housing projects in the form of SDC exemptions.
- ❖ Two additional projects on the horizon, multifamily ones that illustrate how impactful it can be to be a project:
  - Operation Generation = 23 Units = \$143,520
  - Stratus Village = 200 Units = \$1,248,000

# Affordable Housing Committee Review

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**AHC discussed at their July 25, 2021 meeting:**

- Continue the program and analyze revenue shortfalls in public facility updates that are currently underway.**
- Put a cap on the program**
- Put another evaluation year on the program**
- Discontinue the program**

# Recommendation to City Council

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- Continue the program and analyze revenue shortfalls in public facility updates that are currently underway.
- Put a cap on the program
- Put another evaluation year on the program
- Discontinue the program



City Recorder Use

Final Action:  
 Approved  Disapproved

## Liquor License Recommendation

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BUSINESS NAME / INDIVIDUAL: Circle K Stores Inc. DBA: Circle K #9630

BUSINESS LOCATION ADDRESS: 1347 NE Baker Street

LIQUOR LICENSE TYPE: Off-premises (change of ownership)

Is the business at this location currently licensed by OLCC

Yes  No

If yes, what is the name of the existing business:

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Hours of operation: Sunday – Saturday 24 hours

Entertainment: N/A

Hours of Music: N/A

Seating Count: N/A

EXEMPTIONS:

(list any exemptions)

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Tritech Records Management System Check:  Yes  No

Criminal Records Check:  Yes  No

Recommended Action:  Approve  Disapprove

Chief of Police / Designee

City Manager / Designee





**OREGON LIQUOR CONTROL COMMISSION**  
**LIQUOR LICENSE APPLICATION**



1. Application. **Do not include** any OLCC fees with your application packet (the license fee will be collected at a later time). Application is being made for:

<p style="text-align: center;"><b>License Applied For:</b></p> <input type="checkbox"/> Brewery 1 <sup>st</sup> Location Brewery Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/> <input type="checkbox"/> Brewery-Public House (BPH) 1 <sup>st</sup> location BPH Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/> <input type="checkbox"/> Distillery <input type="checkbox"/> Full On-Premises, Commercial <input type="checkbox"/> Full On-Premises, Caterer <input type="checkbox"/> Full On-Premises, Passenger Carrier <input type="checkbox"/> Full On-Premises, Other Public Location <input type="checkbox"/> Full On-Premises, For Profit Private Club <input type="checkbox"/> Full On-Premises, Nonprofit Private Club <input type="checkbox"/> Grower Sales Privilege (GSP) 1 <sup>st</sup> location GSP Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/> <input type="checkbox"/> Limited On-Premises <input checked="" type="checkbox"/> Off-Premises <input type="checkbox"/> Warehouse <input type="checkbox"/> Wholesale Malt Beverage & Wine <input type="checkbox"/> Winery 1 <sup>st</sup> Location Winery Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/> (4 <sup>th</sup> ) <input type="checkbox"/> (5 <sup>th</sup> ) <input type="checkbox"/>	<p style="text-align: center;"><b>CITY AND COUNTY USE ONLY</b></p> Date application received and/or date stamp: <p style="text-align: center; font-size: 1.2em;">8/30/2021</p> Name of City or County: _____ Recommends this license be: <input type="checkbox"/> Granted <input type="checkbox"/> Denied By: _____ Date: _____ <hr/> <p style="text-align: center;"><b>OLCC USE ONLY</b></p> Date application received: <u>8/24/21</u> Date application accepted: <u>8/24/21</u> <hr/> License Action(s): <p style="text-align: center; font-size: 1.2em;">C/O; C/TN</p>
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2. Identify the applicant(s) applying for the license(s). **ENTITY (example: corporation or LLC) or INDIVIDUAL(S)**<sup>1</sup> applying for the license(s):

Circle K Stores Inc.

App #1: NAME OF ENTITY OR INDIVIDUAL APPLICANT      App #2: NAME OF ENTITY OR INDIVIDUAL APPLICANT

App #3: NAME OF ENTITY OR INDIVIDUAL APPLICANT      App #4: NAME OF ENTITY OR INDIVIDUAL APPLICANT

<p><b>3. Trade Name of the Business (Name Customers Will See)</b>                  Circle K #9630</p>		
<p><b>4. Business Address (Number and Street Address of the Location that will have the liquor license)</b>                  1347 NE Baker St.</p>		
<p>City McMinnville</p>	<p>County Yamhill</p>	<p>Zip Code 97128</p>

<sup>1</sup> **Read the instructions on page 1 carefully.** If an entity is applying for the license, list the name of the entity as an applicant. If an individual is applying as a sole proprietor (no entity), list the individual as an applicant.



City Recorder Use
Final Action:
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved

### Liquor License Recommendation

---

BUSINESS NAME / INDIVIDUAL: Circle K Stores Inc. DBA: Circle K #9631  
BUSINESS LOCATION ADDRESS: 1920 NE Lafayette Ave  
LIQUOR LICENSE TYPE: Off-premises (change of ownership)

Is the business at this location currently licensed by OLCC

Yes    No

If yes, what is the name of the existing business:

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Hours of operation: Sunday – Saturday 24 hours

Entertainment: N/A

Hours of Music: N/A

Seating Count: N/A

EXEMPTIONS:

(list any exemptions)

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Tritech Records Management System Check:  Yes    No

Criminal Records Check:  Yes    No

Recommended Action:  Approve    Disapprove

Chief of Police / Designee

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City Manager / Designee



# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION



1. Application. **Do not include** any OLCC fees with your application packet (the license fee will be collected at a later time). Application is being made for:

<b>License Applied For:</b>	<b>CITY AND COUNTY USE ONLY</b>
<input type="checkbox"/> Brewery 1 <sup>st</sup> Location	Date application received and/or date stamp: <u>8/30/2021</u>
Brewery Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	
<input type="checkbox"/> Brewery-Public House (BPH) 1 <sup>st</sup> location	Name of City or County: _____
BPH Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	
<input type="checkbox"/> Distillery	Recommends this license be: <input type="checkbox"/> Granted <input type="checkbox"/> Denied
<input type="checkbox"/> Full On-Premises, Commercial	
<input type="checkbox"/> Full On-Premises, Caterer	By: _____
<input type="checkbox"/> Full On-Premises, Passenger Carrier	
<input type="checkbox"/> Full On-Premises, Other Public Location	Date: _____
<input type="checkbox"/> Full On-Premises, For Profit Private Club	
<input type="checkbox"/> Full On-Premises, Nonprofit Private Club	<b>OLCC USE ONLY</b>
<input type="checkbox"/> Grower Sales Privilege (GSP) 1 <sup>st</sup> location	
GSP Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	Date application received: <u>8/24/21</u>
<input type="checkbox"/> Limited On-Premises	Date application accepted: <u>8/24/21</u>
<input checked="" type="checkbox"/> Off-Premises	License Action(s): <u>C/O; C/TN</u>
<input type="checkbox"/> Warehouse	
<input type="checkbox"/> Wholesale Malt Beverage & Wine	
<input type="checkbox"/> Winery 1 <sup>st</sup> Location	
Winery Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/> (4 <sup>th</sup> ) <input type="checkbox"/> (5 <sup>th</sup> ) <input type="checkbox"/>	

2. Identify the applicant(s) applying for the license(s). **ENTITY** (example: corporation or LLC) or **INDIVIDUAL(S)**<sup>1</sup> applying for the license(s):

Circle K Stores Inc.

App #1: NAME OF ENTITY OR INDIVIDUAL APPLICANT    App #2: NAME OF ENTITY OR INDIVIDUAL APPLICANT

App #3: NAME OF ENTITY OR INDIVIDUAL APPLICANT    App #4: NAME OF ENTITY OR INDIVIDUAL APPLICANT

**3. Trade Name of the Business (Name Customers Will See)**  
Circle K #9631

**4. Business Address (Number and Street Address of the Location that will have the liquor license)**  
1920 Lafayette Ave.

City McMinnville	County Yamhill	Zip Code 97128
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<sup>1</sup> **Read the instructions on page 1 carefully.** If an **entity** is applying for the license, list the name of the **entity** as an applicant. If an **individual** is applying as a sole proprietor (no entity), list the **individual** as an applicant.



City Recorder Use
Final Action:
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved

### Liquor License Recommendation

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BUSINESS NAME / INDIVIDUAL: Circle K Stores Inc. DBA: Circle K #9633  
BUSINESS LOCATION ADDRESS: 2835 N Hwy 99W  
LIQUOR LICENSE TYPE: Off-premises (change of ownership)

Is the business at this location currently licensed by OLCC

Yes    No

If yes, what is the name of the existing business:

---

Hours of operation: Sunday – Saturday 24 hours

Entertainment: N/A

Hours of Music: N/A

Seating Count: N/A

EXEMPTIONS:

(list any exemptions)

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Tritech Records Management System Check:  Yes    No

Criminal Records Check:  Yes    No

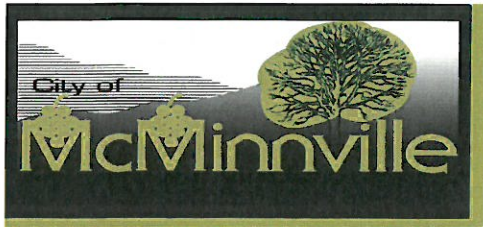
Recommended Action:  Approve    Disapprove

Chief of Police / Designee

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City Manager / Designee





City Recorder Use	
Final Action:	
<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Disapproved

**Liquor License Recommendation**

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BUSINESS NAME / INDIVIDUAL: Humble Spirit, LLC DBA: Humble Spirit  
BUSINESS LOCATION ADDRESS: 411 NE 3<sup>rd</sup> Street  
LIQUOR LICENSE TYPE: Full on premises, commercial

Is the business at this location currently licensed by OLCC

Yes     No

If yes, what is the name of the existing business:

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Hours of operation: Sunday 10 am to 9 pm, Monday – Thursday 11 am to 9 pm, Friday 11 am to 10 pm, Saturday 10 am to 10 pm  
Entertainment: N/A  
Hours of Music: N/A  
Seating Count: 45 total; 32 restaurant, 7 lounge, 6 outdoor

EXEMPTIONS:  
(list any exemptions)

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Tritech Records Management System Check:  Yes     No  
Criminal Records Check:  Yes     No  
Recommended Action:  Approve     Disapprove

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Chief of Police / Designee

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City Manager / Designee



# LIQUOR LICENSE APPLICATION

PRINT FORM

RESET FORM

1. Application. **Do not include** any OLCC fees with your application packet (the license fee will be collected at a later time). Application is being made for:

License Applied For:	CITY AND COUNTY USE ONLY
<input type="checkbox"/> Brewery 1 <sup>st</sup> Location	Date application received and/or date stamp: <i>9/2/2021</i>
Brewery Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	
<input type="checkbox"/> Brewery-Public House (BPH) 1 <sup>st</sup> location	Name of City or County:
BPH Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	
<input type="checkbox"/> Distillery	Recommends this license be: <input type="checkbox"/> Granted <input type="checkbox"/> Denied
<input checked="" type="checkbox"/> Full On-Premises, Commercial	
<input type="checkbox"/> Full On-Premises, Caterer	By: _____
<input type="checkbox"/> Full On-Premises, Passenger Carrier	
<input type="checkbox"/> Full On-Premises, Other Public Location	Date: _____
<input type="checkbox"/> Full On-Premises, For Profit Private Club	
<input type="checkbox"/> Full On-Premises, Nonprofit Private Club	OLCC USE ONLY
<input type="checkbox"/> Grower Sales Privilege (GSP) 1 <sup>st</sup> location	
GSP Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	Date application received: <i>8-20-2021</i>
<input type="checkbox"/> Limited On-Premises	Date application accepted: <i>8-27-2021</i>
<input type="checkbox"/> Off-Premises	<i>EMILIA</i>
<input type="checkbox"/> Warehouse	License Action(s):
<input type="checkbox"/> Wholesale Malt Beverage & Wine	<i>N/D</i>
<input type="checkbox"/> Winery 1 <sup>st</sup> Location	
Winery Additional location (2 <sup>nd</sup> ) <input type="checkbox"/> (3 <sup>rd</sup> ) <input type="checkbox"/>	
(4 <sup>th</sup> ) <input type="checkbox"/> (5 <sup>th</sup> ) <input type="checkbox"/>	

2. Identify the applicant(s) applying for the license(s). **ENTITY** (example: corporation or LLC) or **INDIVIDUAL(S)** applying for the license(s):

Humble Spirit LLC

RECEIVED  
OREGON LIQUOR CONTROL COMMISSION

AUG 26 2021

App #1: NAME OF ENTITY OR INDIVIDUAL APPLICANT

App #2: NAME OF ENTITY OR INDIVIDUAL APPLICANT

SALEM REGIONAL OFFICE

App #3: NAME OF ENTITY OR INDIVIDUAL APPLICANT

App #4: NAME OF ENTITY OR INDIVIDUAL APPLICANT

3. Trade Name of the Business (Name Customers Will See)

Humble Spirit

4. Business Address (Number and Street Address of the Location that will have the liquor license)

411 NE 3rd St

City  
McMinnville

County  
Yamhill

Zip Code  
97128

<sup>1</sup> Read the instructions on page 1 carefully. If an entity is applying for the license, list the name of the entity as an applicant. If an individual is applying as a sole proprietor (no entity), list the individual as an applicant.



## STAFF REPORT

DATE: September 14, 2021  
TO: McMinnville City Council  
FROM: Nic Miles, Code Compliance Officer  
SUBJECT: Resolution No. 2021-49

### STRATEGIC PRIORITY & GOAL:



### COMMUNITY SAFETY & RESILIENCY

Proactively plan for & responsively maintain a safe & resilient community.

**OBJECTIVE/S: Build a community culture of safety (consider safety best practices)**

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### Report in Brief:

This is the consideration of Resolution No. 2021-49, approving liens on property that have not paid for the costs associated with property nuisance abatements per Section 8.10 of the McMinnville Municipal Code. These represent the few properties that the City was not able to achieve voluntary compliance.

### Background:

In October 2019, City Council voted to approve amendments to Title 2 and Title 8 of the McMinnville Municipal Code. Those updates provided code compliance staff with more efficient tools for addressing property maintenance and health and safety concerns in an expeditious time frame. Since that time, code compliance staff has maintained a 90% voluntary compliance rate. For those properties that do not voluntarily comply, the City will abate the property and then invoice the property owner for the full costs of the abatement including staff time. Per Section 2.50.250(F) of the McMinnville Municipal Code, if the property owner refuses to pay the invoice, the City has the right to lien the property for the unpaid invoice per the McMinnville Municipal Code after City Council approval. In the past year, two properties failed to abate their property nuisance violations voluntarily and then refused to pay for the costs incurred by the City to abate the properties.



*Collection and Abatement Costs.*

1. The costs listed in the notice of corrective action costs will become delinquent if not paid within 30 days of the date of the notice or within 10 days of the date set forth in any final order or judgment issued on appeal of the cost notice, whichever comes later.
2. Assessment of the delinquent correction action costs must be made by city council resolution to be entered in the docket of city liens. When the entry is made, it will constitute a lien on all real property on which the corrective action occurred.
3. The lien will be enforced in the same manner as liens for street improvements, as described in Chapter [3.12](#), and will bear interest at the rate of nine percent per year, accruing from the date of the entry of the lien into the lien docket.

**Discussion:**

Below is a summary of the property abatement costs that have not been paid.

*236 NW 18<sup>th</sup> St.*

*Junk Removal; Discarded Vehicle Removal: \$602.34*

- Neighbors notified code compliance staff of discarded vehicles and accumulation of junk and debris in the driveway and side yard of this property. In addition, complaints were received regarding a makeshift pallet fence that created an attractive nuisance. Code compliance staff attempted to reach voluntary compliance with the property owner, but he was unwilling to make progress. Code compliance staff received a warrant to enter the property and remove the junk, pallet fencing and discarded vehicles.

*515 SE Cleveland Ave.*

*Tall Grass/Weed Removal: \$675.62*

- Neighbors notified code compliance staff of overgrown grass and weeds at this vacant property, which presented an immediate threat to public safety during the dry fire season. A vendor removed the overgrown grass and weeds from the front and side yards, reducing the health and safety threats.

**Attachments:**

1. Before/After 236 NW 18<sup>th</sup> St.
2. Before/After 515 SE Cleveland Ave.

**Fiscal Impact:**

Placing these unpaid abatement costs as city liens on the property will result in eventual full cost recovery, including administrative time and resources.

**Recommendation:**

Staff recommends approval of Resolution No. 2021-49.





Sep 10, 2020 at 11:31:55 AM



Sep 10, 2020 at 11:31:58 AM



Sep 28, 2020 at 9:13:41 AM



Sep 28, 2020 at 9:13:44 AM

## RESOLUTION NO. 2021-49

A Resolution approving code compliance liens on properties to recover unpaid corrective action cost and civil penalty citations.

### RECITALS:

On August 13, 2019, the McMinnville City Council adopted Ordinances No. 5078 and 5079, amending the McMinnville Municipal Code to restructure the code compliance program with an emphasis on efficiency, timeliness, voluntary compliance, and the ability to abate properties and issue civil penalties when voluntary compliance was not achieved.

Per Section 2.50.250(F) of the McMinnville Municipal Code, if the city needs to obtain a correction action warrant to abate properties that were not voluntarily abated for public safety, health, and welfare, the city can bill the property owner for the full cost recovery of that abatement.

Per Section 2.50.250(F)(2) of the McMinnville Municipal Code, if the property owner refuses to pay the full costs of the correction action within thirty (30) days, the City Council can lien the property by resolution.

Per Section 2.50.310 of the McMinnville Municipal Code, the city can issue a Notice of Civil Penalty to the property owner.

Per Section 2.50.250(F)(2) of the McMinnville Municipal Code, if the property owner refuses to pay the civil penalties within thirty (30) days, the City Council can lien the property by resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON,** that the following properties have been assessed either corrective action costs or civil penalties that after due process and notification, the property owners have refused to pay within thirty (30) days and are now approved to be recorded as liens on the property:

<b>Property Address</b>	<b>Violation Type</b>	<b>Amount of Lien</b>
236 NW 18 <sup>th</sup> Street	Corrective Action Costs	\$602.34
515 SE Cleveland Avenue	Corrective Action Costs	\$675.62

Adopted by the Common Council of the City of McMinnville at a meeting held the 14<sup>th</sup> day of September 2021 by the following votes:

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

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

Approved this 14<sup>th</sup> day of September 2021.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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



**City of McMinnville**  
**Community Development Department**  
231 NE Fifth Street  
McMinnville, OR 97128  
(503) 434-7312  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

## STAFF REPORT

**DATE:** September 14, 2021  
**TO:** Jeff Towery, City Manager  
**FROM:** Josh Adelman, Project Manager  
**SUBJECT:** WRF Admin Building Re-Roof 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 \$125,621.00 to Washington Roofing Company. for the construction of the WRF Admin Building Re-Roof project, Project 2021-10.

### **Background:**

The scope of work consists of the replacement of approximately 15,000 square feet of roof membrane at the City of McMinnville's Water Reclamation Facility (WRF) Administration Building.

### **Discussion:**

On Thursday, September 2, 2021, five bids were received, opened, and publicly read for the construction of the WRF Admin Building Re-Roof project. The bid results are as follows:

- |   |              |
|---|--------------|
| • Washington Roofing Company            | \$125,621.00 |
| • Coastline Roofing & Construction, Inc | \$148,000.00 |
| • ABC Roofing                           | \$167,190.00 |
| • Griffith Roofing Co.                  | \$149,769.00 |
| • Umpqua Roofing Co, Inc.               | \$167,700.00 |

The construction estimate for this work was \$120,000.

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?
- Did the contractor attend the mandatory pre-bid meeting?

All five of the bids were complete and met the City's requirements. A detailed breakdown of the received bids is on file in the Engineering Department. A comprehensive copy of the bid tabs is shown in attachment 2.

The bid from Washington Roofing Company, in the amount of \$125,621.00, was deemed to be the lowest responsible and responsive bid.

The project work is expected to start late September 2021 and be completed by November 30, 2021.

**Attachments:**

1. Resolution 2021-50
2. Project Bid Tabs
3. Public Improvement Contract

**Fiscal Impact:**

Project funding is included in the adopted FY22 Wastewater Capital Fund (77) budget for the project work.

**Recommendation:**

Staff recommends that the City Council adopt the attached resolution awarding the public improvement contract for the construction of the WRF Admin Building Re-Roof project, Project 2021-10, in the amount of \$125,621.00, to Washington Roofing Company.

**RESOLUTION NO. 2021-50**

A Resolution awarding the contract for the WRF Admin Building Re-Roof, Project 2021-10, to Washington Roofing Company.

**RECITALS:**

The scope of work consists of the replacement of approximately 15,000 square feet of roof membrane at the City of McMinnville’s Water Reclamation Facility (WRF) Administration Building.

At 2:00pm on September 2, 2021, five bids for the WRF Admin Building Re-Roof, Project 2021-10, were publicly opened and read aloud. The bid from Washington Roofing Company, in the amount of \$125,261.00, met all of the bid requirements and should be considered the lowest responsible and responsive bid.

Project funding is included in the adopted FY22 Wastewater Capital Fund (77) budget for the Administration Building roofing 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 Washington Roofing Company, in the amount of \$125,621.00, with a substantial completion date of November 30, 2021 for the WRF Admin Building Re-Roof, Project 2021-10, 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 14<sup>th</sup> day of September 2021 by the following votes:

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

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

Approved this 14<sup>th</sup> day of September 2021.

\_\_\_\_\_  
MAYOR

Approved as to form:

Attest:

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

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



WRF Admin Building Re-Roof Bid Tab Bid Opened 9/2/2021 @ 2:00 PM			Washington Roofing Company		Coastline Roofing & Construction, Inc.		ABC Roofing		Griffith Roofing Co.		Umpqua Roofing Co, Inc.	
Bid Item	Unit	Quantity	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost
Mobilization	LS	1	\$ 976.00	\$ 976.00	\$ 13,200.00	\$ 13,200.00	\$ 8,360.00	\$ 8,360.00	\$ 5,000.00	\$ 5,000.00	\$ 34,800.00	\$ 34,800.00
WRF Admin Building Roof Replacement	LS	1	\$ 124,645.00	\$ 124,645.00	\$ 134,800.00	\$ 134,800.00	\$ 158,830.00	\$ 158,830.00	\$ 144,769.00	\$ 144,769.00	\$ 132,900.00	\$ 132,900.00
<b>Total</b>				<b>\$ 125,621.00</b>		<b>\$ 148,000.00</b>		<b>\$ 167,190.00</b>		<b>\$ 149,769.00</b>		<b>\$ 167,700.00</b>

Bid Complete & Signed?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Addendum Acknowledged?	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A	<input type="checkbox"/> N/A
Bid Bond & Power of Attorney?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
1st Tier Submitted?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Attended Mandatory Pre-Bid Meeting	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Low Bid

CITY OF McMINNVILLE, OR

**WRF Admin Building Re-Roof**

Project No. 2021-10

**PUBLIC IMPROVEMENT CONTRACT**

This Contract is between the CITY OF McMINNVILLE, a municipal corporation of the State of Oregon (City) and Washington Roofing Company (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 November 30, 2021.

**2. Statement of Work.**

The work required under this Contract is contained in Contract Documents entitled: WRF Admin Building Re-Roof, Project No 2021-10. 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.**

The City agrees to pay the Contractor, at the times and in the manner provided in the Contract Documents, the total sum of \$ 125,621.00. 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.

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**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, Instructions to Bidders, Bid, Standard Public Contract, Payment Bond, Performance Bond, Special Provisions, and Technical Specifications, 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-subparagraph (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: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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
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(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: \_\_\_\_\_

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: \_\_\_\_\_