



City Council Meeting Agenda
Tuesday, November 12th, 2024
6:00 p.m. – Work Session Meeting
7:00 p.m. – City Council Regular Meeting

REVISED 11/07/2024

Welcome! The public is strongly encouraged to participate remotely but there is 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.

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

- Attend in person and fill out a public comment card.
- Email at any time up to **noon on Monday, November 11th** to CityRecorderTeam@mcminnvilleoregon.gov
- If appearing via telephone only please sign up prior by **noon on Monday, November 11th** by emailing the City Recorder at CityRecorderTeam@mcminnvilleoregon.gov as the chat function is not available when calling in Zoom;
- Join the Zoom meeting 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 the City Recorder with your First and Last name, Address, and contact information (email or phone) for a public comment card.**

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

mcm11.org/live

Download the "Cablecast" app on iOS, Android, Roku, Apple TV or Amazon Firestick and watch McMinnville City Council on all your devices.

CITY COUNCIL WORK SESSION & REGULAR MEETING:

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/87634518353?pwd=jnj5gwj4laxzf82cpRa4ftzQcWNZAD.1>

Meeting ID: 876 3451 8353

Password: 394872

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

ID: 876 3451 8353

6:00 PM – WORK SESSION MEETING – VIA ZOOM AND SEATING AT CIVIC HALL

1. CALL TO ORDER
2. CULTURE, PARKS AND RECREATION PROJECT – ESTIMATED OPERATING COSTS FOR PROPOSED NEW RECREATION CENTER/POOL
3. ADJOURNMENT OF WORK SESSION

7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM AND SEATING AT CIVIC HALL

1. CALL TO ORDER & ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PROCLAMATIONS
 - a. Small Business Saturday Proclamation

4. 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.

5. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
- b. Department Head Reports
 - 1. City Services Charge Status, Annual Review Memo (in packet)
- c. July 2024 Cash and Investment Report (in packet)
- d. August 2024 Cash and Investment Report (in packet)

6. CONSENT AGENDA

- a. Consider **Resolution No. 2024-49**: A Resolution approving a new three-year lease with MTS Traffic Management, LLC for the City-owned building located at 4025 Nimbus Loop (former Comcast).
- b. Consider **Resolution No. 2024-56**: A Resolution adopting the City's Mercury Total Maximum Daily Load (TMDL) Implementation Plan.
- c. Consider **Resolution No. 2024-57**: A Resolution Approving the 1st amendment to the professional services contract with Jacobs Engineering Group Inc. for the Public Works Water Reclamation Facility (WRF) and Conveyance System Master Plan Update, Project 2022-5 to include Supervisory Control and Data Acquisition (SCADA) System work.
- d. Consider **Resolution No. 2024-58**: A Resolution approving a two-year extension on Jerry Trimble Helicopters Amendment to Lease for the placement of a Modular Building, which is located at the McMinnville Municipal Airport.

7. RESOLUTION

- a. Consider **Resolution No. 2024-59**: A Resolution approving entering into a contract with Euna for a budget and financial transparency software subscription. **(Revised on 11.07.2024)**
- b. Consider **Resolution No 2024-60**: A Resolution authorizing the City Manager to enter into a Professional Services Agreement with Piper Sandler & Co. for Municipal Advisor Services.

8. ORDINANCES

- a. Consider the first reading with a possible second reading of **Ordinance No. 5150**: An Ordinance Amending McMinnville Municipal Code Title 13 (Public Utilities) to Make Changes to the Local Limits and Defective Private Sewer Lateral Program.
- b. Consider the first reading with a possible second reading of **Ordinance No. 5151**: An Ordinance Approving the Cable Franchise between the City of McMinnville and Comcast of Oregon II, Inc.
- c. Consider the first reading with a possible second reading of **Ordinance No. 5152**: An Ordinance Amending McMinnville Municipal Code Section 3.18.530 to Clarify Applicability of Telecommunications Infrastructure Requirements to Cable Operators.

9. ADJOURNMENT OF REGULAR MEETING



STAFF REPORT

DATE: November 1, 2024
TO: City Council
FROM: Susan Muir, Parks and Recreation Director
SUBJECT: Culture, Parks and Recreation Project – Estimated operating costs for proposed new recreation center/pool

Background

There are two types of costs associated with the Culture, Parks and Recreation Project.

Capital: generally defined as the construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, that is expected to have a useful life of more than one year, and includes, but is not limited to:

- Acquisition of land
- Acquisition, installation of machinery or equipment, furnishings or materials that will become an integral part of a structure.
- Activities related to the capital construction, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or other services connected with the construction.

The City Council is currently considering going to voters for a general obligation bond to pay for the capital costs necessary to update, improve or expand the parks, library and senior center as well as constructing a new recreation center.

General obligation bonds cannot be used for:

- Ongoing maintenance and repairs

- Supplies and materials (chlorine, basketballs, pens, pencils, etc)
- Heating or electricity
- Costs associated with staffing, programming and running a facility

Those costs, the ongoing day to day costs the city will incur year to year to operating the facility are considered operating costs. Historically and in most Parks and Recreation programs, those costs are paid for through a combination of user fees, general fund subsidies, donations and in some cities or districts outside of McMinnville, operating levies.

Discussion

Information presented at the work session will address the estimated operating costs like staffing, supplies, materials as well as a proposed cost recovery model and potential membership fees associated with operating the proposed facility. The 2 other indoor facilities included in the Culture, Parks and Recreation project are not anticipated to increase operating costs for those facilities at this time. For parks, the City Council generally considers the service level and funding of that program through the annual budget process. Currently, parks maintenance is building back to a base level of service through the annual budget process, as outlined in the PROS plan and previous budget add packages.

The 2019 recreation center feasibility study did include an estimated operating budget. However, there have been many anticipated and unanticipated changes since then that make the need to update the operating budget necessary, some of those include:

- The community driven concept planning done with the MacPAC advisory committee is different than what was analyzed in the original feasibility study. Aquatics and some other amenities were enhanced and expanded through the community driven process.
- Covid – the additional costs associated with operating facilities, some still in place, changed aspects of indoor recreation. Spacing, cleaning protocols, indoor air quality and other similar issues are more important than ever before. And, the build back to pre-covid participation numbers continues for most recreational facilities, we're getting close in McMinnville but we are still building back in some program areas.
- The economy – the overall economy looks very different today than it did in 2019 due to inflation.

- Personnel costs – The landscape of employment has changed drastically over the last 5 years. Filling vacant positions has become more difficult, which results in recruitments taking longer and being more costly. In addition, the minimum wage has increased from \$10.75/hour in January 2019 to the current rate of \$14.70/hour. Compounding the problem is the competitive pay in the private sector, a recent study by the Economic Policy Institute noted that on average, local government employees earned on approximately, 17.6% less than similar private sector employees, up approximately 4% over pre-pandemic pay gaps.

Some necessary assumptions were made to prepare the estimated operating budget. Many of those assumptions will need to go through a policy level discussion with the future Parks and Recreation Advisory Committee and City Council once there is a firmer timeline for constructing and opening the facility. What will be presented is an estimated operating budget that generally follows industry standards for public recreation facilities.

The future policy discussions may include but are not limited to:

- Subsidies or financial aid – the city council may decide to adjust the fees and rates to incentivize or subsidize recreation, fitness and other programs to improve health outcomes for certain segments of the population (youth, seniors, , etc).
- Cost recovery rates – typically governmental parks and recreation programs are subsidized by the general fund and do not achieve 100% cost recovery.
- City resident discounts –residents living inside the city boundary can receive a discount in fees and rates for facilities like this, considering their property taxes are already going towards a portion of the operating costs, whereas property owners or residents outside the city limits are not contributing financially to the city's finances. Because of that, in city residents are typically offered a discount.

Recommendation

This is an informational item, no action is requested.

Financial Impact

The information presented at the work session will include the proposed fiscal impact to the city budget of a new facility.



PROCLAMATION

Whereas, the City of McMinnville, celebrates our local small businesses and the contributions they make to our local economy and community; and; and

Whereas, according to the United States Small Business Administration, there are 34.7 million small businesses in the United States, small businesses represent 99.7% of firms with paid employees, small businesses are responsible for 61.1% of net new jobs created since 1995, and small businesses employ 45.9% of the employees in the private sector in the United States; and

Whereas, 68 cents of every dollar spent at a small business in the U.S. stays in the local community and every dollar spent at small businesses creates an additional 48 cents in local business activity as a result of employees and local businesses purchasing local goods and services; and

Whereas, 59% of U.S. consumers aware of Small Business Saturday shopped or ate at a small, independently owned retailer or restaurant on Small Business Saturday 2023; and

Whereas, the City of McMinnville, supports our local businesses that create jobs, boost our local economy, and preserve our communities; and

Whereas, advocacy groups, as well as public and private organizations, across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

Now, therefore, I, Remy Drabkin, Mayor of the City of McMinnville, Oregon, do hereby proclaim November 30, 2024 as:

SMALL BUSINESS SATURDAY

And urge our community members, and communities across the county, to support small businesses and merchants on Small Business Saturday and Shop Small throughout the year.

In Witness Whereof, I have hereunto set my hand and caused the official Seal of the City of McMinnville to be affixed this 12th day of November 2024.

Remy Drabkin, Mayor

From: [Claudia Cisneros](#)
To: [Claudia Cisneros](#)
Subject: FW: Comments
Date: Monday, October 28, 2024 1:33:20 PM
Attachments: [image001.png](#)
[4.a.2. Exhibit 1 CChenoweth.pdf](#)
[image002.png](#)

Good afternoon Mayor and Council (by Bcc),

Apologies for the delay in getting this out to the group; I took some time off last week. Please see the email below, I've also included the submitted documents referenced. The attached was included in the amended packet posted on 10.23, this email will be added to the 11/12 packet for the record.

Please let me know if you have any questions.

Thank you!
Claudia



Monday – Thursday 7:00 a.m. – 5:30 p.m.

Website: <http://www.mcminnvilleoregon.gov> | [Recorder Page](#) |

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address are public records of the City of McMinnville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

From: Chris Chenoweth <Chris.Chenoweth@mcminnvilleoregon.gov>
Sent: Tuesday, October 22, 2024 7:51 PM
To: Claudia Cisneros <Claudia.Cisneros@mcminnvilleoregon.gov>
Subject: Comments

I ran out of time in my comments. Will you please forward this to the Council , Mayor and Jeff.

My final paragraph that I wanting to say and is in the paperwork I gave you was this:

“The solution is simple. We should notify the finalists that the council will be scheduling interviews in January. At the first City Council meeting in 2025 the new council can direct the city manager to schedule said interview. This would align us with the charter and allow for those who will be held accountable if anything goes south to make the decision”.

Thank you!

Chris Chenoweth

McMinnville City Councilor, Ward 1



Members of the Council,

It's not typical for a City Councilor to step off the dais to address you directly, but here we are. The current leadership under our mayor and city manager has centralized control to the point where open discussions on these issues are stifled. I've raised concerns about this over the past two years, noting how the mayor's tight control of the agenda limits our ability to engage in meaningful dialogue.

Today, I want to focus on the appointment process for the Chief of Police. I believe the email from Chris Palmer effectively highlighted why it's crucial for the Council to play the leading role in this process.

Over the last several months I have taken several steps to try address this:

1. I raised concerns about the timing of the Chief of Police hiring in my one-on-one with Jeff back in August.
2. Throughout the month of September, I engaged the city attorney in an email exchange regarding my concerns about the charter.
3. After speaking with a former McMinnville Municipal Judge, I sent an email on October 11th to the Mayor, City Manager, HR Director and City Attorney requesting an outside attorney's opinion on whether Jeff exceeded his authority as city manager. Sadly, I received no response.

This situation could have been avoided.

The mayor claimed that the current hiring process mirrors that of Chief Scales, that's not true.

When Chief Noble resigned, we were without a City Manager and the Council decided they did not want to proceed with hiring a Chief until the City Managers position was filled. Chief Scales was appointed as interim chief, and after a thorough six-month process, we hired City Manager Mecker.

From the included January 2015 Council minutes, we see that the Council was deeply involved in the Chief appointment. They determined the process, they conducted the interview, and they made the decisions. The City Manager wasn't even present for the interview. This contrasts sharply with what's happening today.

When Chief Scales was interviewed, he was the only finalist. When Chief Noble was hired there were four finalists, and all of them were also interviewed by the Council.

According to our city charter Administrative Officers, which includes the chief of police, "shall be appointed" by a majority of the Council.

The current process for hiring the Chief of Police mirrors the process used for the recent hiring of our city attorney and public works director. That process culminated in Ordinance 2024-12

which clearly states that the City Manager made the appointments, and the Council merely approved them. This directly contradicts our charter.

This is not about politics; it's about adhering to a fundamental principle; namely the rule of law. If we don't stay within the guardrails of the charter, why even have a charter? The charter places this power in the hands of the elected body so that their constituents can hold them accountable if it goes south. Please do not abrogate your responsibility.

To rectify this, I propose we notify the finalists for the Chief position that the Council will conduct interviews after the new Council is seated in January. This respects our charter and allows the new Council to make a decision that they will ultimately be held accountable for.

Thank you for your attention.

I am asking that a copy of this statement be entered into the record as well as the supporting documentation that I am providing tonight. This supporting documentation is:

- 1) The email sent on October 11th to Mayor, City Manager, City Attorney and HR Director
- 2) The minutes from January 13, 2015
- 3) The minutes from January 21, 2015
- 4) Resolution 2024-12

Police Chief

From Chris Chenoweth <Chris.Chenoweth@mcminnvilleoregon.gov>

Date Fri 10/11/2024 6:24 PM

To Jeff Towery <Jeff.Towery@mcminnvilleoregon.gov>; David Ligtenberg <David.Ligtenberg@mcminnvilleoregon.gov>; Mayor Remy Drabkin <Remy.Drabkin@mcminnvilleoregon.gov>; Vicki Hedges <Vicki.Hedges@mcminnvilleoregon.gov>

Bcc [REDACTED]; Jessica Payne <Jessica.Payne@mcminnvilleoregon.gov>

 1 attachments (433 KB)

res_2024-12.pdf;

Jeff,

I wish to express my serious concerns regarding the process undertaken in the selection of the police chief. I submit the following points for consideration:

1. Following the resignation of the former chief, I conveyed my reservations to our City Manager during our one-on-one meetings about the prudence of making a selection prior to January 1.
2. Over the past month, I have engaged in extensive discussions with our City Attorney, emphasizing my belief that the City Council bears the responsibility for appointing/hiring administrative officers as stipulated by our City Charter.
3. The selection process for the final candidate has proceeded as follows:
 - a. An application window was opened.
 - b. Applications received prior to the closing date were reviewed by a panel of four individuals.
 - c. Candidates identified by the panel underwent interviews conducted by panels selected by the executive team.
 - d. A "meet and greet" session was organized for 44 stakeholders, consisting of:
 1. A 40-minute question-and-answer session based on inquiries submitted by attendees.
 2. Attendees were divided into two groups, allowing candidates to engage in informal Q&A for 20 minutes with each group.
 3. Following the candidates' departure, feedback was provided to the City Manager.
 - e. The City Manager will conduct one-on-one interviews with the two finalists and will make a final selection, pending Council approval.
 - f. The selected candidate will undergo a comprehensive background check, which will be managed in-house.

4. During the meet and greet, I inquired whether the Council had participated in any interviews or application screenings prior to the stakeholder meeting, to which the City Manager responded negatively.
5. I have no record of any formal request for a Council vote that would delegate the responsibility of appointing/hiring this non-elected official to the City Manager.
6. The aforementioned steps are closely aligned with the processes previously utilized for the selection of the City Attorney and City Engineer.

As we are currently in an election cycle where public safety is a primary concern for voters the timing is cause for pause. It is noteworthy that one of the final candidates expressed surprise at the speed of this process. I firmly believe that the decision regarding the next police chief should be made by the incoming Council rather than the current one.

Relevant provisions of our Charter include:

- Section 11, which states that appointed administrative officers, including the Chief of Police, shall be appointed by a majority of the Council.
- Section 22 outlines the City Manager's role in supervising administrative affairs but does not grant unilateral authority to appoint such officers without Council input.

The Beaverton City Charter states that a majority of the entire Council must appoint, manage, and remove the City Manager. This suggests that the term "appoint" indeed implies hiring rather than mere approval of an appointment made by the City Manager. I have attached Ordinance 2024-12 where it is clearly defined that the process currently undertaken is one in which the City Manager is making the "appointment" and the Council is merely "approving" that appointment. That is in direct conflict with the wording of the Charter.

In order to uphold the checks and balances intended by our Charter and given the aforementioned points, I formally request that a third-party attorney be retained to assess whether the City Manager has exceeded his authority in this and previous hiring process.

Chris Chenoweth

McMinnville City Councilor, Ward 1



CITY OF McMinnville
MINUTES OF THE DINNER MEETING of the McMinnville City Council
Held at the Kent L. Taylor Civic Hall on Gormley Plaza
McMinnville, Oregon
January 13, 2015 at 6:00 p.m.

Presiding: Rick Olson, Mayor

Recording: Rose A. Lorenzen, Recording Secretary

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Scott Hill	Alan Ruden
	Kevin Jeffries	Larry Yoder
		Kellie Menke

Also present were City Manager Martha Meeker, City Attorney Candace A. Haines, Community Development Director Mike Bisset, Planning Director Doug Montgomery, Finance Director Marcia Baragary, Councilor-Elect Remy Drabkin, and a member of the news media, Don Iler of the *News Register*.

DINNER

CALL TO ORDER: Mayor Olson called the Dinner Meeting to order at 6:30 p.m. and welcomed all in attendance. He noted that this was recently appointed City Manager Meeker's first Council meeting. Mayor Olson briefly reviewed the agenda.

APPOINTMENT OF POLICE CHIEF: City Manager Meeker pointed out that the City Council and former City Manager had allowed Interim Police Chief Scales to continue as interim Police Chief until the new City Manager was in her new position. She advised that in her opinion, Interim Chief Scales had done an exemplary job and had been serving in the interim position for six full months. She noted that it appeared that the Council had four options - 1) appoint Interim Chief Scales to Police Chief; 2) hold an internal recruitment; 3) open a recruitment to invite external applicants; or, 4) interview Mr. Scales and make a determination following the interview. Ms. Meeker advised that Interim Chief Scales had taken the Department through several major issues, including the recent stabbing/shooting event that occurred near Linfield College and she has heard nothing but very positive comments about his conduct and the conduct of the Department.

Extensive discussion followed. Each of the Councilors supported Mr. Scales, but also felt that they should have an opportunity to sit down as a group and visit with him. The Council asked whether such a discussion could occur in an Executive Session. City Attorney Haines advised that an interview with a prospective Chief of Police did not fall under the Executive Session requirements, but that they could certainly meet with Mr. Scales in an open meeting setting.

It was determined that the Council would ask staff to set a meeting time for them to meet with Interim Chief Scales.

ADJOURNMENT: Mayor Olson adjourned the Dinner Meeting at 7:02 p.m.

Rose A. Lorenzen, Recording Secretary

CITY OF McMinnville
MINUTES OF REGULAR MEETING of the McMinnville City Council
Held at the Kent L. Taylor Civic Hall on Gormley Plaza
McMinnville, Oregon

Tuesday, January 13, 2015 at 7:00 p.m.

Presiding: Rick Olson, Mayor

Recording: Rose A. Lorenzen, Recording Secretary

Councilors:	<u>Present</u>	<u>Excused Absence</u>
	Remy Drabkin	Scott Hill
	Kevin Jeffries	Paul May
	Alan Ruden	Larry Yoder
		Kellie Menke

Also present were City Manager Martha Meeker, City Attorney Candace A. Haines, Community Development Director Mike Bisset, Planning Director Doug Montgomery, Interim Police Chief Matt Scales, Finance Director Marcia Baragary, and a member of the news media, Don Iler of the *News Register*.

AGENDA ITEM

CALL TO ORDER: Mayor Olson called the meeting to order at 7:09 p.m. and welcomed all in attendance. He noted that the evening marked new City Manager Meeker's first meeting as McMinnville's new City Manager.

PLEDGE OF ALLEGIANCE: Councilor May led in the recitation of the Pledge of Allegiance.

INVITATION TO CITIZENS FOR PUBLIC COMMENT: Mayor Olson asked for comments from the audience regarding items not on the evening's agenda.

Mark Davis, 652 SE Washington Street, welcomed new City Manager Martha Meeker and City Councilor Remy Drabkin. Mr. Davis noted that his comments for this evening's meeting centered on the homeless issue and the tents located at the McMinnville Cooperative Ministry. He commended the City's flexibility regarding the matter, and noted that the issue needed the community's attention. He advised that homelessness is not a simple issue and that it would really take the involvement of many different members of the community to make a difference. The solutions are complex,

and he was a firm believer in housing first - housing for people, then work on the social needs of the individuals. He advised that there are several positive things happening in and around the community and suggested that perhaps Howie Harkema could discuss his group's ideas.

Mayor Olson assured Mr. Davis that this topic would be discussed at the Council's upcoming Goals and Objectives meetings.

Howie Harkema, 214 NW 15th Street, advised that he had been a homeless advocate since 2007 when he began serving with the St. Barnabus Soup Kitchen. He noted that he would like to find solutions to the homeless issue and invited the Council to a round-table discussion that was scheduled for an upcoming meeting at the McMinnville Library in the Carnegie Room. He advised that he had been working on a "homeless center" (Community Outreach of McMinnville) which would be an all inclusive, collaborative, community-oriented center that would provide vocational training, and would also include education training designed to help people pass their GED test. People would be able to sleep at the center, but they could not "flop" - they would have to work at the center doing janitorial or other duties that needed attention. He advised that he has also invited all area churches to have a satellite office at this location. He advised that he would send out a meeting reminder to the Council.

Mayor Olson thanked Mr. Harkema for his comments and commended him on his goals for the homeless.

Michael Wilson, 715 SW Baker Street (office) and 21202 NW High Heaven Road (residence) spoke to the City Council regarding the City's Transportation System Development Charges (SDCs). He advised that he had met with staff in mid-2013 to discuss construction of a new veterinary clinic next to his current clinic on SW Baker Street. He advised that when he finally received his loan for construction, which was a fairly lengthy process, he discovered that the fees had risen dramatically, up approximately \$32,000. He advised that he did not know when the new fees had gone into effect, but he believed that any projects that were under consideration prior to enactment of the new fee schedule should have been fallen under the old fees.

Community Development Director Bisset stated that Mr. Wilson had been in the office and had met with staff quite some time before the SDC matter had come before the City Council. He advised that no permits had been pulled for the project and staff had no way of knowing whether Mr. Wilson was moving forward with his construction plans. Mr. Bisset advised that the process had included numerous notifications to the building community and also several public meetings. These occurred several months in advance of implementing the SDC changes. He reminded the City Council that when the new SDC ordinance was adopted, they

allowed several months for folks to get their applications in under the old fee schedule.

Councilor Hill agreed and remembered the lengthy discussions that occurred. He explained that the City was behind in keeping streets and utilities maintained.

Mr. Wilson responded that he did not believe that it had been a fair process and he was not notified.

Additional discussion occurred, following which Mayor Olson promised that the City Council would give this matter more discussion.

OATH OF OFFICE: City Attorney Haines first administered the Oath of Office to newly-elected City Councilor Remy Drabkin. Following her oath, Ms. Drabkin took her place at the dais.

The Oath of Office was then administered to returning Councilors Ruden and Jeffries, both of whom were beginning their second full term as City Councilor.

ELECTION OF COUNCIL PRESIDENT: Mayor Olson explained that each January of odd-numbered years, a new Council President is elected. The individual elected is a senior Councilor who has not served as Council President in the past.

Councilor Hill MOVED to appoint Councilor Jeffries as Council President; SECONDED by Councilor Ruden. Motion PASSED unanimously.

CONSIDER MINUTES: Councilor Yoder MOVED to approve the minutes of the November 18, 2014 Dinner and Regular City Council meetings; SECONDED by Councilor Jeffries. Motion was approved unanimously.

1

NEW BUSINESS

1 a

APPOINTMENT OF POLICE CHIEF: Mayor Olson advised that the Council had discussed the appointment of Police Chief at its Dinner Meeting and asked Councilor Yoder to recap that discussion.

Councilor Yoder stated that the entire Council felt as though the interim appointment of Matt Scales as Police Chief had gone on far too long, yet they had been anxious to have the new City Manager's input into the process. The Council has been very pleased with the job Interim Chief Scales has done and they would like to get to know him better. He advised that all were looking forward to a longer term relationship.

Each of the Councilors affirmed Councilor Yoder's remarks and advised that they were all looking forward to learning more about Interim Chief Scales.

Mayor Olson asked City Manager Meeker to schedule a meeting as quickly as possible so that the Council could take action at its second meeting in January.

Interim Chief Scales thanked the Mayor and Council for the opportunity to discuss his philosophy and passion regarding the Police Department and stated that he looked forward to meeting with them.

2

ORDINANCES

2 a

AMENDING THE DEVELOPMENT PLAN FOR THE ASPIRE SUBDIVISION TO ALLOW RESIDENTIAL USE IN AN AREA CURRENTLY PLANNED FOR COMMUNITY OPEN SPACE: Planning Director Montgomery recalled that in October 2014 the Planning Department received an application from Habitat for Humanity to amend the development plan for its Aspire subdivision. He advised that the Planning Commission heard the matter at its November 20, 2014 Planning Commission meeting. Following the public hearing, the Planning Commission voted to recommend approval of the application to the City Council. He reminded the City Council that although the original application had been a very contentious matter, the amendment to the original application had garnered positive public testimony from one of those originally opposed to the subdivision.

Following a brief discussion by the City Council, Mayor Olson asked City Attorney Haines to read the ordinance by title only.

City Attorney Haines read by title only Ordinance No. 4986 amending the development plan for the Aspire subdivision to allow residential use in an area currently planned for community open space. (No Councilor present requested that the ordinance be read in full.) The title of the ordinance was read for the second time.

Ordinance No. 4986 PASSED by a unanimous roll-call vote.

II B

AMENDING CHAPTER 13 OF THE McMinnville MUNICIPAL CODE AND ORDINANCE NUMBERS 4508-A, 4510, 4511, 4622, 4653, 4761, AND 4852 RELATING TO THE OPERATIONS AND FINANCING OF THE SANITARY SEWER SYSTEM: Community Development Director Bisset referred the Council to the materials located in their information packets. He explained that it had been a lengthy journey to update the Municipal Code as it related to the City's pretreatment functions. He explained that the code changes are necessary to incorporate federally mandated changes to the City's pretreatment program. He advised that following the City's public hearing in December, the Environmental Protection Agency had a 30-day window of opportunity to comment on the process; however, no comments were received.

Mr. Bisset recognized Pretreatment Coordinator Corissa Holmes for her leadership that brought this very lengthy

process to a positive end. He also recognized Wastewater Services Division Manager Dave Gehring who mentored Ms. Holmes throughout the process.

Each of the City Councilors and Mayor Olson expressed their appreciation to the Wastewater Services staff for working through a rather difficult process.

City Attorney Haines read Ordinance No. 4987 amending Chapter 13 of the McMinnville Municipal Code and Ordinance Numbers 4508-A, 4510, 4511, 4622, 4653, 4761, and 4852 relating to the operations and financing of the sanitary sewer system. (No Councilor present requested that the ordinance be read in full.) The title of the ordinance was read for the second time. Ordinance No. 4987 PASSED by a unanimous roll-call vote.

3 RESOLUTIONS

3 a DESIGNATING THE CITY MANAGER OF THE CITY OF McMINKVILLE TO SERVE AS BUDGET OFFICER: Finance Director Baragary advised that the proposed resolution was a housekeeping item and is required by the State of Oregon's Local Budget Law.

Councilor Hill MOVED to adopt Resolution No. 2015-1 designating the City Manager of the City of McMinnville to serve as budget officer; SECONDED by Councilor Yoder. Motion PASSED unanimously.

3 b MAKING CERTAIN BUDGETARY TRANSFERS FOR FISCAL YEAR 2014-2015: Finance Director Baragary stated that unanticipated events occurred during the current fiscal year that had not been planned. Recently, major issues with the heating, ventilation, air condition (HVAC) system in the City-owned Chamber of Commerce building occurred. Following investigation into the matter, it was determined that the best use of funds was to purchase a new HVAC unit. Additionally, a significant water leak was discovered in the shower rooms at the Community Center. Due to the age of the facility, damage occurred to the shower pan in the floor of the men's shower room and to the grout and caulking in the men's and women's shower rooms. It was important to address the issue immediately and the repair has been completed.

A short, general discussion regarding required maintenance at the Community Center ensued. Following discussion, Councilor Ruden MOVED to adopt Resolution No. 2015-2 making certain budgetary transfers for fiscal year 2014 - 2015; SECONDED by Councilor Jeffries. Motion PASSED unanimously.

4 ADVICE / INFORMATION ITEMS

ADD ITEM: Mayor Olson advised that he would be reviewing City Councilor assignments to committees and that if any were interested in any particular committee or board, please let him know.

5

ADJOURNMENT: Mayor Olson adjourned the meeting at 8:39
p.m.

Rose A. Lorenzen, Recording Secretary

7

CITY OF McMinnville
MINUTES OF THE SPECIAL MEETING of the McMinnville City Council
Held at the Kent L. Taylor Civic Hall on Gormley Plaza
McMinnville, Oregon
January 21, 2015 at 6:00 p.m.

Presiding: Rick Olson, Mayor

Recording: Rose A. Lorenzen, Recording Secretary

Councilors: Present Excused Absence

Scott Hill	Alan Ruden	Remy Drabkin
Kevin Jeffries	Larry Yoder	Kellie Menke

Also present were City Attorney Candace A. Haines, citizen Mark Davis, and a member of the news media, Don Iler of the *News Register*.

CALL TO ORDER: Mayor Olson called the meeting to order at 1:00 p.m. and advised that the sole purpose of the meeting was to have a discussion and interview of interim Police Chief Matt Scales.

Interim Chief Scales thanked the Mayor and City Council for the opportunity for all to sit down and get to know one another better - leadership styles, visioning thought processes, and the like.

Interim Chief Scales discussed his passion for the City of McMinnville and its citizens, advising that he believed McMinnville to be a true community. He stated that he believed the Police Department employees were fantastic and noted that he had been given a six-month interim period, during which he and the Department had worked through some very difficult times. He felt those times had made him a better person and, potentially, a better Chief.

A question and answer period ensued with each of the Councilors asking questions of Interim Chief Scales.

Following the discussion and interview session, each of the Councilors thanked Interim Chief Scales for the insights that he provided them. Mayor Olson asked for a motion and second to appoint Interim Chief Scales to the position of Police Chief and to direct the City Manager and City Attorney to finalize the necessary paperwork.

Councilor Hill MOVED to appoint Interim Police Chief Matt Scales to the position of Police Chief and to direct the City Manager and City Attorney to prepare all necessary paperwork; SECONDED by Councilor Ruden.

The motion PASSED by a unanimous roll-call vote. Mayor Olson noted for the record that both Councilors Drabkin and Menke had previously given their support to the appointment. He advised that the new Chief of Police would be sworn in at the January 27, 2015 City Council Meeting.

ADJOURNMENT: Mayor Olson adjourned the Special Meeting at 3:00 p.m.

Rose A. Lorenzen, Recording Secretary

RESOLUTION NO. 2024-12

A Resolution Approving the Appointment of a new City Attorney and new Public Works Director.

RECITALS:

WHEREAS, City Manager Jeffrey R. Towery appointed David Ligtenberg as City Attorney with service commencing on October 30, 2023; and

WHEREAS, City Manager Jeffrey R. Towery appointed Geoffrey Hunsaker as Public Works Director with service commencing on February 23, 2024; and

WHEREAS, City Manager Towery has recommended that the City Council approve his recommended appointments as provided by Section 11 of the City Charter.

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

1. City Manager Towery's recommended appointment of David Ligtenberg with service commencing on October 30, 2023, is hereby approved.
2. City Manager Towery's recommended appointment of Geoffrey Hunsaker with service commencing on February 23, 2024, is hereby approved.
3. This Resolution will 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 12th day of March, 2024, by the following votes:

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

Nays: _____

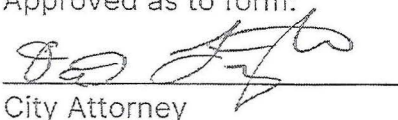
Abstain: _____

Approved this 12th day of March 2024.



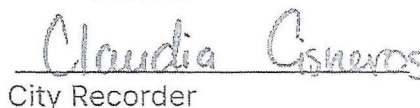
MAYOR

Approved as to form:



City Attorney

Attest:



City Recorder

From: [Anna Barsotti](#)
To: [City Recorder Team](#)
Subject: Support for Culture, Parks and Recreation Project
Date: Monday, November 11, 2024 11:35:39 AM

This message originated outside of the City of McMinnville.

To Whom it May Concern,

I am writing this email in support of the Culture, Parks and Recreation Project that Susan Muir will be presenting to the Council on Tuesday, November 12th, 2024. I understand that the operating costs will be the main presentation, and I want to express my strong support for the project and my respect and admiration for those who have worked so diligently on this project on behalf of our community.

I have benefited from every aspect of our City's offerings: the pool and fitness center for myself and my children's swim teams, attending our church services while our congregation rented space from the Senior Center, innumerable hours at the Community Center playing basketball, watching and participating in music events and plays, holiday gatherings, fundraisers and special dinners, and supporting my kids through gymnastics and the basement Kidlandia zone. The sports teams, fields and parks have been places where I played, worked and fostered relationships with people from all walks of local life - and where now my own children do the same. And the library - how I love the library and save hundreds of dollars every year with their fabulous checkout system; I know so many folks rely on that space for free internet and computers, Carnegie Room usage, and the heartwarming Holiday Craft Fair tradition. In fact, it is for this reason that I am not delivering this message of support in person to the Council on Tuesday - I will be attending an event I have had on my calendar for months - an author visit. I first heard this author, Dion Leonard, on a podcast in 2020, telling his story and it was so wonderful that it has stuck with me for years. When I saw that he was coming to McMinnville, our McMinnville (!), I could hardly believe it and made sure that I could attend; to know that someone of this caliber is coming to tell his story (with his famous dog) just speaks for our community's need to dig deep and fully and truly commit to maintenance and creation of the places and spaces that continue to foster learning, wellness and connection.

Thank you for your time and consideration, and your continued good efforts,

Anna Barsotti

[REDACTED]
McMinnville, OR. 97128
[REDACTED]

From: [Ileana Barsotti](#)
To: [City Recorder Team](#)
Subject: Support for Culture Parks and Recreation Project
Date: Monday, November 11, 2024 11:50:50 AM

This message originated outside of the City of McMinnville.

My name is Ileana Barsotti and I am submitting this testimony in support of the culture parks and recreation project. I have grown up using McMinnville sports facilities. Whether it be playing soccer at Joe Dancer, scooting around in tiny tots, club swimming for 7 years, or playing tennis and pickleball at our local courts. Having the resources to get outside and be active have been monumental in my life, creating lasting friendships, exercise, and helping me feel closer to the McMinnville Community. However, I am also increasingly aware of the need for new recreational buildings. I want all kids in McMinnville to have the same (and even better) experiences using McMinnville facilities that I have had, and I know that with continuing issues and deterioration of buildings that is not possible for many kids. I am regretful that I am unable to attend the meeting tonight, but I have chosen to support many of my close friends on the high school boys soccer team as they play in the semifinals. Many of these friends I have known from time at public swimming, soccer practice, playing at parks, or our current obsession pickleball. There is so much positive that can come from The Culture Parks and Recreation Project, and I hope that you, the council, see that positive and make it central to what you support, for the betterment of all people in Mac.

Ileana Barsotti
Senior at Mac High
[REDACTED]. Mac.

From: [Henry Barsotti](#)
To: [City Recorder Team](#)
Subject: City Council Meeting 11/12 Testimony
Date: Monday, November 11, 2024 12:00:33 PM

This message originated outside of the City of McMinnville.

Dear City Council,

My name is Henry Barsotti, and I am writing in support of the Parks and Recreation Bond to be put on the May ballot. I am unable to attend the meeting in person because I will be supporting the Mac High Boys Soccer team during that time.

As an employee for McMinnville Parks & Recreation, I experience first-hand how the spaces that we use affect families and citizens of McMinnville on a day to day basis. I recognize how new facilities will greatly impact opportunities in a positive way for everyone that uses them. Investing in our future will pay off, even though it will be hard.

Thank you,

Henry Barsotti

ENTERED INTO THE RECORD
DATE RECEIVED: 11/12/2024
SUBMITTED BY: Lisa Macy-Baker
SUBJECT: Public Comment

From: [lisa macy](#)
To: [City Recorder Team](#)
Subject: Public comment for 11/12 city council
Date: Monday, November 11, 2024 9:20:07 PM
Attachments: [We sent you safe versions of your files.msg](#)
[Public Comment - CPR operating.pdf](#)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated outside of the City of McMinnville.

Thank you!
Lisa Macy-Baker

McMinnville City Council,

Thank you and our Parks and Rec department for their work, time and dedication to improving the future of our recreation facilities and open spaces. The work done over the last decade to get to this point is considerable and should not be stifled.

Growing up in 1980s McMinnville, I greatly benefited from just about every Mac Park and Rec programs. Since, McMinnville has doubled in size. Yet, my kids are playing in the same facilities and gyms and on the same fields that are in considerably worse shape and busting at the seams.

It is time to invest in our community and its future by supporting a bond with an operating and maintenance plan. The return on investment will be improved community safety, improved livability and desirability, economic gain, and improved physical and mental health of our citizens. Quality public recreation and enrichment facilities build and bring communities together.

Please see attached article.

Thank you for your time and service,

Lisa Macy-Baker

Executive Director – McMinnville Community Tennis Association

Board Member – McMinnville Swim Club

Volunteer Youth Basketball Coach – McMinnville Basketball Association (former P&R)

Soccer, basketball, swim and tennis parent

The Benefits Of Youth Sports In Local Communities (And How Businesses Can Support Them)

Jason Clement

Former Forbes Councils Member

Forbes Business Council

COUNCIL POST | Membership (Fee-Based)

There's no question—well, at least there shouldn't be—about the importance that recreation, youth sports and park systems play in supporting, serving and improving a community. Whether it's a rural town or a bustling metropolitan city, these assets can be both popular and important.

Outside of the obvious [benefits](#) of physical activity the CDC highlights to one's physical, mental and emotional health and well-being, [studies](#) have shown that well-designed and planned parks have the potential to reduce crime.

However, budgets for parks and recreation are tightening in an unstable economy. In New York City, for example, Mayor Eric Adams [allocated](#) \$63 million less for the parks department in his preliminary budget proposal than in the previous budget

Parks and recreation and, subsequently, youth sports, amateur adult and senior activities should remain a priority. As communities evolve in 2023 and beyond, youth sports and related facilities should play a significant role when elected officials respond to the needs of their constituents. Here are four ways youth sports can impact local government and how businesses can support them.

1. Sports tourism can drive a community.

Communities founded on industries like tobacco, textiles, cotton, rail and other traditional commerce systems are searching for new ways to evolve and reinvent themselves. Other emerging or previous bedroom suburbs can also rely on youth sports and sports tourism as a catalyst. For example, we manage an event center in a small city originally built on rail transportation, textiles and agriculture. Our work helped revitalize the city's downtown area and generated millions of dollars in economic impact in 2022. Development opportunities, commerce and visitation have all followed.

If communities aren't growing, they're dying, and youth sports can provide a much-needed stimulant.

2. Youth sports add economic vitality.

Driving tourism and visitors can have a significant impact on the economic vitality of a community. The communities with the assets and facilities that are proactively attracting those events and participants made up of families in their community tend to be more vibrant, spur economic growth and drive a higher tax base in the community.

According to SportsETA, the sports tourism sector had a direct spending impact of [\\$39.7 billion](#) that year. Its growth seems likely to continue, as Wintergreen Research ([via Hospitalitynet](#)) expects the global youth sports industry alone to reach \$77.5 billion by 2026.

3. Physical activity can support mental health.

Sports and health go hand in hand. Regular physical activity is “one of the most important things you can do for your health,” according to the Centers for Disease Control and Prevention. Not only can being physically active help manage weight, strengthen muscles and bones, and reduce the risk of disease, but it can also improve brain health. These benefits are arguably even more vital for youth. According to the CDC, the benefits of physical activity include improved thinking or cognition for children ages 6–13 and reduced short-term feelings of anxiety for adults.

4. It can improve quality of life.

Like a proudly displayed storefront, beautiful green spaces or multisport facilities can be an anchor for an entire community and its visitors.

Investing in these areas brings in more economic opportunity and, thus, can improve the quality of life of those in and around the community. Local restaurants, accommodations and stores are often bolstered by sports tourism, aiding their local employees, managers and owners.

Communities can be improved in every measurable way by the existence of a healthy and vibrant sports, recreation and park ecosystem.

Private sector and corporations can play a significant role.

If you are a leader of a private corporation, there are several ways to participate and benefit from the sports and recreation industries. Let's explore a few key areas: real estate development, design and construction, and community growth.

Real Estate Development And Economic Growth

When a local community is considering sports and recreation development, it should consult local businesses. How will a youth sports complex impact their customer base and foot traffic? Youth sports facilities attract participants, spectators and their families, which can lead to increased spending in the local community. This spending includes hotel accommodations, dining, shopping and other related services, all of which should be included in the conversation about development.

Design And Construction

If you are a community that has gone through a feasibility study and has decided to move forward to a design and construction stage, advocate for using local firms and suppliers for materials and services wherever possible. With proper guidance, a qualified local provider can support the local economy and foster a sense of community engagement. Providing national trends and guidance to local firms allows for greater customization and helps ensure that the facilities align with the specific needs of the community.

A new facility equals job creation. When planning for the construction stage, consider local contractors, architects, engineers and construction firms to provide them with opportunities to participate in the projects. This supports the local workforce and stimulates job growth within the community. Once the facility is open, I recommend a national search for leadership, but the vast majority of operational hires should be made locally.

Community Growth

Sports tourism and the marketing engine behind it should go beyond parks and rec departments, sports commissions, or convention and visitor bureaus (CVBs). Business

leaders and operators of hotels, restaurants and retail locations should help promote their sports facilities as destinations for tournaments, competitions and events. This attracts participants, families and spectators from other regions and can generate revenue for the local community through accommodation, dining, transportation and leisure activities. Sports tourism can boost local businesses and strengthen the reputation of the community as a sports hub.

I believe our industry exists to help to improve the health and economic vitality of communities across the country. Specifically, the mental, social, spiritual and physical health of a community can all improve because of the work we do with our partners in local government and the private sector.

[Forbes Business Council](#) is the foremost growth and networking organization for business owners and leaders. *Do I qualify?*

<https://www.forbes.com/councils/forbesbusinesscouncil/2023/06/27/the-benefits-of-youth-sports-in-local-communities-and-how-businesses-can-support-them/>

From: [Jason Bizon](#)
To: [City Recorder Team](#)
Subject: Parks and Recreation Cost Analysis
Date: Tuesday, November 12, 2024 10:51:44 AM

This message originated outside of the City of McMinnville.

To Whom it May Concern

I am submitting an initial letter of support to explore the opportunities and expenses for expanding and revitalizing our parks and recreation department which include athletic fields and swim center. As someone who has been involved in youth sports for over 15 years the need to evaluate our current facilities and fields are increasingly evident. I have had the opportunity to travel the United States and the communities that support their athletic fields, and green spaces are communities that thrive. I have also had the opportunity to travel to local communities here in Oregon to compete and participate in sports related activities. Those recreation department that intentionally prioritize their outdoor athletic activities are truly impressive. I also know there is a path to monetize those facilities here in Oregon, especially in turf fields for soccer, baseball and softball diamonds. Joe Dancer has served this community well for many years, however trying to manage a natural grass environment along a rivers flood plain cannot be our long-term solution. As you look at our community aquatic center and tally the amount of deferred maintenance it can only bring to light the question of the value proposition of “fix up” or start over? Our local pool provides a great service to our community, but also our local school district and its student athletes.

JASON BIZON



Dear McMinnville City Council Members,

My name is Andrew Larkin, I am proudly serving as President of McMinnville Soccer Club, Yamhill County's largest youth sports organization. We currently serve 300 families and thousands of McMinnville residents who work to build a connected community through soccer. We've been serving McMinnville as a 501(c)(3) for over 40 years, and we are excited to continue serving for another 40 years!

Today I am, you guessed it, at a soccer game, so I've chosen to write to you with an expression of strong support for the upcoming municipal bond proposal. This bond represents an essential investment in badly needed, and severely overdue infrastructure upgrades needed to support our growing community's passion for sport, which is a necessary outlet for many McMinnville residents to maintain physical and mental well-being.

Our community's need for new facilities is clear. Currently, over 800 children participate in parks and recreation soccer, almost 300 in club soccer, approximately 150 in the high school program, and several self-organized adult teams with 50 to 100 players regularly using local fields. These numbers reflect a growing demand for year-round access to safe, reliable facilities that can be used by athletes all year long—amenities that, to date, our community lacks. For years, youth in our community have had to travel outside McMinnville to access year-round facilities. This not only puts our community at a disadvantage but also directs valuable resources and spending away from our local economy. We have seen in recent years a small group of year round soccer families collectively spending between \$30-\$50k in programs outside of McMinnville in other communities where they can find the athletic resources they need. The bond proposal provides a unique opportunity to change this, ensuring that future generations have the space they need to grow, develop, and excel in a sport that unites so many in McMinnville.

Today, our high school boys' soccer team is playing in the state semifinals (which is why I am not able to attend in person) with a real shot at becoming state champions. Their journey is remarkable, yet these young athletes have been supported almost exclusively through resources arranged by their families and nonprofit organizations, rather than through the infrastructure provided by our city. In neighboring Oregon communities, municipal turf fields offer youth and adult players a safe and consistent space to train



year-round. Here, players make do with mud, flooding, and uneven fields at Joe Dancer Park. Still, they persevere—playing in the rain, mud, and muck because soccer is more than a pastime; it’s a cherished cultural experience and a community connector. While the disparities in resources are obvious, the soccer community, especially the youth in McMinnville, have never let this slow them down, and we’ve finally reached a time and space where we can choose to stand behind these athletes, otherwise we risk letting their voices drift into the wind.

Our soccer community is composed of many hardworking families who, because of job demands and socio-economic barriers, often cannot attend city council meetings to make their voices heard. These residents deserve to have their needs recognized, especially as they are often overlooked in favor of louder, more affluent groups who have the time and resources to advocate for more swimming pools, and more pickleball nets. The proposed bond is a chance for the city to prioritize equitable access to resources that will benefit the entire community.

The need for a turf, lit field is about more than just soccer. It’s about providing adolescents and adults alike with an outlet for healthy physical activity, promoting mental well-being, and creating a shared space where community bonds can thrive. For our young people, these facilities are instrumental to their development and future success, and for our community, this is a step toward a more inclusive and supportive McMinnville.

For these reasons, McMinnville Soccer Club and the community we represent fully support this city bond. We urge you to make this investment a reality for McMinnville and help us provide the quality amenities that all our residents deserve.

Thank you for your commitment to making McMinnville a better place for all.

Sincerely,
Andrew Larkin
Interim President, McMinnville Soccer Club

STAFF REPORT

DATE: November 12, 2024
TO: Jeff Towery, City Manager
FROM: Scott Burke, Acting Finance Director
SUBJECT: City Services Charge Status, Annual Review and Resolution

Strategic Priority and Goal:



CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize & deliver municipal services with discipline and focus.

Report in Brief:

The City Services Charge was established by Ordinance 5123 in September of 2022 with its first billing cycle in January 2023. The ordinance established an automatic increase each calendar year based on consumer price index (CPI) data, specifically the September CPI-U West C index, not to exceed 5% in a single year. The Council is able to defer any portion or all of the increase by resolution.

The CPI for this year indicates a 2.1% year over year increase.

A resolution deferring the increase is not included as a CPI increase was included in the adopted budget for the year, anticipating that CY rates will increase as established in Ordinance 5123.

City Services Charge Financial Status – FY2023-24 review

The City Services Charge (CSC) was implemented starting in January 2023 with six months of activity recorded for the prior fiscal year. Last year at this time, the financial analysis of CSC for the prior fiscal year projected a 1.8% higher net amount of unrestricted resources made available for city core services funded through the General Fund relative the budget with no fee increase from calendar year 2023 to 2024. Based on this, Council believed it made sense not to change the CSC rates and, by ordinance, passed resolution 2023-62 adopting the continuation of the prior year's rates.

Actual FY24 activity ended up being \$10,800 (0.5%) less than budgeted net added resources to the General Fund. The graph shows the data presented last fall to Council

City Services Charge Financial Summary FY2023-24

	FY24 Budget	FY24 Est*	Variance to Est		FY24 Actual	Variance relative budget	
Revenue	2,203,000	2,237,717			2,202,033		
Expense (MWL billing services)	145,800	143,323			155,664		
Net unrestricted resources	2,057,200	2,094,395	37,195	1.8%	2,046,369	-10,831	-0.5%

* estimate is based on first two months of FY24 activities being extended for the remainder of the fiscal year in Oct 2023 when opted not to do a CPI increase.

with the actual data added to the right of those estimates from a year ago. The reason for the higher than anticipated FY2023-24 expenses was a final invoice for one-time implementation costs from our billing partner, McMinnville Water and Light (MWL).

City Services Charge Financial Status – FY2024-25 projections

In the FY2024-25 adopted budget, a CPI estimate of 3% was included for CY2025 for revenue. The current year budget includes a CSC administrative cost increase relative the prior fiscal year’s carrying costs of 5%.

FY2024-25 updated projection is calculated based on the first three months of actual revenue and expense activity, assuming a 2.1% increase for CY2025 months, and updated estimates for administrative services from MWL starting in January 2025.

The updated data indicates that the net unrestricted resources generated from the CSC will likely be \$12,700 less than budgeted. This result is largely driven

City Services Charge Financial Estimates FY2024-25			
	FY25 Budget	FY25 Est*	Variance to Est
Revenue	2,240,000	2,226,614	
Expense (MWL billing services)	154,750	154,083	
Net unrestricted resources	2,085,250	2,072,531	(12,719) -0.6%

* estimate is based on first three months of FY25 actuals, prior year’s revenue for Oct-Dec and the 2.1% CPI applied to Jan-Jun’s prior year revenues as provided in Ordinance 5123

by the lower actual CPI of 2.1% relative the budgeted 3% figure for CY2025 revenues.

City Services Charge CY2025 automatic CPI increase rates

Implementing the automatic CPI update will result in single family homes having a \$13.27 monthly charge, multi-family (which includes manufactured homes) will be \$9.95 and households qualifying for low income charge will be \$1.33.

	CY23+24	CY25
Single Family	\$13.00	\$13.27
Multi-Family	\$9.75	\$9.95
Low Income	\$1.30	\$1.33

The monthly rate structure for commercial properties table is shown in detail here. As a reminder, the smaller water meter sizes are tied to the single family home charge with increasing meter sizes going up by the factors noted in the table.

5/8" water meter	\$13.27	100% standard rate
3/4" water meter	\$13.27	100% standard rate
1" water meter	\$22.17	167% standard rate
1 1/4" water meter	\$26.55	200% standard rate
1 1/2" water meter	\$44.20	333% standard rate
2" water meter	\$70.75	533% standard rate
3" water meter	\$141.62	1067% standard rate
4" water meter	\$221.26	1667% standard rate
6" water meter	\$442.39	3333% standard rate
8" water meter	\$707.85	5333% standard rate
10" water meter	\$1,858.22	14000% standard rate

September Consumer Price Index (CPI) for all Urban Consumers in the West Region

In the ordinance, Section 5 describes the annual increase mechanism.

Section 5. **ADJUSTMENT OF CITY SERVICES CHARGE.** The amount of the city services charge shall automatically increase annually based upon the September CPI-U West C index figure published by the federal government. The adjustment shall not exceed five percent in one year. The City Council may elect to defer all or any portion any such increase by Resolution of the City Council.

The CPI information from the Bureau of Labor Statistics is below. CPI for the prior year had been 3.9%. These west region metrics show that inflation has been moderating substantially, down by 46%.

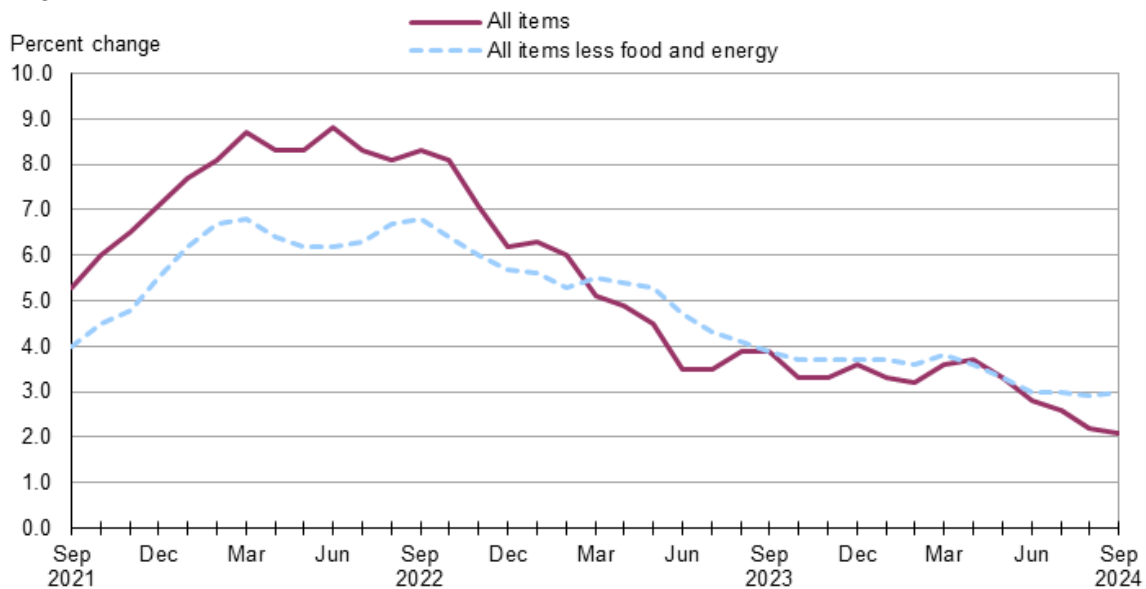
Consumer Price Index, West Region — September 2024

Area prices were up 0.2 percent over the past month, up 2.1 percent from a year ago

Prices in the West Region, as measured by the Consumer Price Index for All Urban Consumers (CPI-U), increased 0.2 percent in September, the U.S. Bureau of Labor Statistics reported today. (See [table A.](#)) The September increase was influenced by higher prices for apparel. (Data in this report are not seasonally adjusted. Accordingly, month-to-month changes may reflect seasonal influences.)

Over the last 12 months, the CPI-U rose 2.1 percent. (See [chart 1](#) and [table A.](#)) Food prices advanced 2.5 percent. Energy prices declined 9.7 percent, largely the result of a decrease in the price of gasoline. The index for all items less food and energy increased 3.0 percent over the year. (See [table 1.](#))

Chart 1. Over-the-year percent change in CPI-U, West region, September 2021–September 2024



Source: U.S. Bureau of Labor Statistics.

City Services Charge Additional Considerations

Further administrative work is required to create and bring online a management program for the past due payments sent to the Finance Department from McMinnville Water and Light's support services team. At FY24 year end, these delinquent payments totaled \$33,600, after allowance for uncollectable amounts.

The delinquencies reflect 15 months of activity (of the six months CSC was active in FY23, delinquency account transfers from MWL began three months after the first invoice) and over 6,700 records. After exclusions of uncollectable accounts, 3,200 individual delinquent payments for 1,300 different payers are represented in the \$33,600 outstanding revenue.

The cost of recovering these delinquent payments will approach, and potentially exceed, the value of the revenue due the City. That said, staff does not recommend forgiving the delinquent payments. The project to solve the delinquency processing issue is among the financial activities that the finance department has on its pending actions list.

In addition, the Finance Department aspires to build a more extensive program for qualifying payers for the low-income monthly rate.

Both of these activities would have impacts on the bottom line of resources available for core services programming that are not reflected in the FY25 financial estimates.

Fiscal Impact:

Financial prudence lies in keeping up with CPI movements so that the purchasing power of the revenue source does not erode over time. This is an issue which we are familiar with in McMinnville and is a driver of the structural issues associated with the way local government is largely funded in Oregon.

For this reason, as well as the fact that in the prior year no CPI increase was adopted, staff recommends that the ordinance's automatic increase be applied.

Options for Action:

1. Take no action and allow the ordinance's CPI rate increase provision to move forward in January 2025.
2. Instruct staff to put together a resolution to defer or apply an alternative, lower rate increase in January 2025 of
 - a. 2%
 - b. 1%



City of McMinnville

July 2024

CASH AND INVESTMENT BY FUND

FUND #	FUND NAME	GENERAL OPERATING		
		CASH IN BANK	INVESTMENT	TOTAL
01	General	\$1,736,024.56	\$8,568,377.13	\$10,304,401.69
05	Grants & Special Assessment	\$359.13	\$522,057.52	\$522,416.65
07	Transient Lodging Tax	\$956.41	\$146,000.00	\$146,956.41
08	Affordable Housing	\$670.54	\$951,000.00	\$951,670.54
10	Telecommunications	\$101.99	\$2,030.00	\$2,131.99
15	Emergency Communications	\$535.67	\$165,094.81	\$165,630.48
20	Street (State Tax)	\$783.78	\$2,228,949.26	\$2,229,733.04
25	Airport Maintenance	\$429.84	\$1,078,749.03	\$1,079,178.87
45	Transportation	\$9.03	\$6,054,494.92	\$6,054,503.95
50	Park Development	\$748.25	\$3,020,441.49	\$3,021,189.74
58	Urban Renewal	\$7.65	\$10,000.00	\$10,007.65
59	Urban Renewal Debt Service	\$403.69	\$1,323,883.29	\$1,324,286.98
60	Debt Service	\$669.39	\$206,387.05	\$207,056.44
70	Building	\$790.34	\$2,282,240.37	\$2,283,030.71
75	Wastewater Services	\$905.86	\$1,293,781.92	\$1,294,687.78
77	Wastewater Capital	\$417.81	\$39,234,103.65	\$39,234,521.46
80	Information Systems & Services	\$534.63	\$227,742.38	\$228,277.01
85	Insurance Reserve	\$691.73	\$361,290.54	\$361,982.27
99	Fire District Transition Fund	\$112.56	(\$3,000.00)	(\$2,887.44)
CITY TOTALS		1,745,152.86	67,673,623.36	69,418,776.22

MATURITY DATE	INSTITUTION	TYPE OF INVESTMENT	INTEREST RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.85%	\$1,745,152.86
N/A	Key Bank of Oregon	Money Market Savings Account		\$0.00
N/A	State of Oregon	Local Government Investment Pool (LGIP)	5.20%	\$46,480,300.60
N/A	Umpqua Bank	Money Market Savings Account	5.45%	\$10,576,219.79
6/11/24	Umpqua Bank	Certificate of Deposit	5.39%	\$10,617,102.97
				<u>\$69,418,776.22</u>



City of McMinnville

August 2024

CASH AND INVESTMENT BY FUND

FUND #	FUND NAME	GENERAL OPERATING		TOTAL
		CASH IN BANK	INVESTMENT	
01	General	\$2,483,811.50	\$6,862,855.61	\$9,346,667.11
05	Grants & Special Assessment	\$130.89	\$609,057.52	\$609,188.41
07	Transient Lodging Tax	\$109.84	(\$7,000.00)	(\$6,890.16)
08	Affordable Housing	\$668.08	\$930,000.00	\$930,668.08
10	Telecommunications	\$83.87	\$4,030.00	\$4,113.87
15	Emergency Communications	\$830.86	\$171,094.81	\$171,925.67
20	Street (State Tax)	\$484.82	\$1,928,719.04	\$1,929,203.86
25	Airport Maintenance	\$714.48	\$1,106,749.03	\$1,107,463.51
45	Transportation	\$516.48	\$6,141,494.92	\$6,142,011.40
50	Park Development	\$286.75	\$3,039,441.49	\$3,039,728.24
58	Urban Renewal	\$644.95	(\$12,000.00)	(\$11,355.05)
59	Urban Renewal Debt Service	\$386.17	\$1,238,874.77	\$1,239,260.94
60	Debt Service	\$424.00	(\$1,991.55)	(\$1,567.55)
70	Building	\$773.14	\$2,348,240.37	\$2,349,013.51
75	Wastewater Services	\$30.47	\$1,293,283.16	\$1,293,313.63
77	Wastewater Capital	\$429.22	\$37,570,103.65	\$37,570,532.87
80	Information Systems & Services	\$647.22	\$198,742.38	\$199,389.60
85	Insurance Reserve	\$804.31	\$370,290.54	\$371,094.85
99	Fire District Transition Fund	\$45.56	(\$5,000.00)	(\$4,954.44)
CITY TOTALS		2,491,822.61	63,786,985.74	66,278,808.35

MATURITY DATE	INSTITUTION	TYPE OF INVESTMENT	INTEREST RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.85%	\$2,491,822.61
N/A	Key Bank of Oregon	Money Market Savings Account		\$0.00
N/A	State of Oregon	Local Government Investment Pool (LGIP)	5.30%	\$42,497,816.61
N/A	Umpqua Bank	Money Market Savings Account	5.55%	\$10,624,725.52
Dec-24	Umpqua Bank	Certificate of Deposit	5.25%	\$10,664,443.61
				<u>\$66,278,808.35</u>



STAFF REPORT

DATE: October 25, 2024
TO: Jeff Towery, City Manager
FROM: Willy Williamson, Airport Administrator
SUBJECT: 4025 Nimbus Loop (Airport) – Three Year Lease

Report in Brief:

This action is for the consideration of a resolution to approve leasing the 4025 Nimbus Loop (formerly Comcast) building to MTS Traffic Management, LLC for a period of Three Years.

Background:

On March 5, 1991, the City leased land with Cascade Sierra Investment, Inc. for the construction of a building at 4025 Nimbus Loop. Most recently this building has been owned by Comcast. At the termination of the Land Lease on January 1, 2023, the building was reverted to City of McMinnville (Airport Sponsor) ownership, to be used as a rental property.

Discussion:

The City entered into a Brokerage Agreement with NLCO to advertise and coordinate property leasing for the 4025 Nimbus building. NLCO is coordinating a three-year lease agreement with MTS Traffic Management, LLC for a graduated monthly lease amount of \$4,000 first year, \$5,000 second year, and \$6,000 third year (\$180,000 total for three years) with a tentative start date in mid-November - December 2024.

The lease is structured as a “triple net”, which reduces the City’s responsibilities for interior maintenance and utilities, etc. The City (Airport) will remain responsible for the exterior and structural components.

At a Special Airport Commission meeting, the Airport Commission unanimously recommended that City Council authorize entering into the lease agreement with MTS Traffic Management, LLC.

Attachments:

1. Resolution 2024- 49
2. 4025 Nimbus Loop Lease Agreement
3. NLCO Brokerage Agreement
4. Comcast (4025 Nimbus Loop) Land Lease Termination
5. TCI Lease Assumption

Fiscal Impact:

The estimated three-year gross income from the 4025 Nimbus Loop building is \$180,000, which will be applied to Airport operations and maintenance projects.

Recommendation:

Staff recommends:

1. City Council adopt the attached resolution authorizing the lease agreement with MTS Traffic Management, LLC for the 4025 Nimbus Loop property.

RESOLUTION NO. 2024 - 49

A Resolution approving a new three-year lease with MTS Traffic Management, LLC for the City-owned building located at 4025 Nimbus Loop (former Comcast).

RECITALS:

Whereas, On January 1, 2023, the building located at 4025 Nimbus Loop ownership reverted from Comcast to the City of McMinnville (Airport) and terminated the associated City land lease, and

Whereas, The entirety of 4025 Nimbus Loop and associated properties are located on the McMinnville Municipal Airport, and

Whereas, The City of McMinnville, as the property owner may rent the property for income, which shall be applied to the Airport Maintenance Fund, and

Whereas, Renting the building will produce a gross three-year combined income of \$180,000 for the Airport Maintenance Fund, and

Whereas, The location of the building meets the criteria to be used for non-aeronautical activities, and

Whereas, The Airport Commission reviewed and considered the proposed lease and unanimously recommended that the City Council authorize entering into the lease, and

Whereas, The public interest will be best served by entering the lease for the generation of revenue.

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

1. That entering into the lease with **MTS Traffic Management, LLC** for the building located at 4025 Nimbus Loop is hereby authorized.
2. The City Manager is authorized and directed to execute the lease.
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 meeting held the 12th day of November 2024 by the following votes:

Ayes: _____

Nays: _____

Approved this 12th day of November 2024.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

McMINNVILLE MUNICIPAL AIRPORT
4025 NIMBUS LOOP
COMMERCIAL PROPERTY LEASE
(Non-Aeronautical, NNN)

1.1 BASIC LEASE TERMS.

- a. DATE OF LEASE EXECUTION:** _____, 2024
- b. TENANT:** MTS Traffic Management, LLC
- Address (Leased Premises):** 4025 Nimbus Loop,
McMinnville, OR 97128
See Exhibit "A" Lease Premises graphic representation
- Address (For Notices):** MTS Traffic Management, LLC
1634 NW Wallace Rd.
McMinnville, Ore. 97128
- c. LANDLORD:** City of McMinnville
- Address (For Notices):** Airport Administrator
231 NE 5th Street
McMinnville, OR 97128
- d. TENANT'S USE OF PREMISES:** The Premises shall be used for administrative / training activities and equipment staging.
- e. PREMISES AREA:** Building containing approximately 4,000 SF of office space, 10 parking spaces, and parking in rear.
- f. TERM OF LEASE:** Three Years (36 months).
The term of this lease shall commence on _____, 2024 and shall continue through _____, 2027.
- g. BASE MONTHLY RENT:** Months 1 – 12: \$4,000/Month
Months 13 – 24: \$5,000/Month
Months 25 – 36: \$6,000/Month

- h. **RENT ADJUSTMENT:** If the tenant has not vacated the premises at the end of the lease term, the tenant, with city approval, may extend on a month-to-month basis for a maximum of 6 months, and the rent will be adjusted to \$7,000 per month.
- i. **OPTION TO NEGOTIATE A NEW LEASE:** If Tenant is not then in default, Tenant shall have an option to negotiate a new lease.
- j. **PREPAID RENT:** \$ _____ (prorated for _____ days) for first month's rent due upon execution of the lease.
- k. **TOTAL SECURITY DEPOSIT:** \$4,000.00 payable upon execution of the lease.
- l. **BROKER(S):** Landlord's Agent:
Kelly McDonald

2.1 PREMISES.

Landlord leases to Tenant the 4025 Nimbus building containing approximately 4,000 square feet of office space, which is located at 4025 Nimbus Loop, McMinnville, Oregon, 97128. Additional space assigned to this lease includes 10 parking spaces and equipment parking behind the building. See Exhibit "A" for the map location.

3.1 TERM.

The term of this Lease is for **three (3) years**, commencing on the date in Section 1.1. If Landlord, for any reason, cannot deliver possession of the Premises to Tenant upon the scheduled commencement date set forth in Section 1.1, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from such delay. In that event, however, Landlord shall deliver possession of the Premises as soon as practicable and the commencement date shall be the date of such delivery with the term of the Lease remaining unchanged, and all other terms and conditions of this Lease remaining in full force and effect. However, if Landlord is delayed in delivering possession to Tenant for any reason attributable to Tenant, this Lease (including the obligation to pay all rents) shall commence on the scheduled commencement date set forth in Section 1.1 above. If Landlord, for any reason not attributable to Tenant, is unable to deliver possession of the Premises within ninety (90) days following the scheduled commencement date, either party may terminate this Lease by written notice given within ten (10) days following expiration of such period.

4.1 RENT.

Base Monthly Rent. Tenant shall pay to Landlord base monthly rent of:

- First year: **Four Thousand Dollars (\$4,000.00) per month**
- Second year: **Five Thousand Dollars (\$5,000.00) per month**
- Third year: **Six Thousand Dollars (\$6,000.00) per month**

All rents shall be payable monthly in advance on the first day of each and every calendar month ("Base Monthly Rent"); provided, however, the Base Monthly Rent for the first month of the term shall be prorated to the first of the next month, if necessary. All charges and sums due from Tenant to Landlord hereunder shall be deemed rent. If the Base Monthly Rent is not received by the Landlord on or before the 10th of the month, it shall be considered late, and a late charge shall be applied pursuant to Section 4.4(2).

4.4 TENANT EXPENSES.

The purpose of this Section is to ensure that Tenant shall pay all Expenses reasonably related to the use, maintenance, repair or replacement, and insurance of the Premises. Accordingly, beginning on the commencement date, Tenant shall commence the payment of Expenses.

- (1) Expenses Defined. The term "Expenses" shall mean all costs and expenses reasonably incurred by Landlord with respect to the operation, maintenance, repair or replacement, and insurance of the Premises. The Tenant shall be responsible for but not limited to, the following costs:
 - a. All supplies, materials, labor, equipment, and utilities for the Premises used in or related to the operation of Tenant's business and interior maintenance of the Premises;
 - b. All maintenance, replacement and repair costs relating to the interior of the Premises;
 - c. All maintenance, replacement and repair of the interior heating, ventilation and cooling systems;

Note: Landlord and Tenant agree that the rental rate for the building shall include real property taxes. The Tenant shall be responsible for their own insurance utilities including electric, water and sewer, trash, phone & internet, janitorial, and any other expenses.

- (2) Rent Without Offset and Late Charge. All rent shall be paid by Tenant to Landlord monthly in advance on the first day of every calendar month, to the following address:

City of McMinnville
230 NE 2nd Street
McMinnville, OR, 97128

or such other place as Landlord may designate in writing from time to time. All rent shall be paid without prior demand or notice and without any deduction or offset whatsoever. All rent due for any partial month shall be prorated at the rate of 1/30th of the total monthly rent per day. If any rent or other sum due from Tenant is not received on or before the 10th of each month, Tenant shall pay to Landlord an additional sum equal to 5% of such overdue payment, and any and all attorneys' fees, costs or expenses incurred by Landlord.

4.5 LANDLORD EXPENSES.

Landlord shall be responsible for the following Expenses:

- (1) All maintenance, replacement and repair costs relating to all electrical systems outside the leased portion of the Premises, sidewalks, driveways, parking areas and parking lot lighting, walkways, building siding, repairing and replacing roofs, structural walls and other structural elements of the Building.
- (2) Prior to occupancy by the Tenant, Landlord shall inspect and subsequently warrant that the Premises including the heating, plumbing, hot water heater, lighting, sewer system, electrical and all other systems on the Premises will be in compliance with all building codes to the best of Landlord's knowledge and in good working order at the time of lease execution and that the roof will be free of leaks for the term of the lease.

5.1 PREPAID RENT.

Upon the execution of this Lease, Tenant shall pay to Landlord the **prepaid rent in the amount of \$ _____ () day prorated first month rent**. Such prepaid rent shall be applied toward the Base Monthly Rent due for the first month of the term. Landlord's obligations with respect to the prepaid rent are those of a debtor and not of a trustee, and Landlord can commingle the prepaid rent with Landlord's general funds. Landlord shall not be required to pay Tenant interest on the prepaid rent. Landlord shall be entitled to immediately endorse and cash Tenant's prepaid rent; however, such endorsement and cashing shall not constitute Landlord's acceptance of this Lease. In the event Landlord does not accept this Lease, Landlord shall return said prepaid rent.

6.1 DEPOSIT.

Upon tenant's execution of the lease, Tenant shall pay the security deposit set forth in Section 1.1 with Landlord as security for the performance by Tenant of the provisions of this Lease. Upon default by Tenant, Landlord shall have the right, without waiver of the default or prejudice to other remedies, to use the security deposit or any portion of it to cure the default or to compensate Landlord for any damages resulting from Tenant's default. Upon demand, Tenant shall immediately pay to Landlord a sum equal to the portion of the security deposit expended or applied by Landlord to maintain the security deposit in the amount initially deposited with Landlord. In no event will Tenant have the right to apply any part of the security deposit to any rent or other sums due under this Lease. If Tenant is not in default at the expiration or termination of this Lease, Landlord shall return the entire security deposit to Tenant. Landlord's obligations with respect to the deposit are those of a debtor and not of a trustee, and Landlord can commingle the security deposit with Landlord's general funds. Landlord shall not be required to pay Tenant interest on the deposit. Landlord shall be entitled to immediately endorse and cash Tenant's security deposit; however, such endorsement and cashing shall not constitute Landlord's acceptance of this Lease. In the event Landlord does not accept this Lease, Landlord shall return said security deposit. If Landlord sells its interest in the Premises during the term hereof and deposits with or credits to the purchaser the unapplied portion of the security deposit, thereupon Landlord shall be discharged from any further liability or responsibility with respect to the security deposit.

7.1 USE OF PREMISES.

Tenant shall use the Premises solely for the purposes set forth in Section 1.1(d) and for no other purpose without obtaining the prior written consent of Landlord. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or with respect to the suitability of the Premises for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration or improvement to the Premises. Tenant shall promptly and at all times comply with all federal, state and local statutes, laws, ordinances, orders and regulations affecting the Premises and the Project (herein "Laws"), as well as existing restrictive covenants, if any, and also any reasonable rules and regulations that Landlord may adopt from time to time. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything in the Premises that will in any way increase the premiums paid by Landlord on its insurance related to the Premises or which will in any way increase the premiums for fire or casualty insurance carried by other tenants in the warehouse. Tenant will not perform any act or carry on any practices that may injure the Premises. Tenant shall not use the Premises for sleeping, washing clothes, cooking or the preparation, manufacture or mixing of anything, including but not limited to hazardous materials, that might emit any objectionable odor. Tenant shall not do anything on the Premises which will overload any existing service to the Premises. Pets and/or animals of any type shall not be kept on the Premises.

8.1 SIGNAGE.

All signage construction, installation and maintenance shall be at tenant's expense and must comply with all applicable city and/or county codes. Prior to the construction and installation of any signage, Tenant shall obtain Landlord's written approval of said signage before it is constructed and/or installed. No signs other than identification for the tenant's business are approved without prior written consent by the Landlord.

9.1 PERSONAL PROPERTY TAXES.

Tenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operations as well as upon all trade fixtures, leasehold improvements, merchandise and other personal property in or about the Premises.

10.1 PARKING.

Tenant is reserved 10 parking spaces in the adjacent parking lot.

11.1 UTILITIES.

Tenant shall pay for all water, gas, heat, light, power, sewer, electricity, telephone or other service metered, chargeable or provided to the Premises.

12.1 MAINTENANCE.

Landlord shall maintain, in good condition, the structural parts of the Premises, which shall include only the foundations, bearing and exterior walls, and roof (excluding skylights), the unexposed electrical, plumbing and sewerage systems, including without limitation, those portions of the systems lying outside the premises, gutters and downspouts on the exterior of the Premises. Except as provided above, Tenant shall maintain the

Premises in good condition, including, without limitation, maintaining and repairing all interior surfaces of walls, heating & ventilation systems, floors, interior surfaces of ceilings, interior & exterior doors, exterior and interior windows and fixtures as well as damage caused by Tenant, its agents, employees or invitees. Upon expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as existed at the commencement of the term, except for reasonable wear and tear or damage caused by fire or other casualty for which Landlord has received all funds necessary for restoration of the Premises from insurance proceeds. Nothing herein shall excuse Tenant from financial responsibility for property damage caused by Tenant or Tenant's agents. Landlord shall be responsible for the electrical systems within the office space and Tenant shall be responsible for their electrical system within the building space. Tenant shall also be responsible for all repair and maintenance for the entry and interior doors.

13.1 ALTERATIONS.

- (1) Tenant shall not make any alterations to the Premises, to any utility system within the Premises or to any structural element of the Premises without Landlord's prior written consent in each instance, which may be unreasonably withheld. If Landlord gives its consent to such alterations, Landlord may post notices in accordance with the laws of the state in which the Premises are located. Any alterations made shall remain on and be surrendered with the Premises upon expiration or termination of this Lease, except that Landlord may, within 30 days before or 30 days after the expiration or termination of this Lease or the termination of Tenant's right of possession, elect to require Tenant to remove any alterations which Tenant may have made to the Premises. If Landlord so elects, at its own cost Tenant shall restore the Premises to the condition designated by Landlord in its election, before the last day of the term or within 30 days after notice of its election is given, whichever is later.
- (2) Any request for Landlord's consent to alterations shall be made at least thirty (30) days before any work may be commenced and shall be accompanied by (i) detailed and costed plans and specifications for all alterations, and (ii) Tenant's written agreement to provide, upon completion of work, a complete set of as-built plans and specifications. Landlord may withhold consent, in its discretion and may issue such consent subject to conditions. All alterations shall be constructed only after obtaining Landlord's prior written consent and only in conformity with all Laws including but not limited to the ADA. The issuance of Landlord's consent shall not be a waiver of Tenant's obligation to comply with all Laws, nor Landlord's opinion that such alterations are in compliance with all Laws.
- (3) Should Landlord consent in writing to Tenant's alteration of the Premises, Tenant shall contract in writing with a party approved by Landlord for the construction of such alterations, shall secure all appropriate governmental approvals and permits, and shall complete such alterations with due diligence in compliance with the plans and specifications approved by Landlord, which approval shall not be unreasonably withheld. All such construction shall be performed in a manner which will not interfere with the quiet enjoyment of other tenants on the airport.

- (4) Tenant shall pay all costs for construction of future alterations, unless agreed upon by the parties, and shall keep the Premises free and clear of all liens, which may result from work by third parties authorized by Tenant. If any such lien is filed, the same shall be an event of default.

13.2 LANDLORD'S WORK.

Prior to Tenant's possession of the building, Landlord, at Landlord's sole expense, shall complete the following improvements to the Premises:

N/A

13.3 TENANT'S WORK.

Tenant shall be responsible for the following:

- (1) All other tenant improvements to the interior and exterior of the leased premises. Said tenant improvements shall have the prior written approval of the Landlord.
- (2) Electrical service beyond the point of entry to the building, including but not limited to outlets, subpanels, etc.
- (4) Obtain permits for those items, which are their responsibility and meet any environmental requirements from the City of McMinnville or other governmental entities. All Tenant's Work shall meet code requirements.

14.1 RELEASE AND INDEMNITY.

As material consideration to Landlord, Tenant agrees that except to the extent of Landlord's liability insurance coverage Landlord and Landlord's partners, shareholders, officers, directors, employees and agents (collectively the "Protected Parties") shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause, and except to the extent of Landlord's liability insurance coverage, and Tenant waives all claims against Landlord for damage to persons or property arising for any reason, except for damage resulting directly from Landlord's breach of its express obligations under this Lease which Landlord has not cured within a reasonable time after receipt of written notice of such breach from Tenant. Tenant shall defend, indemnify and hold Landlord and all other Protected Parties harmless from all claims, losses, causes of action, costs and expenses, and damages arising out of (a) any damage to any person or property occurring in, on or about the Premises, (b) use by Tenant or its agents of the Premises or other properties of Landlord, and/or (c) Tenant's breach or violation of any term of this Lease.

15.1 INSURANCE.

- (1) **Liability Insurance.** Tenant, at its cost, shall maintain public liability and property damage insurance and products liability insurance with a single combined liability limit of \$2,000,000, per occurrence (5,000,000 General Aggregate) insuring against all liability of Tenant and its authorized

representatives arising out of or in connection with Tenant's use or occupancy of the Premises. Public liability insurance, products liability insurance and property damage insurance shall insure performance by Tenant of the indemnity provisions of Section 14.1. Landlord shall be named as an additional insured as to the liability portion of the policy, and the policy shall contain cross-liability endorsements. On all its personal property, at its cost, Tenant shall maintain a policy of standard fire and extended coverage insurance with vandalism and malicious mischief endorsements and "all risk" coverage on all Tenant's improvements and alterations in or about the Premises, to the extent of at least 80% of their full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of personal property and the restoration of Tenant's improvements or alterations. All insurance required to be provided by Tenant under this Lease: (a) shall be issued by insurance companies authorized to do business in the state of; (b) be acceptable to Landlord; shall be issued as a primary policy; and (c) shall contain an endorsement requiring at least 30 days prior written notice of cancellation to Landlord and Landlord's lender, before cancellation or change in coverage, scope or amount of any policy. Tenant shall deliver a certificate or copy of such policy together with evidence of payment of all current premiums to Landlord within 10 days of execution of this Lease. Tenant's failure to provide evidence of such coverage to Landlord at any time during the term of this Lease may, after notice and an opportunity to cure such failure in accordance with Section 20.1(3), and in Landlord's sole discretion, constitute a default under this Lease.

- (2) **Property Insurance and Landlord's Liability Insurance.** Landlord shall obtain and maintain during the term hereof general and public liability (with a single combined liability limit of \$1,000,000), fire and extended insurance coverage (including, at Landlord's option, earthquake, flood and rental abatement (the "business income insurance") on the Premises in the amount of the full replacement cost thereof. Tenant shall, at its sole cost and expense, obtain and maintain during the term hereof fire and extended coverage on Tenant's improvements, personal property, equipment, trade fixtures and inventory in and upon the Premises in an amount not less than eighty (80%) percent of the full replacement cost thereof. Neither party shall be liable to the other for any loss or damage caused by water damage or any of the risks covered by a standard fire insurance policy with extended coverage endorsements, and there shall be no subrogated claim by one party's insurance carrier against the other party arising out of any such loss. Since this is intended to be a triple net lease, Tenant shall reimburse Landlord 1/12th of Tenant's pro-rata share (for the warehouse portion only) of said insurance on a monthly basis estimated to be \$ ___/SF at lease commencement. Tenant shall be added as an additional named insured on said policy.
- (3) Both parties shall obtain endorsements to all of such insurance policies containing waivers of subrogation as to the other party to this Lease, if such waivers are available without voiding the insurance.

16.1 DESTRUCTION.

If during the term, the Premises or Project is more than 50% destroyed (based upon replacement cost) from any cause, or rendered inaccessible or unusable from any cause, Landlord may, in its sole discretion, terminate this Lease by delivery of notice to Tenant within 30 days of such event without compensation to Tenant. If Landlord does not elect to terminate this Lease, and if, in Landlord's estimation, the Premises

cannot be restored within 180 days following such destruction, the Landlord shall notify Tenant and Tenant may terminate this Lease by delivery of notice to Landlord within 30 days of receipt of Landlord's notice. If Landlord does not terminate this Lease and if in Landlord's estimation the Premises can be restored within 180 days, then Landlord shall commence to restore the Premises in compliance with then existing laws and shall complete such restoration with due diligence. Tenant shall have a ratable abatement of rent for loss of use on the portion of the building which is rendered inaccessible or unusable during said time period.

17.1. CONDEMNATION.

- (1) **Generally.** The term "condemnation" used herein shall mean any taking of any interest in the Premises or the improvements to the Premises by right of eminent domain, administrative action, or any purchase of any such interest in lieu of such taking.
- (2) **Total Taking.** In the event the whole of the demised premises are taken by condemnation, or only a portion of the Premises be taken by condemnation so as to render the remainder economically unsuitable for its primary intended use under this Lease in which event such partial taking shall be deemed a total taking for purposes hereof, then in any such event this Lease shall terminate as of the date title to the demised premises vests in the condemning authority. For the purposes hereof, such date of vesting in the condemnor terminating this Lease shall operate as though it were the date originally intended by the parties for expiration of the tenancy created hereunder, and the rent reserve herein shall be adjusted in the light of the condemnation, so that Tenant shall pay rent to Landlord only up to the date of vesting in the condemnor. Any prepaid or advance rental paid by Tenant to Landlord for the part of the term extending beyond the date on which the title vests in the condemnor shall be refunded within ten (10) days after Landlord has received an award of just compensation from the condemning authority for the taking of the demised premises, provided Tenant shall have duly performed all the covenants and conditions of this Lease by it to be performed.
- (3) **Partial Taking.** In the event that only a portion of the demised premises is taken, Landlord shall have the right to terminate this Lease as of the date title thereto vests in the condemnor by giving to Tenant written notice of such termination; but should Landlord not so terminate this Lease when a portion of the demised premises is so taken, this Lease shall terminate as to the part taken, and Landlord shall proceed as soon as reasonably possible to restore the remaining portion of the Premises to a self-contained architectural unit; provided, however, that Landlord shall not be obligated to undertake any such repairs if the cost thereof exceeds the award. The Base Monthly Rent shall be adjusted for the portion of the demised premises remaining after condemnation so that Tenant shall be required to pay for the balance of the term that portion of the Base Monthly Rent reserved herein which the value of the portion of the demised premises remaining after condemnation bears to the value of the demised premises immediately prior to the date of condemnation. The Base Monthly Rental shall be apportioned as aforesaid by agreement between the parties, or if the parties are unable to agree, then by arbitration as set out below. Pending such agreement or arbitration, Tenant shall pay at the time and in the manner above provided the Base Monthly Rental herein reserved, and all other charges herein required to be paid by Tenant, without

deduction, and on such agreement or arbitration tenant shall be entitled to credit for any excess rentals paid.

- (4) **Landlord to Receive Award.** It is specifically understood and agreed that Landlord shall be entitled to all of the proceeds of any partial or total condemnation, and Tenant shall have no claim against Landlord as a result of condemnation. Tenant shall be entitled to the relocation benefits, if any, and all the proceeds of condemnation, which are on account of the taking of the improvements, equipment, fixtures or personal property, if any, belonging to Tenant.

18.1 ASSIGNMENT AND SUBLETTING.

Assignment and Subletting in any fashion **is not approved** at any time during the lease period. Should the Tenant desire an opportunity for Assignment or Subletting, the Tenant may request an amendment to this lease or negotiate a separate lease which will cancel and supersede this lease.

19.1 DEFAULT.

The occurrence of any of the following shall constitute a default by Tenant: (a) A failure to pay rent or other charges when due after notice is given and an opportunity to cure is made not more than once in any calendar year; or (b) Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision will be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to affect the remedy as soon as practicable.

20.1 LANDLORD'S REMEDIES.

- (1) In the event of a default the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, including but not limited to unpaid rent, attorneys' fees and costs and expenses of reletting, and Landlord may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession. In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

- (a) The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out.
 - (b) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs and any other expense occasioned by Tenant's default including but not limited to, any repair costs, attorney fees, court costs, broker commissions, and advertising costs.
 - (c) Any excess of the value of the rent and all of Tenant's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the premises are relet and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.
- (2) Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing. If Tenant fails to perform any obligation under this Lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of twelve percent (12%) annum from the date of expenditure by Landlord. Such action by Landlord shall not waive any other remedies available to Landlord because of the default. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law or equity.
- (3) All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money owed to any party other than Landlord, for which it is liable hereunder, or if Tenant shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after notice thereof by Landlord, Landlord may, without waiving such default or any other right or remedy, but shall not be obligated to, make any such payment or perform any such other act to be made or performed by Tenant. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the Default Rate from the date of expenditure by Landlord, shall be payable to Landlord on demand.

21.1 ENTRY ON PREMISES.

Landlord and its authorized representatives shall have the right to enter the Premises with twenty-four (24) hour notice to the tenant at all reasonable times for any of the following purposes: (a) To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease; (b) To do any necessary maintenance and to make any restoration to the Premises that Landlord has the right or obligation to perform; (c) To post "for rent" or "for lease" signs during the term, or during any period while Tenant is in default; (d) To show the Premises to prospective brokers, agents, tenants or persons interested in leasing the Premises; or (e) To repair, maintain or improve the Premises and to erect scaffolding and protective barricades around and about the Premises but not so as to prevent entry to the Premises and to do

any other act or thing necessary for the safety or preservation of the Premises. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Landlord's entry onto the Premises as provided in this Section. Tenant shall not be entitled to an abatement or reduction of rent if Landlord exercises any rights reserved in this Section. Landlord shall conduct its activities on the Premises as provided herein in a manner that will cause the least inconvenience, annoyance or disturbance to Tenant. For each of these purposes, Landlord shall at all times have and retain a key with which to unlock all the doors in, upon and about the Premises, excluding Tenant's vaults and safes. Tenant shall not alter any lock or install a new or additional lock or bolt on any door of the Premises without prior written consent of Landlord. If Landlord gives its consent, Tenant shall furnish Landlord with a key for any such lock.

22.1 SUBORDINATION.

N/A

23.1 NOTICE.

Any notice, demand, request, consent, approval or communication desired by either party or required to be given, shall be in writing and either served personally or sent by prepaid certified first class mail, addressed as set forth in Section 1.1. Either party may change its address by notification to the other party. Notice shall be deemed to be communicated 72 hours from the time of such mailing, or upon the time of service as provided in this Section.

24.1 WAIVER.

No delay or omission in the exercise of any right or remedy by Landlord shall impair such right or remedy or be construed as a waiver. No act or conduct of Landlord, including without limitation, acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish termination of the Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

25.1 SURRENDER OF PREMISES; HOLDING OVER.

Upon expiration of the term or the termination of this Lease or of Tenant's right of possession, Tenant shall surrender to Landlord the Premises and all tenant improvements and alterations (except alterations which Tenant has the right or obligation to remove) in good condition, except for ordinary wear and tear. Tenant shall remove all Tenant's personal property including Tenant's fixtures and shall perform all restoration made necessary by the removal of any alterations or Tenant's personal property before the expiration of the term. Landlord can elect to retain or dispose of in any manner Tenant's personal property not removed from the Premises by Tenant prior to the expiration of the term so long as such disposition is accomplished in a commercially reasonable manner. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of Tenant's personal property. Tenant shall be liable to Landlord for Landlord's costs for storage, removal or disposal of Tenant's personal property. If Tenant fails

to surrender the Premises upon the expiration of the term, or upon the termination of this Lease or of Tenants right of possession, Tenant shall defend, indemnify and hold Landlord harmless from all resulting loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure.

If Tenant, with Landlord's consent, remains in possession of the Premises after expiration of this Lease, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on written 30-day notice at any time, by either party. The maximum duration of month-to-month tenancy shall be 6 months, which at that time either a new lease may be signed, or tenancy shall have been fully terminated. All provisions of this Lease, except those pertaining to term and rent, shall apply to the month-to-month tenancy. Tenant shall pay Base Monthly Rent in an amount equal to 125% of the Base Monthly Rent for the last full calendar month during the regular term.

26.1 LIMITATION OF LIABILITY

In consideration of the benefits accruing hereunder, Tenant agrees that, regarding any claim against Landlord, including in the event of any actual or alleged failure, breach or default by Landlord:

- (1) Landlord Limitation of Liability:
 - (i) The Landlord shall not be sued or named as a party in any suit or action;
 - (ii) No service of process shall be made against the Landlord (except as may be necessary to secure jurisdiction of the partnership);
 - (iii) The Landlord shall not be required to answer or otherwise plead to any service or process;
 - (iv) No judgment may be taken against the Landlord;
 - (v) Any judgment taken against the Landlord may be vacated and set aside at any time without hearing; and
 - (vi) No writ of execution will ever be levied against the assets of the Landlord.
- (2) These covenants and agreements contained in this Section are enforceable both by Landlord and also by any other Protected Party.
- (3) Tenant agrees that each of the foregoing provisions shall be applicable to any and all liabilities, claims and causes of action whatsoever, including those based on any provision of this Lease, any implied covenant, and/or any statute or common law principle.

27.1 MISCELLANEOUS PROVISIONS.

- (1) Time of Essence. Time is of the essence of each provision of this Lease.
- (2) Successor. This Lease shall be binding on and inure to the benefit of the parties and their successors, except as provided in Section 18.1 herein.
- (3) Landlord's Consent. Any consent required by Landlord under this Lease must be granted in writing.

- (5) Other Charges. If Landlord becomes a party to any litigation concerning this Lease, the Premises by reason of any act or omission of Tenant or any agent, guest or invitee of Tenant, Tenant shall be liable to Landlord for all attorneys' fees and all other costs and expenses incurred by Landlord in connection with such litigation, including any appeal or review.
- (6) Landlord's Successors. In the event of a sale or conveyance by Landlord of the Premises, or of Landlord's interest in the foregoing, the same shall operate to release Landlord from any liability under this Lease, and in such event Landlord's successor in interest shall be solely responsible for all obligations of Landlord under this Lease.
- (7) Interpretation. This Lease shall be construed and interpreted in accordance with the laws of the State of Oregon. This Lease constitutes the entire agreement between the parties with respect to the Premises, except for such guarantees or modifications as may be executed in writing by the parties from time to time. When required by the contents of this Lease, the singular shall include the plural, and the masculine shall include the feminine and/or neuter. "Party" shall mean Landlord or Tenant. If more than one person or entity constitutes Tenant, the obligations imposed upon Tenant shall be joint and several. The enforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.
- (8) Third Parties. The Protected Parties shall have the right to enforce the provisions of this Lease which reference them.

Except for the foregoing, there are no third parties benefited hereby, this Lease being intended solely for the benefit of Landlord and Tenant.
- (9) Survival. The release and indemnity covenants of both parties, the right of both parties to enforce its remedies hereunder, the attorneys' fees provisions hereof, the provisions of Section 26.1 hereof, as well as all provisions of this Lease which contemplate performance after the expiration or termination hereof or the termination of Tenant's right to possession hereunder, shall survive any such expiration or termination.

28.1 EMISSIONS.

Tenant shall not:

- (1) Discharge, and or permit to be discharged or emitted, any hazardous materials, liquid, solid or gaseous matter, or any combination thereof, into the atmosphere, the ground or any body of water, which matter, as reasonably determined by Lessor or any governmental entity, does, or may, pollute or contaminate the same, or is, or may become, radioactive or does, or may, adversely affect the (i) health or safety of persons, wherever located, whether on the Premises or anywhere else, (ii) condition, use or enjoyment of the Premises or any other real or personal property, whether on the Premises or anywhere else, or (iii) Premises or any of the improvements thereto or thereon including buildings, foundations, pipes, utility lines, landscaping or parking areas;

- (2) Produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible from outside the Premises;
- (3) Create, or permit to be created, any sound pressure level which will interfere with the quiet enjoyment of any real property outside the Premises; or which will create a nuisance or violate any Law, rule, regulation or requirement;
- (4) Create, or permit to be created, any ground vibration that is discernible outside the Premises;
- (5) Transmit, receive or permit to be transmitted or received, any electromagnetic, microwave or other radiation which may affect aeronautical operations and/or is harmful or hazardous to any person or property in, on or about the Premises, or anywhere else.

28.2 STORAGE AND USE.

- (1) Storage. Subject to the uses permitted and prohibited to Tenant under this lease, Tenant shall store in appropriate leak proof containers all solid, liquid, or gaseous matter, or any combination thereof, which matter, if discharged or emitted into the atmosphere, the ground or any body of water, does or may (1) pollute or contaminate the same, or (2) adversely affect the (i) health or safety of persons, whether on the Premises or anywhere else, (ii) condition, use or enjoyment of the Premises or any real or personal property, whether on the Premises or anywhere else, or (iii) Premises or any of the improvements thereto or thereon.
- (2) Use. In addition, without Landlord's prior written consent, Tenant shall not use, store or permit to remain on the Premises any solid, liquid or gaseous matter which is, or may become, radioactive. If Landlord does give consent, Tenant shall store the materials in such a manner that no radioactivity will be detectable outside a designated storage area and Tenant shall use the materials in such a manner that (1) no real or personal property outside the designated storage area shall become contaminated thereby or (2) there are and shall be no adverse effects on the (i) health or safety of persons, whether on the Premises or anywhere else, (ii) condition, use or enjoyment of the Premises or any real or personal property thereon or therein, or (iii) Premises or any of the improvements thereto or thereon.

28.3 DISPOSAL OF WASTE.

- (1) Refuse Disposal. Tenant shall not keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers and shall regularly and frequently remove same from the Premises. Tenant shall keep all containers or other equipment used for the storage or disposal of such materials in a clean and sanitary condition.

- (2) Sewage Disposal. Tenant shall properly dispose of all sanitary sewage and shall not use the sewage system (1) for the disposal of anything except sanitary sewage or (2) in excess of the lesser of the amount (a) reasonably contemplated by the uses permitted under this Lease or (b) permitted by any governmental entity. Tenant shall keep the sewage disposal system free of all obstructions and in good operating condition.
- (3) Disposal of Other Waste. Tenant shall properly dispose of all other waste or other matter delivered to, stored upon, located upon or within, used on, or removed from, the premises in such a manner that it does not, and will not, adversely affect the (1) health or safety of persons, wherever located, whether on the Premises or elsewhere, (2) condition, use or enjoyment of the Premises or any other real or personal property, wherever located, whether on the Premises or anywhere else, or (3) Premises or any of the improvements thereto or thereon including buildings, foundations, pipes, utility lines, landscaping or parking areas.

29.1 COMPLIANCE WITH LAW.

Notwithstanding any other provision in the Lease to the contrary, Tenant shall comply with all Laws in complying with its obligations under this Lease, and in particular, Laws relating to the storage, use and disposal of hazardous or toxic matter.

30.1 INDEMNIFICATION.

In connection with Tenant, Tenant's employees, agents and invitees activities on the Premises, Tenant shall defend, indemnify and hold Landlord, the other Protected Parties, the Premises harmless from any loss, claim, liability or expense, including, without limitation, attorneys' fees and costs, at trial and/or on appeal and review, arising out of or in connection with its failure to observe or comply with the provisions of this Section. This indemnity shall survive the expiration or earlier termination of the term of the Lease or the termination of Tenant's right of possession and be fully enforceable thereafter.

31.1 HUMAN HEALTH AND THE ENVIRONMENT.

Tenant shall comply at its expense fully with all laws pertaining to the protection of human health and the environment, including but not limited to OSHA housekeeping, maintenance and custodial activities regulations, employee and community right-to-know laws and all laws regarding the use, generation, storage, transportation, treatment, disposal or other handling of hazardous substances (***“Environmental Requirements”***). Tenant shall exercise extreme care in handling any hazardous substances and shall not cause hazardous substances to be spilled, leaked, disposed of or otherwise released on the Premises. The only hazardous substances permitted on the Premises are cleaning products and other materials in ordinary quantities which are used in the ordinary course of business and necessary for the conduct of Tenant's business and which Tenant uses in strict compliance with all applicable Environmental Requirements. The term ***“hazardous substances”*** is used in its very broadest sense, and refers to materials which because of their quantity, concentration, or physical, chemical, or infectious characteristics may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of, or otherwise managed. Hazardous substances shall include, but is not limited to, all hazardous substances, hazardous materials and hazardous substances listed by the U.S. Environmental Protection Agency and the state in which the Property is located under the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), and the Federal Water Pollution Control Act (FWPCA), and comparable State statutes and other Environmental Requirements. The terms of this Section control if there are any terms of the Lease that are in conflict.

32.1 INFORMATION.

Tenant shall provide Landlord with any and all information regarding Hazardous Substances in the Premises, including contemporaneous copies of all filings and reports to governmental entries, and any other information requested by Landlord. In the event of any accident, spill or other incident involving Hazardous Substances, Tenant shall immediately report the same to Landlord and supply Landlord with all information and reports with respect to the same. All information described herein shall be provided to Landlord regardless of any claim by Tenant that it is confidential or privileged.

33.1 DISCLOSURES AND RESTRICTIONS

- (1) The Premises is located at an airport and is subject to aircraft noise, exhaust and odors.
- (2) Tenants shall not access the airport beyond the fences without escort.

LANDLORD:
CITY OF MCMINNVILLE

TENANT:
MTS Traffic Management, LLC

By: Jeff Towery, City Manager

By:

Approved as to Form:

By: David Ligtenberg, City Attorney

Exhibit A



EXCLUSIVE BROKERAGE SERVICES AGREEMENT

(Oregon)

This EXCLUSIVE BROKERAGE SERVICES AGREEMENT (“**Agreement**”) is made and entered into this First day of December, 2023, by and between the City of McMinnville, a(n) Oregon Public Entity (“Owner”), and NLCO, a(n) Licensed Real Estate Firm in Oregon (“Broker”).

RECITALS

A. Owner is the holder of a fee/leasehold interest in, or is the duly appointed managing agent for the owner or lessee of, that certain real property commonly known as 4025 SE Nimbus Loop, which is located in the City of McMinnville, County of Yamhill, and State of Oregon, as more particularly described on the attached Exhibit A (the “**Property**”).

B. Broker is a real estate broker licensed in the State of Oregon.

C. Owner desires to retain the services of Broker, and Broker desires to perform such services, in accordance with the provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, the parties hereto agree as follows:

1. Retention of Broker. On behalf of Owner, and pursuant to the terms of this Agreement, Owner hereby retains Broker on an exclusive basis to:

- Sell or exchange the Property; **OR**
 Lease or sublease the Property.

2. Term. The term of this Agreement (“Term”) shall commence on December 1, 2023, and shall end on May 31, 2024, unless sooner terminated as provided herein.

3. Authority. The parties acknowledge that all negotiations shall be conducted through Broker. The authority of Broker hereunder is limited to the receipt of a written offer and the deposit of any potential buyer, lessee, sublessee or exchangee (each, an “**Interested Party**” and collectively, “**Interested Parties**”) on the terms specifically set forth in Exhibit B, and Broker is expressly prohibited from making any representation to any Interested Party that Broker has authority to commit Owner to any obligation whatsoever. Further, Broker shall have the right to enter the Property accompanied by Interested Parties at any reasonable time(s), but subject to the rights of tenants of the Property.

4. Scope of Services. Broker shall perform the following activities on behalf of Owner during the Term (each, a “**Broker Service**” and collectively, the “**Broker Services**”):

4.1 Broker shall plan and administer all activities related to the marketing of the Property, subject at all times to the approval of Owner.

4.2 Commencing upon mutual execution of this Agreement, Broker shall report on the status of Broker's activities on the Property to Owner by noon the first of each month or as requested.

4.3 Broker shall prepare brochures, project signs, advertising and public relations materials and shall provide a package of such materials for Owner's review and approval. The parties agree that any inserts for brochures, direct mailing pieces, or automatically-typed letters that are specifically for the purpose of the sale, exchange, lease or sublease the Property, as applicable, will be prepared at the cost and expense of Broker, and that the labor and cost of mailing said direct mail will be at the expense of Broker, including postage. Broker shall not incur any costs and expenses that are Owner's responsibility without Owner's prior written approval.

4.4 Broker shall use commercially reasonable efforts to obtain a sale, exchange, lease or sublease of the Property, as applicable and specified in EXHIBIT B, from qualified Interested Parties, and shall promptly present all written and verbal proposals to Owner.

4.5 Broker shall solicit and use commercially reasonable efforts to obtain the cooperation and support of other qualified real estate brokers in the Oregon area. Broker shall cooperate in accordance with standard industry practice on reasonable proportionate sharing of commissions when dealing with other real estate brokers. Notwithstanding anything to the contrary in this Agreement, Owner will have no responsibility to pay any commission in excess of the commission contemplated in Section 6.

4.6 During the Term, Kelly McDonald of Broker will be the sole representative(s), for sale and exchange or leasing and subleasing purposes, as applicable, of Owner, and, other than such representative(s), Broker shall not engage the services of any other party without Owner's consent. In the event the person or persons designated above are no longer affiliated with Broker, Owner may by written notice to Broker, terminate this Agreement, provided that Owner's obligations contained in Section 6, if any, shall survive and be enforceable by Broker notwithstanding such termination.

5. Responsibilities of Owner.

5.1 Owner agrees to reasonably cooperate with Broker to facilitate Broker's performance of its duties under this Agreement. Without limiting the generality of the foregoing, Owner agrees that: (a) Owner shall review and respond promptly to Broker's requests for information relating to the Property and promptly provide to Broker all pertinent information relating to the Property that is in Owner's possession; (b) Owner shall cooperate with Broker in effecting the sale, exchange, lease or sublease of the Property, as applicable, and immediately to refer to Broker all inquiries of any Interested Party (other than Excluded Interested Parties, as defined below); and (c) unless otherwise instructed by Owner, Owner shall make all decisions relating to the terms of the applicable sale, exchange, lease or sublease contemplated herein.

Accordingly, Owner and its counsel will be responsible for the preparation and the legal sufficiency of any purchase, exchange, lease or sublease agreement(s), and any other documents relating to any transaction contemplated by this Agreement.

5.2 Without limiting the provisions of Section 5.1, above, Owner shall disclose to Broker and, with Owner's consent, Broker may disclose to prospective tenants or purchasers, any and all information of which Owner has knowledge or possession regarding zoning and environmental matters affecting the Property and the condition of the Property, including, but not limited to structural, mechanical and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks in, on or about the Property. Broker is authorized to rely on and, to the extent authorized by Owner, disclose any such information to Interested Parties, provided, however, Broker acknowledges that any representations made by Owner are to the best of Owner's knowledge. Owner agrees to indemnify and hold Broker harmless from any liability, costs or damages and/or expenses, including without limitation attorney's fees, arising from or connected with any incorrect, incomplete or misleading representation made or information supplied by Owner, and any information that Owner fails to supply.

6. Commission.

6.1 Sale or Exchange. The commission set forth on Exhibit C shall be deemed earned by Broker if, during the Term: (a) the Property is sold or exchanged, as applicable, by or to any person or entity, other than the Excluded Interested Parties; (b) a reasonably satisfactory purchaser or exchanging party, as applicable, is procured or introduced by any person or entity (other than the Excluded Interested Parties), which purchaser or exchanging party is ready, willing and able to purchase or exchange the Property, as applicable, on the same or better terms stated on Exhibit B or other terms reasonably acceptable to Owner; or (c) N/A. Any commission payable under this Section 6.1 shall be payable upon the close of escrow for the applicable sale or exchange.

6.2 Lease or Sublease. The commission set forth on Exhibit C shall be deemed earned by Broker if, during the Term: (a) the Property is leased, subleased or contracted to lease, as applicable, by or to any person or entity, other than the Excluded Interested Parties; (b) a reasonably satisfactory tenant or subtenant, as applicable, is procured or introduced by any person or entity (other than the Excluded Interested Parties), which tenant or subtenant is ready, willing and able to lease or sublease the Property, as applicable, on the same or better terms as stated on Exhibit B or other terms reasonably acceptable to Owner; or (c) N/A. Any commission payable under this Section 6.2 shall be payable upon the mutual execution and delivery of a lease or sublease, as applicable.

6.3 Forfeited Funds. If security, earnest money or similar deposits made by a prospective Interested Party are forfeited, in addition to any other rights of Broker pursuant to this Agreement, Broker shall be entitled to one-half (1/2) of such forfeited amount, but not to exceed the total amount of the commission agreed to in accordance with Exhibit C.

6.4 Protective Clauses.

6.4.1 If Owner: (a) terminates this Agreement for any reason (other than for Broker's failure to perform Broker's obligations pursuant to this Agreement); (b) removes the Property from the market; (c) renders the Property unmarketable by Owner's voluntary act; (d) contributes or conveys the Property or any interest therein to a partnership, joint venture, or other entity and such entity does not assume the obligations of Owner hereunder; or (e) otherwise unreasonably interferes with the performance of Broker's Services; then, notwithstanding anything to the contrary set forth in Section 4.3 of this Agreement, and in addition to any other remedies available to Broker, Owner shall reimburse Broker for any and all marketing and advertising costs, out of pocket expenses, and the sum of \$ N/A as consideration for services rendered by Broker as of the date of such termination (if no monetary value is indicated, then Broker shall be entitled to a reasonable sum for services rendered).

6.4.2 Owner shall pay Broker a commission as set forth in Exhibit C, if, within ninety (90) days after the expiration of the Term (the "**Extension Period**"), Owner enters into an agreement to sell, exchange, lease or sublease, as applicable, the Property to, or negotiations continue, resume, or commence and thereafter lead to the sale or exchange or the execution of a lease or sublease of the Property with any person or entity (or their successors, assigns or affiliates) with whom Broker has negotiated or to whom Broker has submitted the Property for consideration prior to the expiration of the Term and whose name appears on any list of such persons or entities (the "**Prospect List**") that Broker shall have mailed to Owner at the address stated below at any time within ten (10) business days immediately following such expiration; *provided, however*, if Broker has submitted to Owner a written proposal from an Interested Party to purchase, exchange, lease or sublease the Property, as applicable, prior to such expiration, then such Interested Party shall automatically be deemed included on the Prospect List. Broker is authorized to continue negotiations with the Interested Party(ies) described in this Section 6.4.2. Owner's obligations hereunder shall apply only if the subject sale or exchange actually closes escrow or the subject lease or sublease is actually signed within ninety (90) days after the Extension Period.

6.4.3 In the event that Owner lists the Property with another broker after the Term but during the Extension Period, Owner agrees that prior to making any payment to such other broker, Owner shall pay to Broker any commission owed by Broker pursuant to this Agreement.

6.4.4 Owner agrees that in the event a sale, exchange, joint venture, condemnation, foreclosure, option or other transfer is made prior to expiration of this Agreement or any extension thereof, or is made or negotiated during the Extension Period thereafter pursuant to the provision of Section 6.4.2 above, to any person or entity whose name appears on the Prospect List or from whom Broker has submitted a written offer, Owner shall pay to Broker a sale commission in accordance with the appropriate provisions set forth in the attached Exhibit C.

6.4.5 In the event any commissions or other payments are due and owing hereunder to Broker and not promptly paid when due and owing, such amounts shall, from the date of such default, bear interest at the rate of the lesser of (a) eighteen percent (18%) per annum, or (b) the maximum non-usurious legally allowable rate of interest.

7. Excluded Interested Parties. Owner and Broker agree that in the event Owner closes the sale or exchange of the Property or enters into a lease or sublease, as applicable, with any of the parties set forth on Exhibit D (the “**Excluded Interested Parties**”), Broker shall not be entitled to a commission as a result of that transaction. The terms of this Section 7 shall expire on N/A.

8. Representations and Warranties. Owner warrants that Owner is the sole owner of the Property, is the holder of a leasehold interest in the Property, or has the full written legal authority from any other owner(s) to execute this Agreement on such other owners’ behalf and to bind such other owner hereto. Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement on behalf of the party for whom he or she signs and that this Agreement binds such party.

9. Dispute Resolution. In the event of any dispute between Owner and Broker relating to this Agreement, the Property or Owner or Broker’s performance hereunder (each a “**Dispute**”), the parties agree to use good faith efforts to settle such Dispute by mandatory mediation before resorting to arbitration, litigation, or any other dispute resolution procedure. The mediation shall be conducted under the rules and procedures of an accredited arbitration service, such as Arbitration Service of Portland, Inc. or the American Arbitration Association (such party, the “**Arbitration Service**”). The mediator shall be selected by mutual agreement of the parties; if the parties cannot agree, the mediator will be selected by the Arbitration Service. The Arbitration Service shall select a mediator with at least five (5) years experience in mediating and arbitrating commercial disputes of the type at issue between the parties. In the event that the parties are unable to resolve the Dispute by mediation within thirty (30) days of a party’s request for mediation, the Dispute will be submitted to binding arbitration in accordance with the applicable Arbitration Service’s rules and procedures. The mediator named under this Section 9 shall not serve as the arbitrator. An arbitrator shall be selected by mutual agreement of the parties; if the parties cannot agree, the arbitrator will be selected by the Arbitration Service. The Arbitration Service shall select an arbitrator with at least five (5) years experience in arbitrating commercial disputes of the type at issue between the parties, which arbitrator shall administer the arbitration after being selected. The arbitrator(s) shall be limited to awarding compensatory damages and shall have no authority to award punitive, exemplary or similar type damages. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party to the mediation or arbitration will pay one-half of the expenses of the mediator and/or arbitrator. The prevailing party in the arbitration proceeding shall be entitled to recover its expenses, including the costs of the arbitration proceeding, and the prevailing party’s attorneys’ fees, court costs, expert witness fees and other expenses related to such attempt to recover, including such fees, costs and expenses on any appeal and review.

10. Dual Representation. Owner acknowledges that in some cases Broker may represent prospective purchasers, tenants or subtenants. Owner desires that the Property be presented to such persons or entities, and consents to the dual representation created thereby, which consent shall be evidenced by a separate agreement signed by Owner.

11. Compliance with Applicable Law. Owner and Broker agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, Property or the subject matter of this Agreement.

12. General Provisions. No amendments or alterations of the terms hereof or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Owner and an officer of Broker. Owner and Broker agree that there are no statements, representations, inducements or promises made or relied upon by one or the other, except as expressly stated herein. The provisions of this Agreement are intended to bind and to benefit only Owner and Broker. It is not intended that these provisions benefit, and it shall not be construed that these provisions benefit, or are enforceable by any cooperating broker or other third parties. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes any prior agreements among them with respect to such subject matter.

THIS FORM SHOULD NOT BE MODIFIED WITHOUT SHOWING SUCH MODIFICATIONS BY REDLINING, INSERTION MARKS, OR ADDENDA.

Owner acknowledges receipt of a copy of this EXCLUSIVE BROKERAGE SERVICES AGREEMENT and the attached SCHEDULE OF COMMISSIONS, each of which Owner has read, fully understands, and has executed.

Dated: November 4, 2023

Dated: _____

OWNER: City of McMinnville, OR

PRINCIPAL BROKER: Ian Levin

By: *Jeff Towery*
Jeff Towery, City Manager

AGENT: _____
Kelly McDonald

Address: 230 NE Second Street
McMinnville, OR 987128

Address: 695 Commercial St SE, Suite #007
Salem, OR 97301

Telephone: 503-474-5138

Telephone: 971-707-4590 (office)

Approved as to Form:

By: *David Ligtenberg*
David Ligtenberg, City Attorney

EXHIBIT A
DESCRIPTION OF PROPERTY

Approximately 4,000 square feet of commercial office space located at 4025 SE Nimbus Loop, McMinnville, OR 97128. The building consists of two floors with stair access only to 2nd floor. Parking is off street and consists of 30 parking stalls.

EXHIBIT B
SCOPE OF AUTHORITY

Check one:

- For sale or exchange of the Property, the acceptable terms are:
- For lease or sublease of the Property, the acceptable terms are:
Initial lease rate to be offered at \$18/sq ft NNN per year. Lease rate may be adjusted at Owners sole discretion to compensate tenant for authorized improvements made by tenant and shall be negotiated in the lease contract. Owners desire is for a 10 year lease but will consider shorter terms for a qualified tenant.
- For sale, exchange, lease or sublease of the Property, the acceptable terms are:

EXHIBIT C
SCHEDULE OF COMMISSIONS

Broker shall receive 6% of the total lease amount during the initial term, due on execution of lease for a lease term of 10 years or longer. If the lease term is less than 10 years, but more than 5 years, Broker shall receive 4% of the total lease amount for the first renewal period. If the Lease term is less than 5 years but at least 1 year, Broker shall received 6% of the total lease amount for the initial term and 4% for all renewal terms for the first 10 years. If the initial lease term is less than 1 year. Broker shall receive a minimum fee of \$4,500 for up to the first year of the lease and 4% of all subsequent renewals for the first 10 years.

EXHIBIT D
EXCLUDED INTERESTED PARTIES

None

**SECOND LEASE AMENDMENT AND TERMINATION AGREEMENT
AND BILL OF SALE**

THIS SECOND LEASE AMENDMENT AND TERMINATION AGREEMENT (Second Amendment) is entered into this 14 day of March, 2023, but effective as of January 1, 2023 (the "Effective Date"), by and between the City of McMinnville, a municipal corporation of the State of Oregon (Lessor), and Comcast of Oregon II, Inc. (Lessee).

RECITALS

A. Lessor and Lessee entered into a lease agreement dated January 1, 2014 (the "Original Lease"), further amended by the Lease Amendment and Extension dated September 20, 2019 (the "First Amendment") for a parcel of land (known as the "FBO-C" property) located at the McMinnville Municipal Airport, having an address of 4025 SE Nimbus Loop, McMinnville, Oregon (the "Premises").

B. Lessee has elected not to exercise Lessee's Option(s) contained in the First Amendment to extend the Lease for an additional five year term, but has instead requested the right to extend the term of the Lease on a one-time basis for a three month period commencing on January 1, 2023 and ending on March 31, 2023.

B. Lessor and Lessee intend, by the execution and delivery of this Second Amendment, to amend and supplement the Lease in certain material respects as stated below including the final termination of the lease on March 31, 2023.

C. Unless otherwise noted, all capitalized terms herein have the same meanings as set forth in the Lease.

D. The Original Lease, the First Amendment, this Second Amendment are collectively known as the "Lease" as of the Effective Date.

NOW THEREFORE, in consideration of the mutual covenants contained herein and the foregoing recitals, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby amend and supplement the Lease as follows:

1. Lessee and Lessor do hereby agree to extend the term of the Lease for three (3) additional months (the "Extended Term"). The Extended Term shall commence as of January 1, 2023 and will terminate on March 31, 2023.

2. The Lease shall terminate on March 31, 2023, and all options to renew the Lease set forth in the Lease are hereby terminated and shall hereafter be null and void.

The monthly Minimum Rent during the Extended Term shall be:

<u>Term</u>	<u>Rent / Month</u>
January 1, 2023 – March 31, 2023	\$929.52

3. Notwithstanding any provisions in the Lease to the contrary, Lessee shall remove its personal property from the Premises prior to March 31, 2023, and Lessee shall surrender the Premises to Landlord, and Landlord shall accept Tenant's surrender of the Premises, with the building and improvements thereon (together, the "Improvements") in its then as-is, where-is condition on March 31, 2023, and on March 31, 2023 all of Tenant's right, title, and interest in and to the Premises and the Improvements thereon shall be shall and are hereby conveyed by Tenant to Landlord, and this instrument shall act as a Bill of Sale to all the Improvements effective as of that date.

4. All warranties respecting the Improvements, express or implied, including warranties of title, merchantability, and fitness for a particular purpose are hereby disclaimed. Lessor releases Lessee from all liability with respect to the Improvements, including but not limited to the environmental aspects and physical condition of the Improvements, its valuation, and suitability for Lessor's purposes. Lessor acknowledges: (i) That in accepting the Improvements, Lessor has been given the opportunity to investigate and study the Improvements, including, without limitation, the opportunity to conduct its own physical and environmental inspections of the Improvements, and that Lessor is not relying on any representation or warranty of Lessee regarding the physical or environmental condition of the Improvements; (ii) and (iii) Lessor will acquire the Improvements in its "as is", "where is" condition and shall assume the risks that adverse physical conditions may not have been revealed by its investigation, and Lessee specifically disclaims making any representation or warranty respecting the Improvements' physical condition, including, but not limited to, warranties of fitness, merchantability, fitness for a particular purpose, habitability or tenantability. Lessor hereby fully releases Lessee and its officers, directors, and shareholders, from all claims, demands and causes of any action, known or unknown, of whatever kind arising out of or related to the Improvements.

All other provisions of the Lease shall remain in full force and effect except as modified or terminated herein.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above set forth.

LESSOR

LESSEE

City of McMinnville

Comcast of Oregon II, Inc.

By: Anne Pagano
Its: Public Works Director

DocuSigned by:
By: Kevin Harrison
CC961916D07647C...
Its: VP Finance & Business Operations

LEASE ASSUMPTION

This agreement contains the terms and conditions under which TCI Cablevision of Oregon, Inc., (hereinafter referred to as TCI) assumes the rights, responsibilities and obligations under the original lease granted by City of McMinnville (hereinafter referred to as City) to Ron Stover in his individual capacity and Cascade Sierra Investment, Inc.

TCI agrees to assume all of the rights and responsibilities and obligations as set forth in that certain lease agreement dated 5 March 1991 between the City of McMinnville and Ron Stover, and Cascade Sierra Investment, Inc. which is attached hereto and incorporated herein by this reference (a metes and bounds description of the parcel is attached as Ex. A and a map as Ex. B). The parties agree and acknowledge that the condition and appearance of the grounds, building, storage area, proposed storage trailer, and parking lot are of significant importance to the City because this property is an integral part of the McMinnville Airport. The following conditions and terms are in addition to those set forth in the assumed lease:

1. TCI agrees to be responsible for all lease payments that may be in arrears and for all lease payments commencing February 1, 1993 as set forth in the assumed lease.
2. TCI agrees to erect and maintain a sight obscuring fence (at least 6 feet in height) to surround the exterior storage area to the east of the existing building (this fence shall be of chain link construction with slats installed) in a location and to a standard approved by the City Airport Manager. The approval for exterior storage is limited to the east end of the building. TCI and City acknowledge that this is an exception to the standard contained in paragraph 9.1 of the assumed lease.
3. TCI agrees to install and maintain additional sight obscuring landscaping adjacent to the fence (see item 2 above) to a standard approved by the City Airport Manager.
4. TCI agrees that there shall be no freestanding signs or reader boards erected on the leasehold and that only one indirectly lighted sign may be placed on the surface of the building and that this sign will be in compliance with all City of McMinnville ordinances. (Prior to erection of any sign a building permit and the approval of the Planning Director will be obtained).

5. TCI agrees that only one trailer (for the storage of equipment) may be placed on site. This storage unit shall be placed on site immediately adjacent to the south side of the main building and shall be maintained in good condition as regards its physical and visual appearance.

6. TCI agrees not to use the parking lot for commercial purposes (e.g., the sale of any kind of goods or material).

The City of McMinnville agrees to the assumption by TCI of the Cascade Sierra Investment, Inc. lease based upon complete compliance with the above terms in addition to the terms contained in the original lease agreement (attached as Exhibit C and incorporated herein by this reference). However, compliance with Items 1 through 6 of this assumption agreement are not subject to the grace periods contained in the assumed lease.

This Assumption may be recorded as evidence of the existence of the lease agreement.

Dated this 25th day of January 1993.

By [Signature] Barry P. Marshall
President
TCI Cablevision of Oregon, Inc.

By [Signature]
Ken Taylor
City Manager, City of McMinnville

STATE OF OREGON

County of DEPPAHOE ss.
before me appeared BARRY P. MARSHALL
.....
duly sworn, did say that he, the said BARRY P. MARSHALL
is the.....President, and he, the said.....
is the.....Secretary.....

On this 25th day of JANUARY, 1993,
..... and
..... both to me personally known, who being

..... of TCI CABLEVISION OF OREGON, INC. an OREGON CORP
the within named Corporation, and that the seal affixed to said instrument is the corporate seal of said Corporation, and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and BARRY P. MARSHALL and.....
acknowledge said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

[Signature]
Notary Public for OREGON
My Commission expires October 4, 1996 Amended on 11.13.24

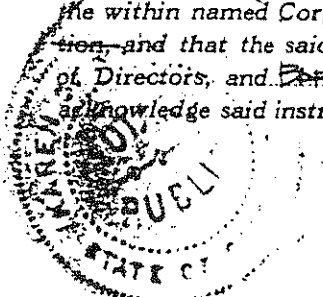


EXHIBIT "A"

Being a part of the North 1/2 of the John White D.L.C. No. 82, Northeast 1/4 Section 26, Township 4 South, Range 4 West, Willamette Meridian, Yamhill County, Oregon and being within those certain lands known as McMinnville Municipal Airport and owned by the City of McMinnville and being further described as follows:

Beginning at a point 588.78 feet South $87^{\circ}56'55''$ East, 120 feet South $2^{\circ}03'05''$ West (Basis of bearings from State of Oregon Highway survey) from the Northeast corner of that tract conveyed by the City of McMinnville to Evergreen Helicopters, Inc. and recorded in Film Volume 85, Page 1250, Deed Records of Yamhill County, Oregon, said point being 60 feet South $2^{\circ}03'05''$ West of Three Mile Lane right-of-way, as conveyed to the State of Oregon by deed recorded in Film Volume 230, Page 1743, Deed Records of Yamhill County, Oregon; thence South $2^{\circ}03'05''$ West, a distance of 94.90 feet; thence South $87^{\circ}56'55''$ East parallel with the south line of said Highway, a distance of 275.0 feet; thence North $2^{\circ}03'05''$ East, a distance of 154.90 feet to the South line of said Highway; thence North $87^{\circ}56'55''$ West along said Highway south line, a distance of 235.0 feet; thence southwesterly, a distance of 72.11 feet to the Place of Beginning of this description and containing 0.95 acres, more or less. Said tract identified on City records as FBO "C" and as shown on the attached Exhibit "B".

EXHIBIT "E"

Scale: 1" = 200'

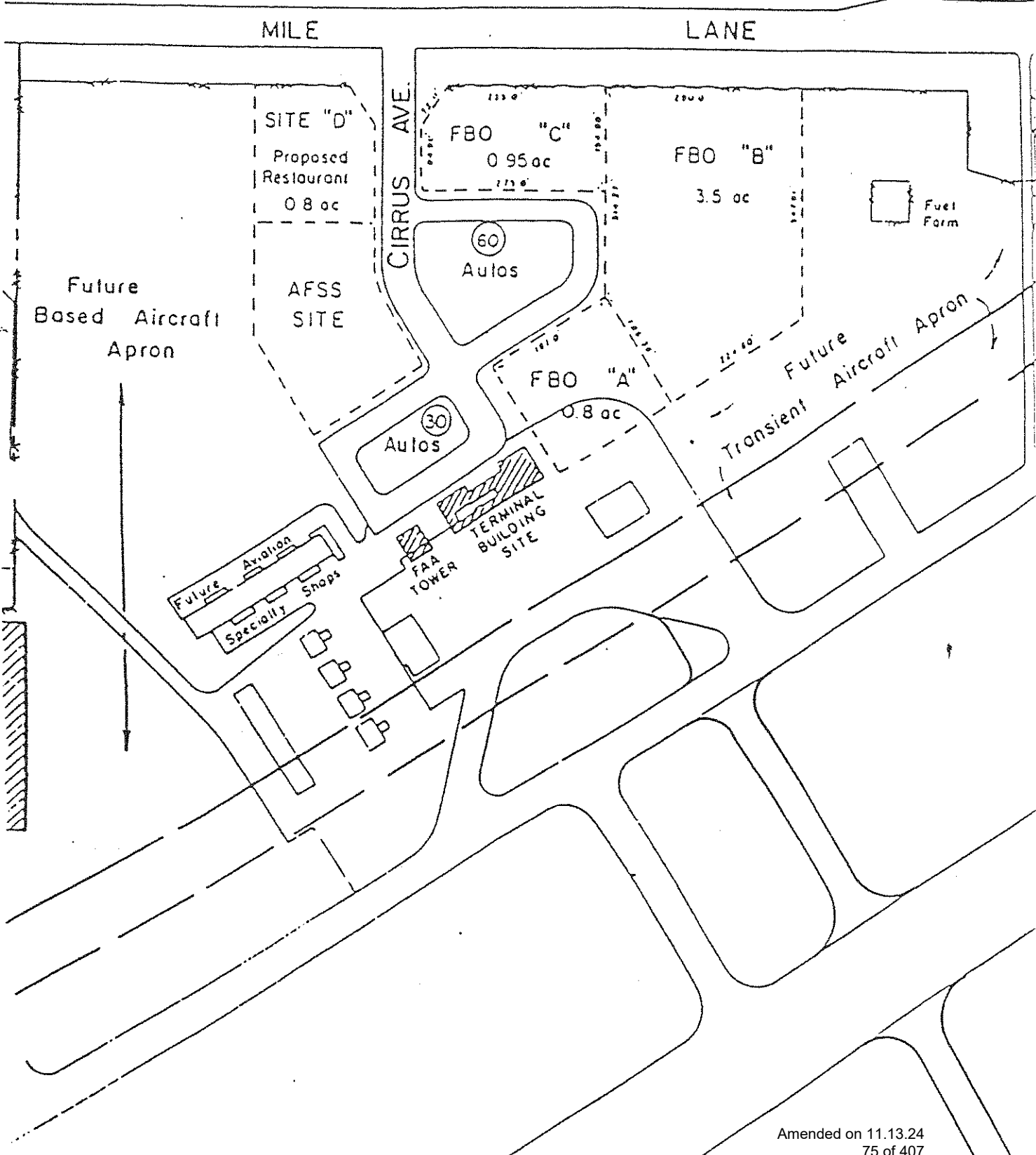


EXHIBIT "C"

LEASE

THIS LEASE made and entered into on the 5 day of March, 1991, by and between the City of McMinnville, a municipal corporation of the State of Oregon, hereinafter referred to as the "Lessor," and Cascade Sierra Investment, Inc., an Oregon corporation, hereinafter referred to as "Tenant."

WITNESSETH:

WHEREAS, the Lessor is the owner of McMinnville Municipal Airport, located in the County of Yamhill, State of Oregon; and

WHEREAS, Tenant desires to lease a parcel of land at the McMinnville Municipal Airport for the sole purpose of construction and operation of a real estate development and property management business; and

WHEREAS, the Lessor desires to grant such a lease to said Tenant and to set forth the terms and conditions of such occupancy and use of the McMinnville Municipal Airport;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto agree as follows:

1. Description. Lessor leases to Tenant the premises described in Exhibits "A" and "B" attached hereto and made a part hereof and described as FBO "C."
2. Primary term. The primary term of this lease is for a period of 5 years commencing on February 15, 1991.
3. Renewal term. Provided Tenant is not in default in the performance of any term or condition of this lease, Tenant shall have the option to extend this lease for 3 renewal terms of 5 years each. The first 5-year term shall commence with the termination of the primary term; the second and third 5-year terms shall commence at the termination of the preceding term. The following conditions apply:
 - 3.1 The renewal option may be exercised at any time within 60 days preceding termination of the primary or any one of the renewal terms by Tenant giving written notice to Lessor. If not exercised within such period and in such manner, the option to renew shall be void.
 - 3.2 On an annual basis (based upon the execution of this lease) Lessor shall inspect the property and notify Tenant of his findings regarding its condition. Said findings shall be in writing. A period of time not longer than 180 days from the date of written notice to Tenant shall be allowed for restoration of the property to a condition and status the same as was in existence at the time the plans herein called for were approved. Normal wear and tear are excluded from this standard except at such time as the conditions have reached a condition of disrepair.

3.2.1 Tenant's failure to make such restoration and repairs within that period shall result in the immediate termination of the lease and the provisions of paragraph 17 shall apply.

4. Rent payments. Commencing on February 15, 1991 Tenant shall pay a minimum rent on the following schedule:

Year 1	Feb. 15, 1991 - Jan. 31, 1992	\$200 per mo.	\$2,400
Year 2	Feb. 1, 1992 - Jan. 31, 1993	\$250 per mo.	\$3,000
Year 3	Feb. 1, 1993 - Jan. 31, 1994	\$300 per mo.	\$3,600
Year 4	Feb. 1, 1993 - Jan. 31, 1995	\$375 per mo.	\$4,500

Payments shall be made to Lessor at its office in McMinnville, Oregon. All amounts not paid by Tenant when due shall bear interest at the rate of 10 percent per annum.

5. Periodic adjustment of minimum rent. The rent at the commencement of the fifth through the twentieth years shall be adjusted each year on the anniversary date of this agreement as follows: the rental sum as established above shall be multiplied by the Consumer Price Index (CPI-W) in Portland, Oregon as compiled by the U.S. Department of Labor or its successor for the closest available 12-month period immediately preceding the scheduled adjustment. The rent for each year (5 through 20) shall be adjusted as above described provided, however, that the minimum rate increase shall be not less than 2 percent and the maximum rate increase shall not be greater than 10 percent. In any event, the rent shall be not less than the following schedule:

5.1 Year 5 through Year 10	\$4,500 per yr. payable at \$375 per mo.
Year 11 through Year 15	\$4,800 per yr. payable at \$400 per mo.
Year 16 through Year 20	\$5,100 per yr. payable at \$425 per mo.

6. Taxes. Tenant shall pay when levied any taxes on the leased premises, as well as any taxes upon real and personal property constructed and maintained upon the premises, it being the intent of the parties that Lessor shall not be required to pay any taxes or assessments on the leased premises.

7. Approval of plans and construction. The Tenant shall submit to Lessor (as soon as possible after execution of this Lease) architectural sketches and renderings of the proposed development in such detail that the building configuration, color, and kind of construction can be ascertained and reviewed. Lessor shall have 10 working days within which to approve or disapprove said plans. The plans will be considered approved as submitted unless Lessor notifies Tenant in writing of disapproval within the 10-day period.

7.1 The Airport Manager may withhold approval of Tenant's plans and of site preparations or construction when in his judgment the proposed development is not consistent with the plans, policies, rules, regulations, standards of quality and practices at McMinnville Municipal Airport.

- 7.2 Tenant shall comply with all applicable laws of the Federal, State, and City governments regarding construction of said facility. Final plans will be submitted to the City Manager for submission to the Airport Commission. Tenant shall complete said construction within a reasonable time after approval is granted.
8. Use of the premises. The Tenant may use the leased premises for the following purposes and no others without the prior written approval of the Airport Manager.
- 8.1 Construction and operation of a real estate development business, property management functions, and related business operations.
9. Restrictions on use. The Tenant's rights provided for hereunder are expressly limited to the above purposes (see No. 8. Use of the premises). However, Tenant may lease space for an airport-related business subject to Section 10 below.
- 9.1 All outside storage of any and all materials and equipment is strictly prohibited. No radio or other electronic signals that interfere with the operation of the airport or any business thereon may originate in or from the building site.
10. Assignment, sublease, or other transfer or possession or control of the premises. This lease is personal between Lessor and Tenant. Tenant shall not assign this lease, sublease a portion or all of the premises, encumber this lease or any interest in the premises or improvements, or in any other manner transfer possession or control of the premises to any other person without the prior written approval of Lessor, and said approval shall not be unreasonably withheld.
11. Specific obligations of tenant. In connection with Tenant's occupancy and use of the leased premises, the following specific conditions shall apply:
- 11.1 Utilities. Lessor is obligated to provide utilities to the leased premises. Tenant is entitled to connect to any storm sewers and sanitary sewers, and to water and utility outlets at its sole cost and expense, including charges by Lessor as reimbursement for Tenant's reasonable share of the cost of making such utility services available to the leased premises. The Tenant shall pay on a month-to-month basis for the actual use of the utilities consumed.
- 11.2 Maintenance. Tenant shall at its own cost and expense keep and maintain the leased premises and all other improvements, in a condition of repair satisfactory to the Airport Manager. In determining whether or not the premises are in proper condition, the Airport Manager shall take into consideration the appearance and character of other similar improvements at the airport or other airports in the area (area being defined as the State of Oregon) which are in good condition and repair. It is specifically acknowledged that the condition of repair includes appearance of the premises and improvements and therefore the condition of paint

or other exterior finish. Tenant shall cause to be removed from the premises and the airport all refuse.

- 11.3 Compliance with laws. Tenant shall comply with all rules and regulations of the airport and all applicable laws, ordinances, rules and regulations of any governmental bodies having jurisdiction over the airport with respect to Tenant's activity in relation to the use and occupancy of the premises and of the airport in general. Tenant shall also abide by any additional rules and regulations from time to time promulgated by Lessor. Any act or failure to act by Tenant or by any subtenant, employee, invitee, or agent of Tenant in violation of any such laws, ordinances, rules and regulations shall be deemed a violation of this lease. Tenant will be notified of any future rule changes before enforcement action is taken by Lessor in regard to said new changes.
- 11.4 Signs. In addition to compliance with any ordinance of the City of McMinnville pertaining to signs, Tenant shall not permit to be maintained any sign or billboard nor any freestanding sign or billboard on the premises or at the airport without the prior written approval of the Airport Manager.
12. Liability to third parties.
- 12.1 Tenant's indemnificator. Tenant agrees to defend, indemnify, and hold Lessor harmless from any claim, loss, liability, or cause of action or suit arising out of or in any way related to any activity of Tenant or Tenant's subtenants, employees, invitees, or agents on the leased premises or at the airport, including the construction and maintenance of improvements on the premises in the exercise or enjoyment of any rights or privileges granted by this lease. In the event Tenant or any subtenant, employee, invitee, or agent commits any act or omission that results in a penalty or fine imposed upon the airport, Tenant agrees to pay such fine or penalty and hold Lessor harmless from costs and expenses in connection therewith.
- 12.2 Liability insurance required. Tenant shall procure and maintain throughout the term of this lease, and any renewal hereof, at Tenant's cost, public liability and property damage insurance with the combined single limit of not less than \$1,000,000 for bodily injury, death, or property damage in connection with Tenant's use or occupancy of the leased premises, or the exercise or enjoyment of rights or privileges granted by this lease. Lessor shall have the right to require Tenant to increase the limits of such coverage from time to time, to an amount deemed by Lessor to be reasonable in view of conditions and circumstances existing at the time of such increase, provided such insurance is available. Tenant shall cause Lessor to be named as an additional insured on its liability policy. Tenant shall provide Lessor with a certificate of insurance

evidencing the required coverage and shall provide Lessor with such evidence as Lessor may require from time to time that the policy remains in force.

13. Lessor/Lessee's assurance of subordination. This lease shall be subordinata to the provisions of any existing or future agreement between Lessor and the United States relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

14. Attorney fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs, such sums as the court may adjudge reasonable as attorney fees, including attorney fees for any appeals herein.

15. Nondiscrimination. The Tenant, for himself, his heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on said property described in this lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

The Tenant, for himself, his personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination, (3) that the Tenant shall use the premises in compliance with all other requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the lease and to reenter and repossess said land and facilities thereon, and hold the same as if said lease had never been made or issued; provided, however, that the Tenant allegedly in breach shall have the right to contest said alleged breach under applicable Federal Aviation Administration procedures and any sanctions under or termination of lease shall be withheld pending completion of such procedures.

16. Termination--removal of improvements. This lease concludes at the end of each 5-year period unless specifically renewed as provided for in this agreement. At the time of termination the Lessor will require the Lessee to restore the site to a clean and orderly condition, free of any improvements above ground level and any debris, within 60 days from the date of termination unless the building is in good and suitable condition to be immediately used for the same or similar kinds of tenants.

16.1 At the conclusion of the 20-year period, the Lessee shall have the right of first refusal should the City retain the facilities and make them available to rent to the general public.

16.2 In the event removal of the building is required, then Tenant shall restore the leased premises within 60 days. If a termination occurs as the result of a default by the Tenant in performance of the terms and conditions of this lease, title to any improvements shall vest in Lessor and Lessor shall have the option within 6 months to remove the improvements and restore the premises to the above described physical condition, and Tenant agrees to pay the reasonable expenses thereof.

17. Cancellation and purchase by Lessor. The City reserves the right to cancel this lease at any time upon 60 days' written notice after the elapse of 10 years from its execution provided the City intends to use the structure for activities benefitting the airport.

17.1 The value of the Lease shall be established by determining the structure and landscaping (not including the land or parking improvements) fair market value at the time of cancellation. The parties may agree upon the fair market value.

17.2 In the event the parties cannot agree on the market value of the building within 90 days subsequent to the cancellation notice, the matter shall be arbitrated between Lessor and Lessee by each appointing an arbitrator qualified to appraise real estate and these two arbitrators selecting a third arbitrator who is also qualified to appraise real estate. If the arbitrators cannot agree on the third arbitrator, then and in that event, the Tenant, Lessor, and two arbitrators shall accept as the third arbitrator an appraiser appointed by the presiding Circuit Court Judge of Yamhill County. The standard used by the arbitrators in their determination shall be the market value of a comparable structure located in the area of the demised premises. The value determined by the arbitrator shall be effective and retroactive to the day notice of cancellation was given. "Area" shall be defined as the State of Oregon. The parties shall accept the market value established by the three arbitrators by majority vote and shall equally bear the cost of said arbitration.

18. Abandonment. If Tenant abandons the premises, Lessor may treat such abandonment as a default under this lease and Lessor may exercise any right it may have as in the case of a default for which Tenant is not entitled to notice.

Tenant shall be deemed to have abandoned the premises if it fails to occupy the same for a period of one year; however, Lessor may consider Tenant to have abandoned the premises by other acts, words, or conduct. Any personal property remaining on the premises 60 days after a termination of the lease for any reason shall be deemed abandoned by Tenant and Lessor may make any disposition of such personal property as it deems appropriate. Lessor may charge Tenant for the reasonable costs incurred in disposing of such personal property.

19. Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. No act or omission shall constitute a waiver of this nonwaiver clause.

20. Default. Tenant shall be in default under this lease upon the occurrence of any one or more of the following events, time of payment and performance being of the essence:

20.1 Failure of Tenant to pay any rent or other charges within 30 days after the same becomes due.

20.2 Except as otherwise provided in this paragraph 20, the failure of Tenant to comply with any term or condition, to fulfill any obligation, or to cure any violation of this lease within 30 days after written notice by Lessor specifying the nature of the default with reasonable particularity. If such default is of such a nature that it cannot be completely remedied within 30 days, this provision shall be deemed complied with if Tenant begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Lessor may require, as a part of the cure of any violation by Tenant, reimbursement by Tenant to Lessor of any and all costs and expenses incurred by Lessor by reason of Tenant's violation of this lease.

20.3 If Tenant cures a deficiency in the manner described in 20.2 above, Tenant's subsequent failure to comply with the same term or condition shall constitute a default if it is not cured within 10 days after written notice of the specific default is given.

20.4 Tenant shall also be in default in the event of its insolvency; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; adjudication that Tenant is a bankrupt; the filing of an involuntary petition in bankruptcy and the failure of Tenant to seek a dismissal of the petition within 30 days after the filing; the attachment of or the levy of execution on the leasehold interest and failure of the Tenant to secure a discharge of the attachment or release of the levy of execution within 10 days after such attachment or execution; and failure to maintain in effect required insurance coverage.

21. Remedies on default. In the event of a default, the lease may be terminated at the option of the Lessor by notice in writing to Tenant. The notice of termination may be included in a notice of failure of compliance given under paragraph 20. If the property is abandoned by Tenant in connection with a default, termination shall be automatic and without notice. If the lease is not terminated by election of Lessor or otherwise, Lessor shall be entitled to recover damages from Tenant for the default. If the lease is terminated for any reason, Tenant's liability to Lessor for damages shall survive such termination, and the rights and obligations of the parties shall be as follows:

- 21.1 Tenant shall vacate the property immediately, remove any property of Tenant including any fixtures which Tenant is required to remove at the end of the lease term, perform any cleanup, alterations or other work required to leave the property in the condition required at the end of the term, and deliver all keys to Lessor.
- 21.2 Lessor may reenter, take possession of the premises and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.
- 21.3 Following reentry or abandonment, Lessor may relet the premises and in that connection may relet all or part of the premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession, and may make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises, but Lessor shall not be required to relet to any tenant which Lessor may reasonably consider objectionable.
- 21.4 The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

22. Notices. Any notice required or permitted under this lease shall be given when actually delivered or when deposited with postage prepaid in the United States mail as registered or certified mail, addressed as follows:

To Lessor: Airport Manager
City of McMinnville
230 East Second Street
McMinnville, Oregon 97128

To Tenant: Cascade Sierra Investment, Inc.
P.O. Box 325
McMinnville, Oregon 97128

or to such other address as may be specified from time to time in writing by either of the parties.

23. Succession. Subject to the limitations set forth elsewhere in this lease on the transfer of Tenant's interest, this lease shall be binding upon and inure to the benefit of the parties, their respective heirs, legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

Lessor:

Tenant:

CITY OF McMinnville, a municipal corporation of the State of Oregon

CASCADE SIERRA INVESTMENT, INC., an Oregon corporation

W. T. Ross
W. T. Ross, M.D.
Chairman, Airport Commission

Ron Stover
Ron Stover, President

Kent L. Taylor
Kent L. Taylor
Airport Manager

GUARANTY OF LEASE

This is a contract of guaranty by Ron Stover (guarantor), to the City of McMinnville, a municipal corporation (obligee), of performance of a certain contract with obligee by Cascade Sierra Investment, Inc. (obligor).

In consideration of the City of McMinnville entering into the above lease of airport land to Cascade Sierra Investment, Inc., guarantor guarantees to obligee performance of that certain contract of obligor with obligee, described as above, according to its provisions, terms, and conditions, as set forth in paragraphs 4, 5, 6, 11, and 16.

Guarantor consents to: any extension of time of performance of the whole or any part of the contract; or any addition or change of the contract; and waives notice of that consent with regard to the rental payments specified in paragraph 4 and the removal of the building as required in paragraph 16 of said contract.

This guaranty and every part of it shall bind guarantor's heirs, executors and administrators, successors and assigns.

Dated this 5 day of March, 1991.

Witness:

Ron Stover, Guarantor

[Signature]

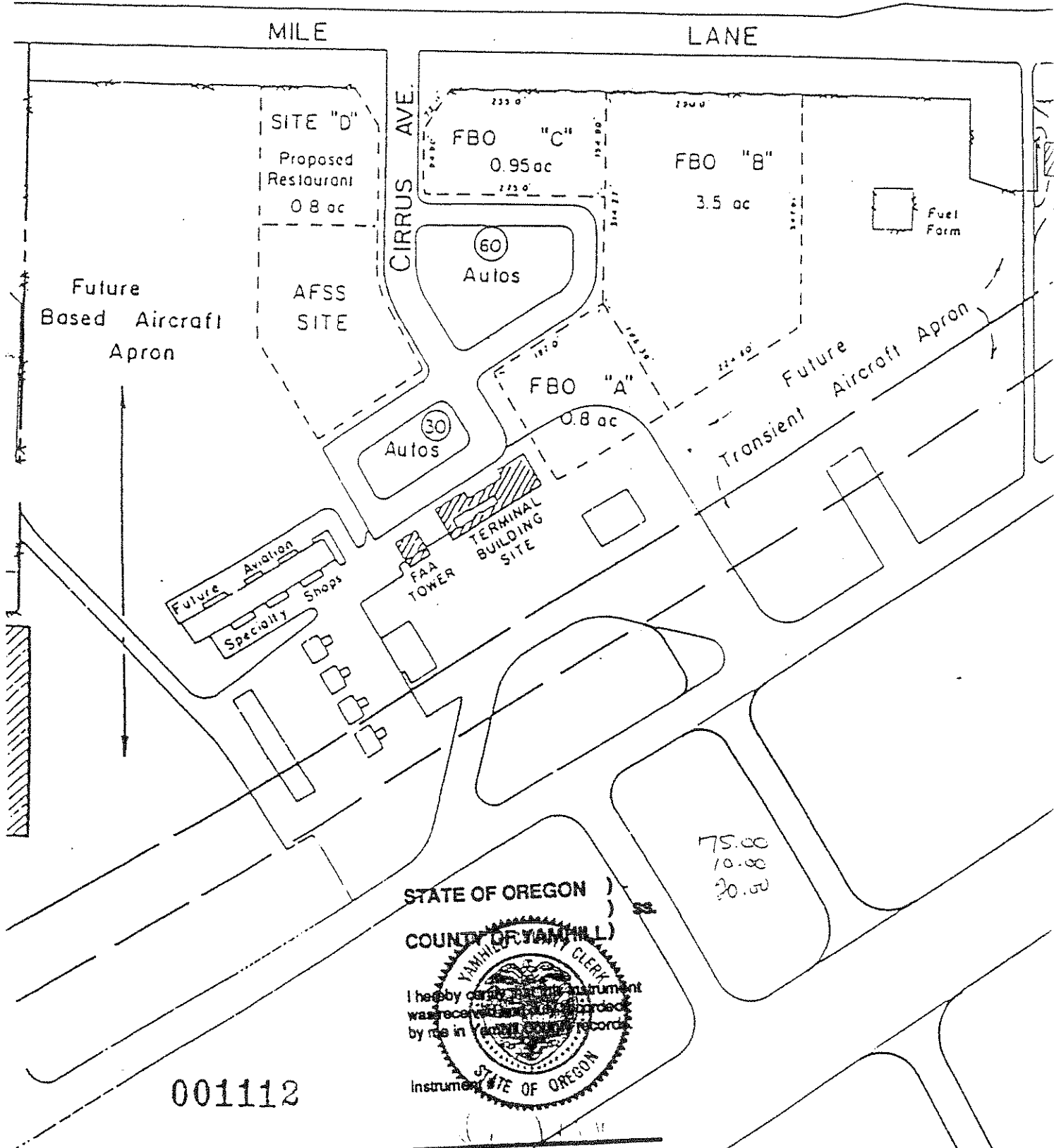
EXHIBIT "A"

Being a part of the John White Donation Land Claim No. 82, Northeast 1/4 Section 26, Township 4 South, Range 4 West, Willamette Meridian, Yamhill County, Oregon and being within these certain lands known as McMinnville Municipal Airport and owned by the City of McMinnville and being further described as follows:

Beginning at a point on the east side of service road known as Cirrus (not a public right-of-way) said point being 60 feet South of Three Mile Lane right-of-way; thence southerly 94.90 feet; thence easterly parallel with the South line of said Highway a distance of 275.0 feet; thence northerly 154.90 feet to the South line of said Highway; thence westerly along the South line of said Highway, a distance of 235.0 feet; thence southwesterly 72.11 feet to the place of beginning of this description and containing 0.95 acres, more or less. Said tract identified on City records as FBO "C" and as shown on the attached Exhibit "B".

EXHIBIT "B"

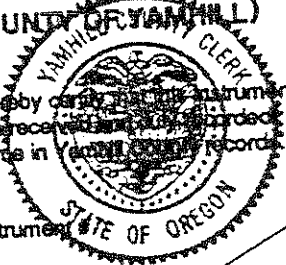
Scale: 1" = 200'



STATE OF OREGON
COUNTY OF YAMHILL

I hereby certify that this instrument
 was received in my office and recorded
 by me in the public records.

Instrument No. _____



001112

CHARLES STERN,
COUNTY CLERK

BILL OF SALE

THIS INDENTURE WITNESSETH, That in consideration of the sum of TWO HUNDRED THOUSAND DOLLARS AND NO/100 Dollars, (\$200,000.00) the receipt whereof hereby is acknowledged, I the undersigned seller, hereby grant, bargain, sell, transfer and deliver unto TCI CABLEVISION OF OREGON, INC., an Oregon ** hereinafter called buyer, the following described personal property, now being and situate

in State of Oregon, County of Yamhill to-wit:
 **corporation

SEE ATTACHED EXHIBIT "A"

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

TO HAVE AND TO HOLD, the same unto the buyer and buyer's executors, administrators, successors and assigns forever.

And I, the seller, hereby covenant to and with the said buyer that I am the owner of said personal property; that the same is free from all encumbrances except existing ground lease with the City of McMinnville that I have a good right to sell the same, and that I, my heirs, executors and administrators shall warrant and defend the same against the lawful claims of all persons whomsoever.

WITNESS.....hand.....this 19th day of January, 1993
Cascade Sierra Investment, Inc. by
Ron Stover, President

STATE OF Oregon }
 County of Yamhill } ss.

I, Ron Stover, President of Cascade Sierra Investment, Inc. being first duly sworn, depose and say that he the sole owner of the property described in the foregoing bill of sale, that the same has been paid for in full, and that on this date the same is free and clear of liens and encumbrances of every kind and nature excepting the ground lease with the City of McMinnville

Cascade Sierra Investment, Inc. by
Ron Stover, President

Subscribed and sworn to before me
January 19th, 1993

[Signature]
 Notary Public for Oregon
 My commission expires 6-9-93
 Amended on 11.13.24

EXHIBIT "A"

The building and improvements located on the following described Real Property:

Being a part of the John White Donation Land Claim No. 82, Northeast 1/4 Section 26, Township 4 South, Range 4 West, Willamette Meridian, Yamhill County, Oregon and being within these certain lands known as McMinnville Municipal Airport and owned by the City of McMinnville and being further described as follows:

Beginning at a point on the east side of service road known as Cirrus (not a public right-of-way) said point being 60 feet South of Three Mile Lane right-of-way; thence southerly 94.90 feet; thence easterly parallel with the South line of said Highway a distance of 275.0 feet; thence northerly 154.90 feet to the South line of said Highway; thence westerly along the South line of said Highway, a distance of 235.0 feet; thence southwesterly 72.11 feet to the place of beginning of this description and containing 0.95 acres, more or less. Said tract identified on City records as FDO "C" and as shown on the attached Exhibit "B".

WARRANTY DEED - OREGON STATUTORY FORM

CASCADE SIERRA INVESTMENT, INC., hereinafter called the grantor, does hereby grant, sell and convey unto TCI CABLEVISION OF OREGON, INC. an Oregon corporation, hereinafter called the grantee, the following described real property situated in Yamhill County, Oregon:

THE BUILDING AND IMPROVEMENTS LOCATED ON THE ATTACHED EXHIBIT "A" LEGAL DESCRIPTION.

Said grantor hereby covenants that grantor owns the above described property free of all encumbrances except existing ground lease with the City of McMinnville - and that grantor will warrant and defend the same against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

THE TRUE AND ACTUAL CONSIDERATION FOR THIS TRANSFER IS \$200,000.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT. THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Dated this 19th day of January, 1993

Ron Stover

CASCADE SIERRA INVESTMENT, INC. by Ron Stover, President

State Of Oregon, County Of Yamhill

The foregoing instrument was acknowledged on January 19th, 1993 by Ron Stover, President acting on behalf of Cascade Sierra Investment, Inc.

Before me:

[Signature]

129798 YAMHILL COUNTY TITLE & CLOSING, INC.

EXHIBIT "A"

BEING a part of the North half of the John White Donation Land Claim No. 82 in the Northeast Quarter of Section 26, Township 4 South, Range 4 West, Willamette Meridian, Yamhill County, Oregon and being within those certain lands known as McMinnville Municipal Airport and owned by the City of McMinnville and being further described as follows:

BEGINNING at a point 588.78 feet South 87° 56' 55" East, 120 feet South 02° 03' 05" West (Basis of bearings from State of Oregon Highway survey) from the Northeast corner of that tract conveyed by the City of McMinnville to Evergreen Helicopters, Inc. and recorded in Film Volume 85, Page 1250, Deed Records of Yamhill County, Oregon, said point being 60 feet South 02° 03' 05" West of Three Mile Lane right-of-way, as conveyed to the State of Oregon by Deed recorded in Film Volume 230, Page 1743, Deed Records of Yamhill County, Oregon; thence South 02° 03' 05" West, a distance of 94.90 feet; thence South 87° 56' 55" East parallel with the South line of said Highway, a distance of 275.0 feet; thence North 02° 03' 05" East, a distance of 154.90 feet to the South line of said Highway; thence North 87° 56' 55" West along said Highway South line, a distance of 235.0 feet; thence Southwesterly, a distance of 72.11 feet to the Place of Beginning of this description.

YCT&E 129798



City of McMinnville
Public Works Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7312

www.mcminnvilleoregon.gov

STAFF REPORT

DATE: November 1, 2024
TO: Jeff Towery, City Manager
CC: David Ligtenberg, City Attorney, Finance Director
FROM: Geoff Hunsaker, Public Works Director
SUBJECT: Adoption of City Mercury TMDL Implementation Plan



CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize & deliver municipal services with discipline and focus.

Report in Brief:

The City developed a Mercury Total Maximum Daily Load (TMDL) Implementation Plan that was approved by the Department of Environmental Quality as required by the Final Revised Willamette Basin Mercury Total Maximum Daily Load. This Implementation Plan requires the dedication of City resources, and future changes to be made to the municipal code.

Action:

Approve the attached resolution.

Background:

On March 3, 2021, the City of McMinnville was notified by the Oregon Department of Environmental Quality of its status as a Designated Management Agency (DMA) to the Willamette Basin. A DMA is a federal, state or local governmental agency that has legal authority over a sector or source contributing pollutants and is identified as such by the Department of Environmental Quality. DMAs are responsible for implementing strategies and specific plans for addressing Total Maximum Daily Loads per Oregon Administrative Rules 340-042-0030(2).

In November 2021, the City hired a consultant to work with staff on development of an implementation plan. Initial steps for plan implementation and program development focused on the formation of the best management practices to be used as a new TMDL agency. Emphasis has been placed on educational activities and training to allow time for staff to review the City's existing water quality-based actions and expand on them.

On November 15th, 2022, the Department of Environmental Quality approved of McMinnville’s TMDL plan.

On November 1st, 2023, an annual report was submitted to DEQ for review and approval. On November 30th, 2023, DEQ confirmed the City had met its Year 1 implementation goals. City Council held work sessions on the Mercury TMDL and its requirements on August 9, 2022, and October 16, 2024.

Discussion:

Designated Responsibility

Under Oregon Administrative Rules the City has been Designated as a Management Agency. Under OAR – 340-042-0080(4)(b) the City must implement a Mercury TMDL implementation plan and revise it after five years.

Feasibility of Implementation

Staff developed the Implementation Plan to be a reasonable roll out of TMDL requirements given City resources. The implementation plan will require future updates be made to City municipal code and internal City processes but can be implemented within the timeframe laid out.

Fiscal Impact:

The TMDL Implementation Plan requires the City perform street sweeping which has a total budget of \$317,780 for Fiscal Year 2025.

The TMDL Implementation Plan also requires the City perform catch basin cleaning, public outreach, staff trainings, inspections, and support for waterway restoration projects that will have a fiscal impact. Some of this impact will be offset using development engineering fees that went into effect on October 1, 2024.

Failure to comply with the TMDL Implementation Plan and the relevant Oregon Administrative Rules may incur penalties from the Department of Environmental Quality that could result in fines.

Attachments:

1. Resolution No. 2024-56
 - a. Exhibit A – City of McMinnville TMDL Implementation Plan
 - b. Exhibit B – Department of Environmental Quality Approval Letter

RESOLUTION NO. 2024-56

A Resolution adopting the City’s Mercury Total Maximum Daily Load (TMDL) Implementation Plan.

RECITALS:

Whereas, in 2021 the City was informed by the Oregon Department of Environmental Quality that it had become a Designated Management Agency under the Final Revised Willamette Basin Mercury TMDL; and

Whereas, the City hired a consultant that worked with staff to develop a feasible TMDL Implementation Plan; and

Whereas, in 2022 the Department of Environmental Quality approved of the TMDL Implementation Plan developed by the City; and

Whereas, the City has a legal responsibility to implement the TMDL Implementation Plan approved by the Department of Environmental Quality or face penalty by the State per Oregon Administrative Rule (OAR) 340-042-0080.

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

1. That the attached Exhibit A: City of McMinnville TMDL Implementation Plan is approved and adopted.
2. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 12th day of November 2024 by the following votes:

Ayes: _____

Nays: _____

Approved this 12th day of November 2024.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBITS:

- A. City of McMinnville TMDL Implementation Plan
- B. Department of Environmental Quality Approval Letter

CITY OF MCMINNVILLE TMDL IMPLEMENTATION PLAN

August 19, 2022



South Yamhill River

Prepared By:

E and S Consulting, LLC
Salem, OR 97304
sagmillere@gmail.com

Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Anne Pagano

Anne Pagano, Public Works Director

City of McMinnville, OR

ACRONYMS

BMPs	Best Management Practices
City	City of McMinnville
CESCL	Certified Erosion and Sediment Control Lead
CS	Construction Site Runoff
CWA	Clean Water Act
DEQ	(Oregon) Department of Environmental Quality
DMA	Designated Management Agency
ESCP	Erosion and Sediment Control Plan
EPA	United States Environmental Protection Agency
GH	Good Housekeeping in Municipal Operations
GIS	Geographic Information Systems
IDDE	Illicit Discharge Detection and Elimination
IPM	Integrated Pest Management
LID	Low Impact Development
LUCS	Land Use Compatibility Statement
MCM	Minimum Control Measure (aka Stormwater Controls)
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
NPS	Nonpoint Sources (not under an NPDES permit)
NWI	National Wetland Inventory
OAR	Oregon Administrative Rules
ODA	Oregon Department of Agriculture
ODFW	Oregon Department of Fish and Wildlife
PC	Post-Construction Runoff Control in New and Re-development

PE	Public Education
PI	Public Involvement
SPRP	Spill Prevention and Response Plan
SWPCP	Stormwater Prevention and Control Plan
SWPPP	Stormwater Pollution Prevention Plan
TMDL	Total Maximum Daily Load
TSS	Total Suspended Solids
UIC	Underground Injection Control (device)
USGS	United States Geological Survey
WQMP	Water Quality Management Plan

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The City of McMinnville Total Maximum Daily Load (TMDL) Implementation applies to:

The 2019 Final Revised Willamette Basin Mercury TMDL and WQMP

Load allocation: This TMDL Implementation Plan was developed with the purpose of reducing load allocations from the City of McMinnville, a non-permitted DMA. The City's goal is to reach a 75% reduction together with other DMAs with full implementation of the management practices listed in this plan.

Section 1.0 Introduction

Section 1.1 Background

A Willamette Basin Mercury TMDL was first issued in 2006 [Department of Environmental Quality : Willamette Basin 2006 : Total Maximum Daily Loads : State of Oregon](#). On November 22, 2019 DEQ issued the *Final Revised Willamette Basin Mercury Total Maximum Daily Load and WQMP* that was submitted to the EPA [Department of Environmental Quality : Willamette Basin Mercury 2019 : Total Maximum Daily Loads : State of Oregon](#). According to DEQ, this revised TMDL identifies sources of mercury and how much mercury needs to be reduced to meet water quality standards. The EPA disapproved DEQ's TMDL on December 30, 2019. On February 4, 2021 the EPA notified DEQ that *EPA has established this TMDL and is hereby providing it to the State for implementation*. The Water Quality Management Plan (WQMP) was issued as part of the EPA TMDL.

The final TMDL and WQMP specifies mercury reductions which can be achieved through planned implementation of activities, best management practices, conservation practices, and other management strategies to help reduce mercury entering waterways. The ultimate goal of this process is to provide full restoration of the beneficial use of fish consumption, including protection of aquatic species and wildlife throughout the Willamette Basin.

According to DEQ the goals, objectives and approaches of this TMDL are consistent with the requirements of the federal Clean Water Act (CWA) and Oregon water quality laws and implementing regulations.

On March 3, 2021 the City of McMinnville was notified that DEQ had included McMinnville as a designated management agency (DMA) in the Willamette Basin Mercury TMDL and WQMP. According to Oregon Administrative Rules (OAR 340-042-0030(2)) *DMA means a federal, state or local governmental agency that has legal authority over a sector or source contributing pollutants, and is identified as such by the Department of Environmental Quality in a TMDL*. DMAs are responsible for implementing strategies and DMA specific TMDL Implementation Plans.

Section 1.2 The City of McMinnville

McMinnville is an attractive, vibrant community with an vigorous and walkable downtown area. The City is home to Linfield University and a branch of Chemeketa Community College. There are approximately 350 acres of City parks including 70 acres of undeveloped natural areas. There are multiple nature trails at various sites throughout the system, and two of those sites are directly adjacent to the South Yamhill River. The City has been proactive in maintaining a community that people want to visit and live in.

According to the 2020 census the population of McMinnville is ~ 34,615. The City incorporated in 1882. There is a City Manager, Mayor, and 6 City Councilors. The City is divided into 3 wards.

McMinnville does not have a stormwater or environmental division. There is no stormwater fee that stands as dedicated funding. For the most part, stormwater activities such as street sweeping, catch basin cleaning, storm line repair, detention basin maintenance and the like is performed by the Wastewater Conveyance group and Street staff and funded by the Streets Fund (gas tax).

Despite the lack of an established stormwater program, the City is involved in strong environmental activities. Staff actively engages with the Greater Yamhill Watershed Council, attending monthly meetings and providing monetary support as well as free storage space for the group. The staff has indicated support for the Friends of Cozine Creek group, and Parks staff utilizes an Integrated Pest Management Plan (IPM) in parks and open spaces. Engineering and Wastewater staff have been innovative with the use of green elements at the Water Reclamation Facility in McMinnville. These activities and much more will serve McMinnville well as the community takes on the responsibility of a TMDL Implementation Plan.



Section 1.3 Summary of TMDL Plan Development

The City of McMinnville has developed an implementation plan that meets the requirements listed in the WQMP, specifically Table 13-11, and is consistent with the timelines listed in Table 13-14. The TMDL Implementation Plan includes a narrative which is captured in Sections 1 through 4 of this document, an 'at-a-glance' matrix in Appendix A, and land use findings in Appendix B.

Shortly after the DMA notice arrived from DEQ, McMinnville began the process of hiring a consultant to assist with development of the implementation plan. In November 2021 the consultant spent 2 days with key staff becoming familiar with how the City operates, but also providing background and instruction on TMDL implementation and how it applies within the region.

Initial steps for plan development focused on formation of the BMPs to be used by the City as a new TMDL agency. More importantly, the City has been focused on the 6 control measures and their role in pollutant reduction. Emphasis has been placed on foundation building activities and training to allow staff to review existing water quality based actions that could be expanded upon. The timeline listed in Table 13-14 of the TMDL WQMP called for a shorter timeline in regard to implementation of 3 control measures - Public Education, Public Involvement and Good Housekeeping.

As was noted, a consultant has been used in assisting with design and development of the implementation plan. The City intends to retain consulting services through the first report year to assist with helping the City to move forward smoothly with accurate messages. The ultimate goal is to have a program fully developed and implemented by the end of the first permit term in 2027. Current progress on control measures, as well as projections for the future, are described under Subsection 2.4 of this document.

Section 2 Hydrological Conditions / Existing Conditions

Section 2.1 Yamhill Subbasin / Local Waterways

The Yamhill Subbasin ([Hydrologic Unit Code 17090008](#)) is located in the Western portion of the Willamette Basin and drains portions of the Coast Range. Hydrologic Unit Code 170900080701 applies to the South Yamhill Subbasin and much of the City. The Yamhill River flows into the Willamette River to the east of McMinnville. The Subbasin's 772 square miles (493,762 acres) include the following eight watersheds: • Willamina Creek Watershed • Agency Creek-South Yamhill River Watershed • Mill Creek Watershed • Deep Creek-South Yamhill River Watershed • Salt Creek Watershed • North Yamhill River Watershed • Yamhill River Watershed. The subbasin is within portions of Yamhill and Polk counties, and includes the Cities of Amity, Carlton, Dayton, Lafayette, McMinnville, Sheridan, Willamina, and Yamhill. The subbasin is

primarily owned by private landowners, however federal and state ownership accounts for 14% of the total land use in the subbasin. There are scattered landholdings by the U.S. Forest Service and Bureau of Land Management. The subbasin consists of forestry, agriculture and urban land uses.

The City of McMinnville is located primarily to the west of the confluence of the North Yamhill and South Yamhill Rivers. It is transected by Cozine Creek, Baker Creek, North Cozine, and Ash Creeks.

Cozine Creek originates west of the City and winds through the southern part of the community before discharging to the South Yamhill River. Much of the land use in that area of town is residential and schools. The stream habitat is degraded but a community group and Linfield University have taken interest in the creek. A 'Friends of Cozine Creek' group has been active in restoration projects as has Linfield University. There appears to be good energy for ongoing maintenance of this area.

The North Fork of Cozine Creek flows from northwest to southeast and joins the Cozine Creek near the middle of town. Portions of the waterway may have been channelized or filled.

The South Yamhill River flows from southeast north around the airport and north to the wastewater treatment facilities. A limited riparian corridor exists through much of the span in and near the City, but it does receive runoff from agricultural lands.

Baker Creek originates to the west of the City. The main channel flows along the northern border of the City.

Native fish in the South Yamhill River include Coastal Cutthroat Trout, Coho Salmon (stocked by ODFW), Willamette Winter Steelhead, and Pacific Lamprey. Warm water species such as Bass, Crappie, Sunfish, and Catfish also utilize the waterway.

Section 2.2 City Services

Stormwater – The City operates and maintains the stormwater conveyance system in McMinnville. The older portions of the City have an undersized system which poses flooding issues during heavy rainfall events. Staff has developed an operational procedure to respond to high water, but that often requires pulling staff from other unrelated activities. Since there is no dedicated funding for the stormwater system, repairs and maintenance are largely conducted on a reactive basis.

Stormwater infrastructure has been added to the City's GIS, but routine inventory updates or priorities are not established. The City utilizes a Hansen Information Management system to schedule and track work orders. The Hansen system and GIS can be linked to allow for activities like capturing asset misinformation in the field during routine activities. GIS personnel are currently making stormwater updates to the system.

Streets – Streets personnel maintain the McMinnville’s street system. Street sweeping is funded by the Street Fund, and performed via contracted services.

Conveyance – Conveyance is funded by wastewater (90%) and streets (10%). Public Works employees funded primarily by wastewater clean catch basins, conduct outfall inspections, and other water quality minded activities. Large projects are contracted to outside entities.

Wastewater – The City’s wastewater plant is well maintained and operated. The City operates under NPDES Permit #101062. The City has implemented environmentally sound practices because they discharge year round under their permit. During the summer months, discharge from McMinnville makes up 1/3rd of the flow in the South Yamhill River.

Water – Drinking water in McMinnville is provided by McMinnville Water and Light. Source water comes from McGuire and Haskins reservoirs located in the coast range. The City does not manage drinking water within the community.

Airport - The City owned airport is used by a number of entities including private owners, training companies, service agencies, and more. The facility has a stormwater pollution control plan (SWPCP) that includes maintenance activities. The plan was updated in 2021. Routine activities include catch basin cleaning, outfall inspections, sweeping, and other water quality minded actions. Recordkeeping occurs according to schedule.

Section 2.3 Existing Conditions and Pollutant Sources

Pollutant sources coming from McMinnville are similar to those in other northwestern Oregon municipalities. The City has a downtown core, residential areas, regional and neighborhood parks, and a local university. With minimal erosion control or vegetation management requirements in place, mercury and TSS are contributors to impacted water quality. The City has a municipal airport which was previously discussed.

The City is surrounded by large parcels of land that are linked specifically to agricultural uses. This land use provides the potential for a pollutant source that isn’t common with all municipalities including elevated levels of the chemicals associated with agriculture. DEQ works directly with Oregon Department of Agriculture (ODA) and other state agencies for implementation of these rules. McMinnville recognizes that pollutants coming from outside the City may need the involvement of DEQ to resolve illegal discharges to waterways.

Section 2.4 Control Measure Discussion

The WQMP requires that cities with populations >10,000 have 18 months from the date of notification to develop and implement 3 of the 6 control measures including Public Education, Public Involvement, and Good Housekeeping. The activities required for these control measures are fully underway and are discussed below. These measures will be elevated during report year 2022/2023.

The other control measures are discussed throughout this document but most specifically in Appendix A.

Public Education – According to the MS4 Phase II General Permit, *the goal of the education and outreach program is to reduce the behaviors and practices that cause or contribute to adverse stormwater impacts on receiving waters. McMinnville’s program seeks to promote specific actions to increase audience understanding of how to reduce pollutant discharges in stormwater runoff.* The management group from the City for this effort has decided that following the general design of the regulations of the Phase II permit is a prudent way to proceed. A public education review group will be assigned in 2022/2023 to review material and steer the program. The City Engineer or consultant acting as City Engineer will direct this endeavor.

Staff has developed the following list of target audiences. These target audiences will have messages and activities designed that pertain specifically to that group through key messages. While certain audiences like the general public can receive a wide variety of messages through various means (brochures, articles, social media, etc.), if the target audience is school children for example, messages should be designed in a way that is useful for that group. Field trips or field presentations covering the impacts of mercury might be much more interesting for students.

Target Audiences for the City of McMinnville

General Public

Students / School Children

Businesses

Industries

Landscapers

Developers/Builders/Engineers

Elected Officials / City Staff

The City will complete messages in 2022/2023 that can be used for each of the target audiences over the 5 year term and beyond. Records will be maintained in order to make certain all audiences are being reached and what factors indicate success or poor performance to fine-tune efforts over the permit term. It is expected that McMinnville will continue to focus on Public Education as a core control measure. The City recognizes that activities presented to an educated public will provide for long term success.

General public education messages and introduction to the TMDL Implementation Plan were added to the City’s website in July 2022. Messages were also added to Facebook and the City Newsletter.

Public Involvement

The opportunity for the public to participate in the TMDL Implementation Plan development is an important part of gaining interest in the program. Staff intends to make certain that the City Council is kept informed on a regular basis.

A Work Session was held with the City Council on August 9, 2022. City Council members were engaged and asked thoughtful questions.

When possible, the Mayor or a City Councilor will provide some type of interaction with residents during public outreach events.

The TMDL Implementation Plan, revisions, annual reports, and 5th year evaluations are, or will be posted on the City's website.

Good Housekeeping

The City of McMinnville has a good housekeeping program in place. It needs to be updated and formalized with a Good Housekeeping Manual which will occur in Year 1 and 2.

The City has 1200-Z coverage for the wastewater treatment facility as well as the airport. The SWPCP has been developed and was revised in 2021. Other known industries in town have 1200-Z coverage although the City needs to develop a process to record that information. Procedures are being developed to review the SWPCPs for new industries to identify inconsistencies with stormwater programs. SWPCPs will also be reviewed when permits are renewed.

McMinnville has an Integrated Pest Management Plan (IPM). The document will be reviewed to ensure water quality minded activities are in place.

The City currently provides street sweeping and a leaf haul program. They have actively been tracking leaf removal totals since 2007 and do so annually.



Catch basin cleaning in the downtown area occurs annually and then high priority areas are cleaned as time allows. TV inspection work occurs annually.

Section 3.0 Mercury Reductions / Plan Discussion

Section 3.1 General Approach for Mercury Reduction

In general, the City will focus on setting the foundation for the program in Years 1 and 2. The City will utilize a consultant to develop some of the program basics as is covered in Section 3.2.

Overall, educating the residents and employees of the City of McMinnville is crucial to any stormwater program. Stormwater is a relatively new utility in the minds of many people and therefore requires consistent and accurate messaging in order to gain support. The ultimate goal for public education is to encourage behavioral change which is less likely to happen without educational efforts. In addition to providing information to the community, Public Works personnel should also take advantage of a variety of training opportunities such as networking with other municipalities, attending regional training opportunities and making use of guest speakers.

Construction site runoff

Construction site runoff and erosion control measures are to be elevated in this TMDL Implementation Program. McMinnville's program includes the provisions listed in Table 13-11 of the WQMP as follows:

DMA's must refer project sites to DEQ, or the appropriate DEQ agent, to obtain NPDES 1200-C Construction Stormwater Permit coverage for construction projects that disturb one or more acres (or that disturb less than one acre, if it is part of a "common plan of development or sale" disturbing one or more acres).

In addition, DMA's must require construction site operators to complete and implement an Erosion and Sediment Control Plan for construction project sites in its jurisdictional area that result in a minimum land disturbance of 21,780 square feet (one half of an acre) or more, and are not already covered by a 1200-C permit.

Through ordinance or other regulatory mechanism, to the extent allowable under state law, the DMA must require erosion controls, sediment controls, and waste materials management controls to be used and maintained at all qualifying construction projects (as described above) from initial clearing through final stabilization to reduce pollutants in stormwater discharges to the stormwater conveyance system from construction sites.

The DMA must develop, implement and maintain a written escalating enforcement and response procedure for all qualifying construction sites. The procedure must address repeat violations through progressively stricter response, as needed, to achieve compliance.

The DMA must track implementation of its construction site runoff program required activities. In each TMDL annual report, the DMA must assess their progress toward implementing its construction site runoff program's control measures.



Rock is used to diffuse flow at outfalls which helps prevent erosion.

Given the City's limited involvement in 1200-C projects at this point, a substantial amount of training needs to be completed while the ordinance is being developed. As the matrix points out, a guide for staff will be developed in 2022/2023 covering the basics of erosion control including BMPs, site management, resources, and material for the development community.

Operational manuals

As was discussed in Subsection 2.4, the City currently has a well-developed operations program, but there is no formal documentation for resources and standard operation procedures. A Good Housekeeping Manual will be developed in 2022/2023 using existing staff in order to finalize good practices and will discuss options for BMPs that might be incorporated to existing activities. The manual will include a schedule for inspections. It will also include a provision to require document review on a to be established period. This will allow a time to add new practices and remove those that are obsolete.

Section 3.2 BMP Discussion

In order to provide for future efforts to address water quality, McMinnville has chosen to base many of the activities and actions listed in the implementation plan on the regulatory requirements contained within the MS4 Phase II General Permit. The BMPs listed in the matrix in Appendix A were developed in part using Table 13-11 of the WQMP in the Final Revised Willamette Basin Mercury TMDL. The City has chosen to list the order of stormwater control

measures as listed in the MS4 Phase II General Permit rather than the order listed in the WQMP.

As is the case with many new TMDL DMAs, the City of McMinnville does not currently have dedicated staff for environmental programs. With a new program in place, the City is seeking to make certain they start on the right foot by providing residents accurate information about the implementation plan and what role they play in the program. In an effort to make certain that the public and target audiences are receiving accurate educational material, staff has decided to use a portion of Year 1 to develop an educational messages portfolio from which they can draw on over the 5 year implementation term. This information will be used on the website and other outreach material with the goal of reaching students, the business community, builders and developers, landscaping companies, decision makers and the general public.

Section 3.3 Public Involvement

The TMDL Implementation Plan has gone through public review. It was posted to the City's website in July 2022 for 30 days and an opportunity was provided for residents to provide comments on the plan. Significant information obtained during public comment will be included in the Year 1 annual report.

In addition, the plan has been reviewed by the McMinnville City Council at a Work Session held on August 9, 2022. The plan and program will be reviewed by City Council annually and the plan itself will be posted on the City's website.

Section 3.4 Land Use Compliance

See Attachment B.

Section 3.5 Fiscal Analysis

As was stated earlier, McMinnville does not currently have a Stormwater Division. Municipal wastewater conveyance and street maintenance staff maintain the stormwater system and respond to emergencies involving the same. The TMDL program is a currently unfunded program that will need to rely on the wastewater utility for stop gap support to fund implementation.

The City recognizes that a solution needs to be agreed upon for sustainable funding for the program and will enter into those discussions as part of program implementation. Currently the City relies primarily on the Street Fund ("gas tax") and uses both Wastewater Services Conveyance staff and Street Maintenance staff to maintain the storm system. Repairs and other storm related costs are also primarily funded with Street Fund revenues. The City recognizes that it is responsible for funding the program and its related activities, and that any funding source that is developed will need to include a plan to reimburse the wastewater utility

for implementation funding. Discussions will occur during the first report year to agree on a path forward.

Section 4 Implementation Plan Management

Section 4.1 Annual Reporting

Yearly progress reports will be submitted to DEQ on or before Dec 1 starting in 2023. Report Year will start on October 1, 2022 and end on Sept 30, 2023. A concise review will be included to add, update, or explain program specifics. This portion of the annual progress report will also include the public education evaluation and assessment required in the WQMP as listed in Table 13-11.

During the 5th year of the implementation period, the City of McMinnville will submit a program evaluation and assessment according to guidance provided by DEQ. The five-year evaluation shall be submitted every 5th year as long as McMinnville is a DMA.

Section 4.2 Plan Review / Performance Monitoring

In an effort to make certain that the program remains on track, applicable management staff will need to carefully review annual progress reports and tasks for upcoming years. Corrections and adjustments should be made at annual report time.

For each monitoring year staff will look at developing trends to determine if BMPs need to be adaptively managed. Staff shall look for avenues to improve function, funding, efficiency, and pollutant reduction. These outcomes should be the markers for considering and applying Adaptive Management. According to the WQMP *Adaptive Management is a process that acknowledges and incorporates improved technologies and practices over time in order to refine implementation.* Adaptive Management is intended to improve the effectiveness of the chosen BMP. Progress of each BMP will be included in the status column of the matrix and submitted with the annual report. Program analysis and adaptive management proposals will be included in the narrative of the annual report.

City of McMinnville TMDL IMPLEMENTATION PLAN – Sept 2022 to Sept 2027 Report Year #1 09/03/22 to 09/30/23								
POLLUTANT: Mercury								
MCM #1 Public Education								
BMP#	Source <i>What source is being addressed? (ex. runoff from construction sites, riparian condition)</i>	Strategy <i>What will be done to control or reduce pollutant from source?</i>	How <i>Specifically, how will this be done?</i>	Fiscal Considerations <i>How is the BMP funded? (ex. In the 2023 budget, grant, etc.)</i>	Measure <i>How will successful implementation or completion be measured?</i>	Timing <i>When will the strategy be completed?</i>	Milestone <i>What intermediate goals will be achieved and by when to know what progress is being made?</i>	Status
PE-1	Runoff from soil disturbance and direct discharge to waterway from riparian area	Organize a PE group to help guide education and outreach efforts	Group to tailor messages to reach target audiences	Staff Time	Organize group and establish meetings with consultant	2021/2022	Staff members selected for this BMP and list of target audiences developed	Management group has approved and committee to be determined by new
PE-2	Runoff from soil disturbance and direct discharge to waterway from riparian area	Develop a resource portfolio of outreach messages for the 5 year evaluation period	Resources to be developed by knowledgeable persons	Consultant	Portfolio developed	2021/2022	Material will be tailored to reach target audiences	Underway
PE-3	Runoff from soil disturbance and direct discharge to waterway from riparian area	Post relevant stormwater public education materials to the City's website	Materials such as FAQ sheets, resource lists, and information for target audiences	Staff time	Post materials annually and review content each year for relevance	To occur each year starting in 2022	Maintain records of when and what was posted and report on annual progress	TMDL educational materials have been posted to the website
PE-4	Discharge from unvegetated riparian areas	Continue to support the GYWC, the SWCD, or others such as 'friends' groups annually	Monetary funding, attend meetings, and explore other opportunities	Add to budget for 2022/2023 and annually thereafter.	Document support actions and activities	To occur each year	Maintain records of support actions and include in the annual report	Staff have attended 22 watershed council meetings since March 21.
PE-5	Runoff from soil disturbance and direct discharge to waterway from riparian area	Provide educational opportunities to students annually	Use staff or other professionals to provide educational presentations in the classroom or field	Staff time and potential minimal cost for materials	Speaker, topic, date, and number of students	To occur each year starting in 2023/24	Assemble a list of potential presenters and contact schools	No progress

BMP#	Source <i>What source is being addressed? (ex. runoff from construction sites, riparian condition)</i>	Strategy <i>What will be done to control or reduce pollutant from source?</i>	How <i>Specifically, how will this be done?</i>	Fiscal Considerations <i>How is the BMP funded? (ex. In the 2023 budget, grant, etc.)</i>	Measure <i>How will successful implementation or completion be measured?</i>	Timing <i>When will the strategy be completed?</i>	Milestone <i>What intermediate goals will be achieved and by when to know what progress is being made?</i>	Status
PE-6	Runoff from soil disturbance and direct discharge to waterway from riparian area	Mail informational material to streamside property owners	1 mailing sent 2x in the 5 year evaluation period	Cost of mailing	Complete list of streamside property owners and conduct the mailing	Complete by 2025/2026	Report date and content of mailing	No progress to report
MCM #2 Public Involvement								
PI-1	Runoff from soil disturbance and direct discharge to waterway from riparian area	Maintain a website and post the most current water quality related information to the site	Post the TMDL Plan on the City website	Staff time	Post new and updated material annual	To occur each year	Post the plan in 2022 and post plan reports submitted to DEQ annually	Plan to be posted from July 25 th to August 29 th 2022 to gather public comment. Final to be posted after DEQ approval
PI-2	Direct runoff to waterway	Utilize a volunteer group to conduct restoration work on a local waterway	2 projects will be implemented in the 5 year plan term	Budget for support items such as refreshments, plants, planting material, etc.	Complete the projects and record description and # of participants	Complete by 2025/2026	Identify suitable project sites and develop a project plan	Coordination underway with GYWC
PI-3	Runoff from soil disturbance and illicit discharges	Mark catchbasin grates using volunteer groups	Utilize community groups to mark a number of basins each year	Budget for placards, and misc. costs for adhesive, kits, etc.	Track number of markers installed, dates, and volunteer	To occur each year starting in 2023/2024	Track number of basins marked and develop door-hanger to use for marking events	No progress to report
PI-4	Runoff from soil disturbance and illicit discharges	Educate Elected Officials	Work Session presentation	Consultant and staff	Complete the activity	To occur each year	Report progress in yearly report	Presentation to City Council on 7/26/22. Work Session. General program overview
MCM #3 Illicit Discharge and Detection								
ID-1	Runoff from soil disturbance and direct discharge to waterway from riparian area	Update the City's existing GIS database to include new stormwater data and assets	Update the map at least annually	Staff time	Develop a preliminary list of desired assets	To occur each year	Provide DEQ information on stormwater and waterway work done annually	The City has existing GIS data and coordination has occurred between personnel. Asset list being developed

BMP#	Source <i>What source is being addressed? (ex. runoff from construction sites, riparian condition)</i>	Strategy <i>What will be done to control or reduce pollutant from source?</i>	How <i>Specifically, how will this be done?</i>	Fiscal Considerations <i>How is the BMP funded? (ex. In the 2023 budget, grant, etc.)</i>	Measure <i>How will successful implementation or completion be measured?</i>	Timing <i>When will the strategy be completed?</i>	Milestone <i>What intermediate goals will be achieved and by when to know what progress is being made?</i>	Status
ID-2	Runoff from soil disturbance and impervious area	Develop an ordinance that prohibits non-stormwater discharges into the stormwater system and local waterways	Utilize ordinances and programs from other agencies	Staff time involving legal	Document annual progress	Complete by 2024/2025	Provide DEQ annual progress on this BMP in the annual report	Pulling together ordinances from other agencies
ID-3	Runoff from soil disturbance and impervious area	Develop an enforcement response plan	The plan will include escalating steps of enforcement	Staff time	Document annual progress	Complete by 2024/2025	Report progress and final outcome to DEQ	No progress to report
ID-4	Runoff from soil disturbance and impervious area	Staff training	Annual training by existing staff. Take advantage of inexpensive regional training	Include training in the annual budget	Conduct annual training – develop a schedule. Yr 1 training by consultant	To occur each year starting in 2022/2023	Report/record training date, # of employees in attendance	The City has a spill response plan, but no formal IDDE plan in place
ID-5	Runoff from soil disturbance and impervious area	Recordkeeping	Utilize GIS or another database to document response	Staff time	Develop a response sheet and process	To occur each year starting in 2022/2023	Report # of complaints and outcome annually	No progress to report
ID-6	Runoff from soil disturbance and impervious area	Annual outfall inspections	Field inspect outfalls and maintain inventory	Staff time	Develop process and maintain digital inventory	To occur each year starting in 2023/2024	Report activities in annual report	No progress to report
MCM #4 Construction Site Runoff								
CS-1	Runoff from soil disturbance and impervious area	Staff training - CESCL training for at least 1 employee and annual training for staff	Familiarize key staff with the 1200-C program	Include training in the annual budget	Document CESCL information as well as staff training. Yr 1 training by consultant	CESCL training completed by 2023/2024 Annual training for staff	Report training activities in the annual report	Several staff members attended the Erosion Control and Stormwater Management Summit held online on January 26, 2022 (Mid-Willamette Outreach Group)

BMP#	Source <i>What source is being addressed? (ex. runoff from construction sites, riparian condition)</i>	Strategy <i>What will be done to control or reduce pollutant from source?</i>	How <i>Specifically, how will this be done?</i>	Fiscal Considerations <i>How is the BMP funded? (ex. In the 2023 budget, grant, etc.)</i>	Measure <i>How will successful implementation or completion be measured?</i>	Timing <i>When will the strategy be completed?</i>	Milestone <i>What intermediate goals will be achieved and by when to know what progress is being made?</i>	Status
CS-2	Runoff from soil disturbance and impervious area	Develop a guidance document for staff that outlines program implementation	Document to include resources, program descriptions, BMPs, etc	Consultant - budgeted	Develop the guidance document	To be completed 2022/2023	Report progress in the annual report	
CS-3	Runoff from soil disturbance and impervious area	Develop a local erosion control program which meets the specifications for coverage under the 1200-CN	Research similar 1200-CN permittee ordinances. Work with legal dept	Staff time	Develop the ordinance	Complete by 2025/2026	Report progress in the annual report	Initial discussion with Ryan Johnson, and Blair Edwards from DEQ
CS-4	Runoff from soil disturbance and impervious area	Provide educational materials to the development community including a template	Develop a builder/developer packet with template, BMPs, resources, etc	Consultant – funds in budget	Completion of packet materials	2023/2024	Describe progress in the annual report	
CS-5	Runoff from soil disturbance and impervious area	Develop an erosion control ordinance	Use or edit an existing or new document.	Staff time involving legal	Demonstrate progress annually	Complete by 2025/2026	Report progress in the annual report	
CS-6	Runoff from soil disturbance and impervious area	Develop an enforcement response plan	See ID-3 The plan will include escalating steps of enforcement	Staff time	Demonstrate progress annually	Complete by 2025/2026	Describe progress in the annual report	
CS-7	Runoff from soil disturbance and impervious area	Develop and maintain a construction database	Utilize GIS, excel, or another database of current and closed projects	Staff time	Maintain database so that it can be submitted to DEQ upon request	To occur each year starting in 2023	Describe progress in the annual report	Discussion with GIS personnel as to what elements need to be included on 5/11
CS-8	Runoff from soil disturbance and impervious area	Notify DEQ for projects requiring 1200-C permits	Offer educational material to builders	Staff time	Record notifications	To occur each year 2022/2023	Describe progress in annual report	

BMP#	Source <i>What source is being addressed? (ex. runoff from construction sites, riparian condition)</i>	Strategy <i>What will be done to control or reduce pollutant from source?</i>	How <i>Specifically, how will this be done?</i>	Fiscal Considerations <i>How is the BMP funded? (ex. In the 2023 budget, grant, etc.)</i>	Measure <i>How will successful implementation or completion be measured?</i>	Timing <i>When will the strategy be completed?</i>	Milestone <i>What intermediate goals will be achieved and by when to know what progress is being made?</i>	Status
MCM #5 Post-Construction Runoff Control in New and Re-development								
PC-1	Runoff from soil disturbance and impervious area	Develop or revise an ordinance or other regulatory mechanism (Design Standards) to meet the requirements of Post Construction regulations	Utilize DEQ resources and mirror what other municipalities have done.	Staff time – potential for engineering costs	Document progress annually	Complete by 2025/2026	Describe progress in the annual report	
PC-2	Runoff from soil disturbance and impervious area	Develop a long term maintenance approach for private facilities	The plan should include a checklist for inspections	Staff time	Consider utilizing existing resources from other agencies. Document progress.	Complete by 2024/2025	Describe progress in the annual report	
PC-3	Runoff from soil disturbance and impervious area	Develop an inventory of public & private facilities (type ie. swale, rain garden, etc)	Review as-builts, field verify, or other means to collect location information	Staff time	Inventory shall include owner, installation date, type, etc.	Complete by 2024/2025	Describe progress in the annual report	
MCM #6 Good Housekeeping in Municipal Operations								
GH-1	Runoff from soil disturbance and impervious area	Develop a new or revise an existing Good Housekeeping Manual	The manual is a reference guide for operations personnel	Staff time w/ Consultant	Complete manual	Complete by 2022/2023	Describe progress in the annual report	
GH-2	Runoff from soil disturbance and impervious area	Conduct inspections at Shop facilities	Inspections will occur according to Good Housekeeping Manual in Yr 2	Staff time	Conduct inspections	Conduct inspections starting in 2023/2024	Provide completion date and documentation for inspections	Inspection work is taking place, but protocol and recordkeeping need to be included in the new Good Housekeeping manual

BMP#	Source <i>What source is being addressed? (ex. runoff from construction sites, riparian condition)</i>	Strategy <i>What will be done to control or reduce pollutant from source?</i>	How <i>Specifically, how will this be done?</i>	Fiscal Considerations <i>How is the BMP funded? (ex. In the 2023 budget, grant, etc.)</i>	Measure <i>How will successful implementation or completion be measured?</i>	Timing <i>When will the strategy be completed?</i>	Milestone <i>What intermediate goals will be achieved and by when to know what progress is being made?</i>	Status
GH-3	Runoff from soil disturbance and impervious area	Conduct Street Sweeping	Develop a written document for street sweeping operations and implement Yr 2	Staff time	Evaluate practices to improve effort	To occur each year starting in 2023	Provide annual activities in annual report	Street sweeping is an existing program. Between 3500 and 5000 yards of leaves have been removed annually since 2017
GH-4	Runoff from soil disturbance and impervious area	Catchbasin cleaning	Develop a plan for catchbasin cleaning in the City and implement Yr 2	Staff time	Evaluate practices to improve effort	To occur each year	Provide annual activities in annual report	Catchbasins are cleaned annually. The city will refine the program to capture annual percentage or other trend
GH-5	Runoff from soil disturbance and impervious area	Annual training for Public Works facility	Purpose is to review practices and review staff suggestions	Staff time Consultant	Conduct training	To occur each year	Develop training calendar with staff. Training dates to be recorded along with attendance	Underway. List of annual topics being developed
Regulatory BMPS								
		Develop a stormwater fee	Consider options such as developing ESUs	Staff time	Determine a feasible funding mechanism	Prior to end of 5 year review period	Track annual activity	
		Review internal documents and permits for consistency with TMDL Implementation Plan	Review existing code, planning and master plans to identify inconsistencies	Staff time	Develop a plan for making adjustments in existing management documents and ordinances	Prior to end of 5 year review period	Track progress and report to DEQ 2026/27	
		Annual report	This is an annual requirement	Consultant	Complete report	Due date – Sept 30, 23	Submit annually	
		5 th year evaluations	To be completed in 2026/2027	Staff time	Complete evaluation	Due date – Sept 30, 27	Submit to DEQ in 2026/2027	
		PE evaluation and assessment Year 1	To be included w/ annual report	Consultant	Complete evaluation	Due date – Sept 30, 23	Submit annually	

		Annual evaluation and assessment of the TMDL Program	Monitoring to be included w/ annual report	Consultant	Complete evaluation	Due date – Sept 30, 23	Submit annually	
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**City of McMinnville
Planning Department**

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June 1, 2022

Anne Pagano, Public Works Director
231 NE 5th Street
McMinnville, OR 97128
via e-mail: anne.pagano@mcminnvilleoregon.gov

Re: City of McMinnville - Mercury TMDL Implementation Plan
Land Use Compatibility Acknowledgement

Dear Anne:

This letter is to provide acknowledgment of land use compatibility for the City of McMinnville's Mercury TMDL Implementation Plan. The City is undertaking this work as required by the Final Mercury TMDL for the Willamette Basin issued by EPA on February 4, 2021. Additional information is provided at the following link.

<https://www.oregon.gov/deq/wq/tmdls/Pages/willhgtmdlac2018.aspx>

A summary of information excerpted from website is provided below:

On Nov. 22, 2019, DEQ issued the [*Final Revised Willamette Basin Mercury Total Maximum Daily Load*](#) that was submitted to the U.S. Environmental Protection Agency for action. EPA disapproved DEQ's TMDL on Dec. 30, 2019 and issued their final TMDL on Feb. 4, 2021 following a public comment period. EPA notified DEQ that, "EPA has established this TMDL and is hereby providing it to the State for implementation." EPA's TMDL states that reasonable assurance for their TMDL relies on DEQ's Water Quality Management Plan. The plan was issued on Nov. 22, 2019 as part of the DEQ TMDL. The total mercury allocations specified in EPA's TMDL are effective for designated management agencies and responsible persons named in DEQ's management plan.

DEQ will be working with agencies and responsible persons to implement the water quality management plan. The plan describes a multi-faceted approach that requires implementation of management practices through development of TMDL implementation plans by multiple federal, state, and local agencies, and responsible persons across the entire Willamette Basin to reduce human-caused sources of mercury. TMDL implementation plans will contain measurable objectives, milestones and timelines, and must be approved by DEQ staff. Annual and five-year reviews ensure agencies and responsible persons are on track for making sustained progress in implementing management strategies to reduce mercury primarily through control of erosion and sediment runoff. In addition, the plan includes development of mercury minimization

plans for major point source dischargers and reduction of mercury in stormwater runoff through requirements contained in stormwater permits. DEQ expects that with implementation of the water quality management plan, mercury water quality standards will be met.

McMinnville's Comprehensive Plan is acknowledged, and the City has adopted amendments to the Comprehensive Plan and implementing ordinances following the original acknowledgment, consistent with the applicable state law for amendments in accordance with the requirements for Periodic Review and Post-Acknowledgment Plan Amendments (PAPAs).

Acknowledgement of the Comprehensive Plan means the Comprehensive Plan and implementing ordinance have been found to comply with the Statewide Planning Goals, including Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), Goal 6 (Air, Water, and Land Resources Quality), and Goal 7 (Areas Subject to Natural Hazards).

Several sections of the Comprehensive Plan specifically address natural resources, and other sections also address natural resources in the context of specific land use and development goals and policies. Specific provisions include the following:

Chapter II: Natural Resources:

Goal II.1. To preserve the quality of the air, water, and land resources within the Planning Area. Policies 8.00-11.00 specifically address water resources.

Chapter VII: Community Facilities and Services

Addresses stormwater management and provision of open spaces, natural areas, and scenic areas, including protection and acquisition of floodplain and riparian areas.

The City's Mercury TMDL Implementation Plan has been undertaken consistent with DEQ's TMDL Implementation Plan Guidance for State and Local Government Designated Management Agencies, May 2007, linked here:

<https://digital.osl.state.or.us/islandora/object/osl:20723/datastream/OBJ/view>

The TMDL Implementation Plan includes a number of action items to be undertaken by the City of McMinnville within its planning area to reduce mercury levels in the Willamette Basin. The Implementation Plan itself is consistent with the Goals and Policies of the Comprehensive Plan and there aren't proposed implementation actions that would conflict with the Comprehensive Plan.

Some implementation actions may require changes to the City's Comprehensive Plan and/or implementation ordinances. At such time as those items are undertaken, the City will address compatibility with the Comprehensive Plan and will comply with the applicable Post-Acknowledgement Plan Amendments to ensure amendments to the City's Comprehensive Plan continue to comply with the Statewide Planning Goals.

Anne Pagano
Re: Mercury TMDL Implementation Plan
Date: June 1, 2022

Page 3

If any of the implementation actions should require a DEQ LUCS (Land Use Compatibility Statement), the City will address the applicable LUCS requirements at the time the respective implementation actions are undertaken.

Please contact me at (503) 474-5108 or by email at tom.schauer@mcminnvilleoregon.gov if you have any questions or if I can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Schauer".

Tom Schauer
Senior Planner

Cc: Elizabeth Sagmiller, sagmillere@gmail.com
Nancy Gramlich, nancy.h.gramlich@deq.oregon.gov



Oregon

Kate Brown, Governor

Department of Environmental Quality

Western Region Eugene Office

165 East 7th Avenue, Suite 100

(541) 686-7838

FAX (541) 686-7551

TTY 711

Nov. 15, 2022

Certified: 7022 0410 0001 9324 0843

Anne Pagano
230 NE 2nd St
McMinnville, OR 97128

Re: Department Order Approving the City of McMinnville Nonpoint Source Mercury TMDL Implementation Plan

Dear Anne Pagano,

The Oregon Department of Environmental Quality approves the City of McMinnville Total Maximum Daily Load Implementation Plan (the "Plan") received on August 22, 2022. The City's Plan meets the implementation plan criteria as outlined in OAR 340-042-0080 and DEQ's 2019 *Revised Mercury TMDL Water Quality Management Plan*.

This approved Plan outlines the actions for minimizing mercury and sediment inputs into surface waters from those areas where the City has jurisdiction to reduce mercury and sediment in the Willamette Basin in order to protect people who regularly eat fish and shellfish from streams and lakes across the basin.

The City must report on Plan implementation in order to document that the Plan is being implemented to restore and protect water quality in the Willamette Basin. To adequately fulfill the reporting and implementation requirements of the revised Mercury TMDL the City of McMinnville must:

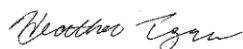
1. Begin Plan implementation on Sept. 3, 2022.
2. Implement the best management practice activities it has proposed in the updated Plan.
3. Consult DEQ for approval on any changes to the Plan activities and timelines in advance.
4. Monitor, document, and report on progress in implementing the provisions of the Plan:
 - a. Submit annual reports to the Department by Dec. 1 each year. Reports should cover the previous months of implementation for October 1 through September 30.
 - b. Submit complete reports. Reports must contain sufficient information to enable the Department to assess reporting metrics, measurable goals, compliance with the provisions of the Plan, progress, and delays and challenges, towards implementing the Plan for meeting the TMDL load allocation.
5. TMDL implementation is an iterative process that continues every five years. The fifth report submittal, due on Dec. 1, 2027, must document 1 & 2 above and include information on the following:
 - a. A comprehensive review of overall Plan implementation progress over the previous years (September 3, 2022, through October 31, 2027).
 - b. Evaluation, in consult with DEQ, to determine whether strategies, timelines, or

- other components of the Plan are adequate for the next five-year timeline.
- c. Submittal of an update to the Plan for approval by the Department if evaluation determined Plan and/ or effectiveness of management strategies are inadequate for meeting the TMDL load allocations. At a minimum, update the five-year timeline for the continuation of implementation effective October 31, 2027.

The TMDL, WQMP, Department approved TMDL Implementation Plan, and the deadlines and requirements established by this letter are enforceable orders. Failure to implement or timely implement the approved Plan is therefore an enforceable violation. The City's reporting on implementation is the mechanism to document the City is implementing the terms and conditions of the above- mentioned orders and failure to report is also an enforceable violation. Compliance with the approved Plan is considered compliance with the TMDL.

The Department endeavors to assist you in your implementation efforts. Please do not hesitate to contact your basin coordinator or specialist if you have questions about TMDL implementation:

Grace Goldrich-Middaugh
Grace.goldrich-middaugh@deq.oregon.gov
541-972-5520
DEQ, Western Region
165 E. 7th Ave., Suite 100, Eugene OR. 97401



Heather Tugaw
Water Quality Manager DEQ, Western

ec: Anne Pagano, Public Works Director;

DEQ file/BC – grace.goldrich-middaugh@deq.oregon.gov



City of McMinnville
Public Works Department
3500 NE Clearwater Drive
McMinnville, OR 97128
(503) 434-7313
www.mcminnvilleoregon.gov

STAFF REPORT

DATE: November 12, 2024
TO: Jeff Towery, City Manager; Geoffrey Hunsaker, Public Workers Director
FROM: Leland Koester, Wastewater Services Manager
SUBJECT: WRF SCADA Master Plan

Report in Brief:

This action is the consideration of a resolution to amend our Professional Services Contract with Jacobs (formerly CH2MHill) for the Water Reclamation Facility (WRF) and Conveyance System Master Plan Update Project 2022-5.

Background:

In September of 2022, the City awarded a Professional Services Contract to Jacobs Engineering to perform a master plan update for the city's Water Reclamation Facility and Conveyance System to plan for the next 20 years of operational and capital needs. This work would cover the following items:

- Collection system flow monitoring
- Collection system model update and calibration
- Collection system capacity analysis
- WRF hydraulic model update to address any changes from the collection system
- Update existing treatment plant evaluations
- Analysis the possible addition of BIOCHAR as a treatment process

As we have worked through this process it was determined that we need to look at the Supervisory Control and Data Acquisition (SCADA) System that controls all our processes and pump stations. Attached is the scope and fee that would cover this work.

The estimate for this scope of work is \$ 210,673.

Attachments:

1. Resolution 2024-57
2. Exhibit A Scope and Fee for work

Fiscal Impact:

Funds for the design work are included in the FY24/25 and FY 25/26 Wastewater Capital Fund (77).

Recommendation:

Staff recommends that the City Council adopt the attached resolution approving an Amendment to the Professional Services Contract with Jacobs for the Public Works Water Reclamation Facility (WRF) and Conveyance System Master Plan Update, Project 2022-5.

RESOLUTION NO. 2022-57

A Resolution Approving the 1st amendment to the professional services contract with Jacobs Engineering Group Inc. for the Public Works Water Reclamation Facility (WRF) and Conveyance System Master Plan Update, Project 2022-5 to include Supervisory Control and Data Acquisition (SCADA) System work.

RECITALS:

Whereas, On September 13, 2022, Jacobs Engineering Group Inc. was awarded the Professional Services Contract for the WRF and Conveyance System Master Plan Update Project 2022-5; and

Whereas, While Jacobs was performing these services it was determined that there was a need to update the Water Reclamation Facility and Pump Station SCADA System ; and

Whereas, Jacobs Engineering is qualified and capable of performing these services; and

Whereas, Project funding is included in the 2024-2026 Wastewater Capital Fund (77).

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

1. That the first amendment set forth in **Exhibit A** to the Professional Services Contract with Jacobs Engineering Group Inc. for the Public Works Water Reclamation Facility (WRF) and Conveyance System Master Plan Update to include SCADA System work for \$210,673.00 is approved. Bringing the total not to exceed price of the contract to \$1,607,866.00.
2. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 12th day of November 2024 by the following votes:

Ayes: _____

Nays: _____

Approved this 12th day of November 2024.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBITS:

- A. Water Reclamation Facility (WRF) and Conveyance System Master Plan Update Project 2022-5 Amendment 1 to Professional Service Contract.

CITY OF McMinnville
FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

Water Reclamation Facility (WRF) and Conveyance System Master Plan Update Project

This First Amendment to Professional Services Agreement (“First Amendment”) is effective the 12th day of November 2024 (“Effective Date”), by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (“City”), and Jacobs Engineering Group INC., a Delaware corporation (“Consultant”), upon the terms and conditions set forth below.

RECITALS

WHEREAS, the City entered into a Professional Services Agreement (“Agreement”) with Consultant on September 13, 2022 relating to the **Water Reclamation Facility (WRF) and Conveyance System Master Plan Update Project**. (“Project 2022-5”); and

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

WHEREAS, the City and Consultant anticipate that additional time is needed to complete the Services stated in the Agreement

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. Term

The term of the Agreement is hereby extended to December 31, 2025.

Section 2. Additional Services To Be Provided

Consultant will perform the 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 3. Compensation

The City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed TWO HUNDRED TEN THOUSAND SIX HUNDRED SEVENTY THREE DOLLARS (\$210,673.00) for performance of the Additional Services (“Additional Compensation Amount”) which, when totaled with the Compensation Amount, equals a total not-to-exceed amount of ONE MILLION SIX HUNDRED

SEVEN THOUSAND EIGHT HUNDREDSIXTY SIX DOLLARS (\$1,607,866) for the performance of the Services and Additional Services (“Total Compensation Amount”). Consultant’s estimate of time and materials is attached hereto as **Exhibit A** and incorporated herein by reference.

Section 4. All Other Terms

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

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

CONSULTANT:

Jacobs Engineering Group Inc.

By: _____

Print Name: _____

As Its: _____

Employer I.D. No. _____

CITY:

CITY OF McMINNVILLE

By: _____

Print Name: _____

As Its: _____

APPROVED AS TO FORM:

City Attorney
City of McMinnville, Oregon

EXHIBIT A

Agreement for Professional Services for the City of McMinnville Water Reclamation Facility (WRF) and Conveyance System Master Plan Updates Project 2022-5 Amendment 1

PROJECT DESCRIPTION

To develop a SCADA system master plan to identify and provide a roadmap for implementation of recommended system improvements.

BACKGROUND

Portions of the existing SCADA system has reached the end of its useful life and requires upgrading and replacement to meet current and future operational demands, reliability, and security.

The existing facilities that will be evaluated for the SCADA master plan includes:

- One (1) Water Reclamation Facility (WRF)
- Public Works Operations
- One (1) Pre-Screening Facility/Diversion Structure
- One (1) Raw Sewage Pump Station
- Fourteen (14) Remote Pumping Stations

The existing SCADA and operational technology (OT) systems for these facilities are described below:

- The existing SCADA HMI uses Wonderware Intouch as the graphical user interface for WRF and remote facilities. The City is considering migrating to a new SCADA HMI platform for future system monitoring and control and expressed interest in Inductive Automation's Ignition platform, but no decision has been made.
- The system uses radios for SCADA communication to all the remote stations.
- The existing system uses a variety of different PLCs for each facility (Allen Bradley PLC5, SLC 505s, CompactLogix, ControlLogix and Siemens)

The City has not previously conducted a SCADA master planning effort.

WORK APPROACH

The master planning effort will be initiated with an onsite kickoff meeting at City's facility. Immediately following the kickoff meeting, Jacobs will visit just a few of City's representative remote stations to build a familiarity with the existing infrastructure. Jacobs will lead workshops to discuss findings and present alternatives for improvement. The final master plan recommendations will be determined by the City considering the material presented by Jacobs. Budgetary cost estimates for implementation of the recommended improvements will be provided to assist the City with planning.

SCOPE OF WORK

The major tasks are described below:

Task 15.1 Project Management

Jacobs will plan and execute the project as described. This task includes the following project management work activities:

- a. Monthly Project Management:
 - o Monitor project progress monthly including work completed, work remaining, budget expended, schedule, estimated cost of work remaining and estimated cost at completion; manage activities within total project budget.
 - o Monitor project activities for potential changes, anticipate changes whenever possible, and with City approval, modify project tasks, task budgets, and approach to keep the overall project within budget and on schedule.
 - o Prepare and submit invoice with monthly narrative report.

- b. Bi-Weekly Coordination Meetings with City Project Manager

Jacobs will hold up to 18 bi-weekly calls with City's project manager to discuss schedule, budget, the direction of the project and any needed information or data. The effort will document meeting decisions and action items, assign the activities to team members, and follow-up to ensure timely resolution.

Task 15.2 Discovery

The discovery effort will be used for collecting and assembling existing system information. Major tasks are identified below:

- a. Onsite Project Kickoff Meeting

Jacobs will lead a one-day onsite kickoff meeting with City key stakeholders. City will identify and coordinate participation of all stakeholders they feel should be involved in the effort. Jacobs' participants will include Jacobs' project manager and the technical lead. The purpose of this meeting is to introduce the project parties, review the project scope, identify project priorities, discuss project schedule, and collect existing system information and drawings from City staff.

City staff will provide available documentation for the existing system to assist with the assessment (PLC I/O lists, network drawings, panel drawings, etc.).

b. Field Data Collection

Jacobs will provide up to 40 hours (5 days) for technical staff to visit the WRF, 14 Pump Stations, Raw Sewage Pump Station, and the Pre-Screening Structure to gather field data, take photos, and collect information for the existing control system equipment. City will provide a staff member knowledgeable about the SCADA system to accompany Jacobs staff during these site visits.

c. System Data Organization

Jacobs will provide up to 60 hours of technical staff labor (offsite) to assemble and organize the existing system information. Major efforts include developing simple Excel tables to summarize collected information, development of simple Bluebeam sketches, and printing copies of City-provided drawings (as needed).

Task 15.3 Assessment

The assessment effort will be used to evaluate major system improvement alternatives considering the existing system condition and industry trends. Major tasks are identified below:

a. Alternatives Evaluation Workshops

Jacobs will lead up to ten (quantity of 10) Microsoft Teams workshops (average 2.5 hours each) to discuss the findings of the discovery effort and present alternatives for system improvements. This effort will focus on current state-of-the-art approaches commonly used in the industry and will consider anticipated direction of technologies that the City may wish to consider. The workshops will be used to facilitate the City's decision making for the project alternatives, including selection of major product platforms and project approaches. Jacobs will document City project decisions in the master plan.

Each workshop will be attended by Jacobs project manager and I&C lead. Additional Jacobs technical staff will attend as needed to address each topic. The estimated meeting quantity and durations are based on the following major topics:

i. **(Qty 1) Existing system understanding, new functional requirements, and "advanced technology" alternatives.**

During this workshop, City staff will explain the existing system and desired new functions. Jacobs will discuss some of the potential "advanced technology" alternatives. Example advanced technology topics include connectivity with a digital twin, automatically triggering work order request in the computerized maintenance management system (CMMS) based on alarms or runtimes from the SCADA system, use of the SCADA HMI graphics as an interface for entry of laboratory data into the SCADA historian to accommodate automated reports, use of the SCADA HMI graphics to access electronic O&M data, application of alarm analysis software to comply with ISA18.2 alarm management philosophy, and potential for new automated functions to address water

age and/or ratcheted rate charges.

ii. **(Qty 1) PLC hardware and control panel improvements.**

This workshop will evaluate needs and options for upgrades and replacement of the existing PLC system and control panel hardware that will address system/component reliability, redundancy, standardization, evaluate redundant 24VDC power supplies, installation of Uninterruptible Power Supplies (UPS) for backup power and eliminate unused wiring.

iii. **(Qty 1) PLC systems, HMI systems, alarm notification, historian, and reporting.**

This workshop will evaluate needs and options for upgrades or replacement to address existing system issues (product obsolescence, product support, failures, etc.), add new features, standardize products and platforms to facilitate O&M. The workshop will include presentation of Inductive Automation Ignition HMI capabilities, high performance HMI approaches with sample graphics demonstration, and recommended approaches for alarm notification, historian, trending, and automated reporting approaches, and SCADA software programming. The discussion will also present a concept for backing up critical SCADA files (AssetCentre).

iv. **(Qty 1) Facilities – Server and Control Rooms.**

This workshop will evaluate needs and options for new server and control rooms to accommodate the SCADA equipment and provide dedicated rooms for operations for SCADA system interfacing.

v. **(Qty 2) OT Systems, networks, and facilities.**

These workshops will discuss options and recommendations related to the OT systems, including hardware, software, and networks. Recommendations will be based on NIST 800.82, Guide to Operational Technology (OT) Security. The workshops will discuss the use of intraplant singlemode fiber and servers (or recommendation of alternatives), secure remote access, network monitoring, disaster recovery planning, and development of OT policies and procedures. The workshops for the OT system will be divided into two separate workshops as follows:

1. OT system and features (automated backups for disaster recovery, secure remote access, network monitoring, time sync, etc.)
2. Plant Network/Fiber

The scope of work does not include a cybersecurity assessment of the existing infrastructure based on direction from City's project manager.

vi. **(Qty 1) Remote station communication systems.**

This workshop will discuss options and recommendations related to the remote station communication systems, including evaluation of the existing radio system fitness for use, needs, and cybersecurity versus the potential for alternative communication options to provide additional features that may be desired by the utility. A primary topic will be

identifying a concept for existing communication system infrastructure to accommodate centralization of polling and monitoring from the WRF.

vii. (Qty 1) Connectivity with External Systems.

This workshop will discuss potential connectivity between the SCADA historian and other enterprise data systems, including computerized maintenance management system (CMMS), asset management system (AMS), laboratory information management system (LIMS), and compliance reporting system.

viii. (Qty 1) SCADA system documentation and planning for recommended improvements.

This workshop will discuss two major topics:

1. **SCADA DOCUMENTATION:** The availability, quality, and accuracy of the existing SCADA-related documentation to identify the requirements for updates. Major topics include P&IDs, network block diagrams, panel drawings, PLC I/O wiring drawing, asset inventories (hardware, software licenses), and PLC I/O lists. Consideration should also be given to needs for development of a SCADA operations guide or updates to the system O&M manual.
2. **PLANNING FOR RECOMMENDED IMPROVEMENTS:** The intention for this workshop is for the City to identify major sequence requirements and constraints that should be considered during development of the implementation plan and budgetary cost estimates for recommended improvements. Major topics to be considered include cash flow restrictions, other City capital improvements projects, seasonal construction limitations, equipment pre-purchasing concepts to mitigate lead time issues, and scope split (will City staff self-perform any work, does City have delivery specialists that should be used for certain work – radio shop, panel fabricator, electrician, etc.).

ix. (Qty 1) Overflow topics.

This workshop is reserved for as-needed topics that may not have been resolved in the other pre-defined workshops identified above.

b. Workshop Preparation and Post-Workshop Assessment

Jacobs will provide up to 40 hours of labor to prepare an agenda, plan presentation material, and assemble meeting notes for each workshop. The planning effort includes coordination with Jacobs' internal experts and external resources, including websites and manufacturer's representatives.

Task 15.4 Master Plan Document Development

Jacobs will prepare a written master plan to describe the existing system based on the workshop discussions, provide an evaluation of the existing system condition, present the upgrade options discussed at the alternatives evaluation workshops, and identify recommended major improvements. This work includes preparation of the document text and development or modification of up to five simple figures to convey concepts described in the document.

The main document sections include table of contents, system overview, desired new functions (including advanced technology alternatives), existing system description, existing system assessment, recommended improvements, and capital/implementation planning.

The major technical systems to be evaluated by the document are listed below. For each major topic listed below, the document will include an existing system description, existing system assessment, and list of recommended improvements:

- Programmable Logic Controllers (PLCs)
- Human-Machine Interface (HMI), including alarm notification, historian, trending tools, and automated reports
- OT Systems (SCADA network and computer equipment, including network and remote station communication)
- Interfaces with Enterprise Data Systems
- Existing System Documentation

Major efforts are identified below:

a. Main Body

Jacobs will prepare written text to document the existing system based on the workshop discussions, provide an analysis of the existing system considering the utility's needs and identified gaps relative to industry trends, and recommend system improvements.

b. Implementation Plan

Jacobs will develop written text to document the planned implementation concepts, including major constraints (based on input from City staff), identification of any recommended early procurement packages, and work phasing. It will also outline a timeline concept for the major planning and design efforts required for project execution, including software planning, design, construction, SCADA programming, construction, and commissioning. The document is not intended to identify specific years or dates, but to provide planning-level information considering the relative levels of effort and required order of attack.

c. Budgetary Cost Estimates

Jacobs will provide up to 40 hours of labor to develop budgetary cost estimates for planning, design, implementation and ongoing maintenance of the recommended SCADA improvements resulting from the system assessment tasks above. The budgetary financial planning figures will be based on AACE International Class 5 order-of-magnitude engineering opinion of costs.

d. Quality Control

Jacobs will provide up to 16 hours of labor to provide quality control (QC) review of the Master Plan document prior to submitting the document to the City. Review will be provided by senior staff.

e. Allowance for Fixup after Review Workshops

Jacobs will provide up to 24 hours of labor to update the Master Plan document to address comments from the review workshops with the City.

Task 15.5 Deliverable Review Workshops

Jacobs will present the draft and final master plan documents to City staff as outlined below:

a. Draft Report Review

The purpose of this meeting is to review the compiled draft report with the City's major stakeholders, including the project findings and recommended improvements prior to final completion. The City will identify and coordinate participation of all stakeholders they feel should be involved in the effort. This meeting could be held prior to the completion of capital and implementation planning, if desired by the City. This meeting will be used to gain acceptance of the draft report findings and recommendations prior to final completion.

The half-day workshop will be held virtually via Microsoft Teams to save project cost. The level of effort includes budget for Jacobs' project manager and I&C lead, plus up to 2 hours of participation by each of Jacobs' 3 technical specialists.

b. Implementation Plan Review

The purpose of this meeting is to review the implementation plan and budgetary cost estimates prior to finalization. It is common for the plan to require minor editing to accommodate the budget, cash flow, or constraints once the initial plan is developed based on the workshop discussion.

The half-day workshop will be held virtually via Microsoft Teams to save project cost. The level of effort includes budget for Jacobs' project manager and I&C lead.

c. Final Report Presentation

The purpose of this meeting is to present the final report to City's project manager. The 2-hour workshop will be held onsite with Jacobs' project sponsor, and project manager.

Task 15.6 Weekly Team Meetings

Jacobs will hold regular team meetings to discuss information needs, staffing issues, task progress, and schedule. The budget for this task assumes Jacobs' project manager and technical lead will attend regularly (up to 40 one-hour meetings). The budget includes 4-hour allowances for Jacobs' OT, HMI, and advanced technology specialists.

Task 15.7 Owner Managed Contingency

This task will be used to manage unforeseen work to address out of scope items encountered during the work under this amendment.

ASSUMPTIONS

The scope assumes the following:

- All work will be completed in calendar year 2024 and 2025. Jacobs increases labor rates annually on January 1 each calendar year. The cost is based on 2024 rates, with 3.5% estimated escalation allowance for work anticipated to be performed in 2025.
- For project management:
 - The project management level of effort estimate assumes a 9-month maximum project duration.
 - The level of effort for monthly project management is based on an average of 8 hours per month (4 hours for project manager, 2 hours for project controls, 2 hours for project accountant / project assistant).
- OT recommendations will be based on NIST 800.82, Guide to Operational Technology (OT) Security.
- For existing system data collection:
 - All existing system data will be provided by City staff. The evaluation will be based on workshop discussion and supplemented by City-provided data, and site evaluation conducted by Jacobs. The following minimum data will be provided by the City:
 - Remote station list
 - PLC / RTU I/O lists
 - Network / communication block diagrams
 - Control panel and PLC I/O wiring drawings
 - P&IDs
 - City will coordinate availability of resources for participation in the meetings.
 - City staff will select the SCADA system improvement products and approaches based on alternatives presented in the workshops by Jacobs. Jacobs will document the City's decisions in the master plan.
- The scope of work for project definition does not include development of complex figures or any drawings (Jacobs has not included labor effort for CAD drawing development). All simple figures developed to supplement the written text will be produced using Visio or Bluebeam.
- City responsibilities include supply of all existing system data to be used for the assessment, selection of key stakeholders for workshop attendance, participation in workshops, selection of all recommended improvements and project approaches based on information and examples provided by Jacobs, and review of all draft deliverables. Jacobs assumes that the City will return review comments within 2 weeks from submission of each deliverable.
- This scope of work does not include:
 - Development of design or software standards.
 - Development of field as-builts drawings

- Software configuration changes or design / implementation of any improvements.
- Evaluation of enterprise data systems, including but not limited to laboratory information management, asset management, and maintenance management.
- Evaluation of existing field instrumentation or process equipment
- Cybersecurity assessment of the existing system.
- Any radio system engineering, including pathway studies or frequency coordination.

DELIVERABLES:

Jacobs will provide one electronic PDF copy of each deliverable identified below via email (no hard copies will be provided). Native document copies will be provided with the final deliverables.

- Workshops:
 - Summary notes (simple bulleted text via email) for each meeting
- Master Plan:
 - Preliminary / Draft
 - Document Table of Contents
 - Draft Compiled Report for Review
 - Final:
 - Final copy of master plan document. The bound PDF will be provided with bookmarks for each major section.
- For project management:
 - Monthly invoice with written narrative.

SCHEDULE CONCEPT

Major milestones and planned activity are outlined below:

- Contracted / Notice to Proceed – By end of November 2024
- Project kickoff – December 2024
- Completion of Master Plan – No Later than July 31, 2025
- Contract Completion – No later than August 31, 2025 (to accommodate final invoicing)
- Amendments / Task Orders for Follow-on Work – TO BE DETERMINED

COMPENSATION

Jacobs hereby proposes this Work on a Time & Materials basis with a not-to-exceed amount of **\$210,673**. Refer to Exhibit B, Level of Effort Estimate. Jacobs' staff labor rates will be capped at \$295/hour. All other expenses will be billed at cost.

SUPPLEMENTS

- Exhibit B - Level of Effort Estimate

**AMENDMENT 1
EXHIBIT B**

**McMinnville
ENGINEERING SERVICES FOR SCADA SYSTEM MASTER PLANNING
Level of Effort Estimate
Updated 10/16/24**

Description	Assumed Blended 2024/2025 Billing Rate:	Labor Hours										TOTAL HOURS	Total Labor	Total Expenses	TOTAL By Line Item	TOTAL Task Rollup	
		Sr. Consultant/Project Sponsor	Client Services Leader	Project Manager/I&C Lead	QC Engineer	HMI Specialist	OT Specialist	Advanced Technology	Editor	Project Controls	Lead Project Assistant						
		Kanyuch	Koch	Nivong	Brown	Little	Price	McGregor	Hall	Bates	Hurt						
		\$295	\$271	\$262	\$226	\$247	\$295	\$260	\$197	\$151	\$146						
15.1 - Project Management																	
15.1.a	Monthly Project Management	0	0	36	0	0	0	0	18	18	72	\$ 14,774	\$ -	\$ 14,774			
15.1.b	Bi-weekly Coordination Meetings with City PM	18	0	18	0	0	0	0	0	0	36	\$ 10,025	\$ -	\$ 10,025			
15.2 - Discovery																	
15.2.a	Onsite Project Kickoff Meeting	8	8	8	0	0	0	0	0	0	24	\$ 6,624	\$ 300	\$ 6,924		\$ 33,994	
15.2.b	Site Evaluations	0	0	40	0	0	0	0	0	0	40	\$ 10,478	\$ 600	\$ 11,078			
15.2.c	System Data Organization	0	0	40	0	8	12	0	0	0	60	\$ 15,992	\$ -	\$ 15,992			
15.3 - Assessment																	
15.3.a	Alternatives Evaluation Workshops (10)																\$ 34,748
i	Existing System Understanding, New functional requirements	2.5	2.5	2.5	0	0	0	0	0	0	7.5	\$ 2,070	\$ -	\$ 2,070			
ii	PLC Hardware and Control Panel Improvements	2.5	0	2.5	0	0	0	0	0	0	5	\$ 1,392	\$ -	\$ 1,392			
iii	PLC Systems, HMI Systems, Alarming, Historian and Reporting	2.5	2.5	2.5	0	2.5	0	0	0	0	10	\$ 2,687	\$ -	\$ 2,687			
iv	Facilities - Server and Control Rooms	2.5	2.5	2.5	0	0	2.5	0	0	0	10	\$ 2,808	\$ -	\$ 2,808			
v	OT Systems, Networks, and Facilities																
	OT System and Features	2.5	0	2.5	0	0	2.5	0	0	0	7.5	\$ 2,130	\$ -	\$ 2,130			
	Plant Networks	2.5	0	2.5	0	0	2.5	0	0	0	7.5	\$ 2,130	\$ -	\$ 2,130			
vi	Remote Station Communication Systems	2.5	0	2.5	0	2.5	2.5	0	0	0	10	\$ 2,747	\$ -	\$ 2,747			
vii	Connectivity with External Systems	2.5	0	2.5	0	2.5	2.5	0	0	0	10	\$ 2,747	\$ -	\$ 2,747			
viii	SCADA System Documentation and Planning	2.5	0	2.5	0	2.5	0	0	0	0	7.5	\$ 2,009	\$ -	\$ 2,009			
ix	Overflow Topics	2.5	2.5	2.5	0	2.5	2.5	0	0	0	12.5	\$ 3,424	\$ -	\$ 3,424			
15.3.b	Workshop Preparation and Post-Workshop Assessment	0	0	16	0	8	8	8	0	0	40	\$ 10,605	\$ -	\$ 10,605			
15.4 - Master Plan Document Development																	
15.4.a	Main Body	0	0	80	0	8	16	8	16	0	128	\$ 32,883	\$ -	\$ 32,883		\$ 62,568	
15.4.b	Implementation Plan	4	2	16	0	0	8	0	0	0	30	\$ 8,273	\$ -	\$ 8,273			
15.4.c	Budgetary Cost Estimates	8	0	16	0	8	8	0	0	0	40	\$ 10,885	\$ -	\$ 10,885			
15.4.d	QC	8	0	0	8	0	0	0	0	0	16	\$ 4,169	\$ -	\$ 4,169			
15.4.e	Allowance for Cleanup After Review Workshops	0	0	16	0	4	4	0	0	0	24	\$ 6,358	\$ -	\$ 6,358			
15.5 - Deliverable Review Workshops																	
15.5.a	Draft Report Review	4	4	4	0	0	0	0	0	0	12	\$ 3,312	\$ -	\$ 3,312		\$ 9,078	
15.5.b	Implementation Plan Review	4	4	4	0	0	0	4	0	0	16	\$ 4,352	\$ -	\$ 4,352			
15.5.c	Final Report Presentation	2	0	2	0	0	0	0	0	0	4	\$ 1,114	\$ 300	\$ 1,414			
15.6 - Weekly Team Meetings																	
15.6	Weekly Team Meetings	40	0	40	0	4	4	4	0	0	92	\$ 25,485	\$ -	\$ 25,485		\$ 25,485	
15.7 - Owner Managed Contingency																	
15.7	Contingency	8	8	40	0	0	8	0	0	0	64	\$ 17,367	\$ 2,633	\$ 20,000		\$ 20,000	
Total Hours		129	36	401	8	52.5	83	24	16	18	785.5						
Total (\$)		\$38,055	\$9,758	\$105,044	\$1,809	\$12,950	\$24,485	\$6,242	\$3,153	\$2,719	\$2,625	\$ 206,840	\$ 3,833	\$ 210,673	\$ 210,673		



STAFF REPORT

DATE: October 23, 2024
TO: Jeff Towery, City Manager
FROM: Willy Williamson, Airport Administrator
SUBJECT: Jerry Tremble Helicopters Modular Building Placement Extension

Report in Brief:

This action is for the consideration of a resolution to approve a two-year extension on the placement of Jerry Trimble Helicopter’s modular building that is being used for flight simulator training.

Background:

On July 2012, the City Council approved an amendment to the Jerry Trimble Helicopters (JTH) land lease that approved the placement of a modular building at the McMinnville Municipal Airport, with an expiration and removal date of May 2022. In April 2022 the amendment was extended for three years with an option to extend for an additional two years, if certain criteria were met.

Discussion:

JTH has requested to exercise the option to further extend the placement of the modular building for a period of two additional years. The option to further extend requires building and fire inspections, and applications and permits to construct or modify buildings to incorporate necessary offices, classrooms, and restrooms.

Building and fire inspections were conducted in mid-2024 and the results were provided to the Airport Administrator. There were no violations that would prohibit the use of the building for flight simulator training.

JTH has remodeled office and hangar space in the adjacent building that incorporates the reception, administrative office, and classroom that were previously in the modular building. Additionally, hangar space has been acquired to expand their aircraft maintenance and storage functions.

Overall, JTH has doubled their under-roof area and expanded their business activities.

JTH presented their request to extend the modular building placement at the September 3rd Airport Commission meeting. The presentation (included in this packet) provided photographic evidence of their new office spaces. The Airport Commission reviewed and heard testimony and considered the continued use of the modular building for a period of two years. The Airport Commission voted unanimously to recommend to City Council to approve the two-year extension for the modular building placement.

The Airport Administrator, Public Works Director and other City Staff have discussed the modular building extension with favorable consideration.

Attachments:

1. Jerry Trimble Helicopters Request for Modular Building Placement Extension
2. Resolution 2024- 58
3. Extension of Amendment to Lease
4. Resolution 2022-17 Amendment to Lease Extension dated April 2022
5. Amendment to Lease Extension dated April 2022
6. Amendment to Lease dated March 2012

Fiscal Impact:

There is no financial impact to the City or the Airport.

Recommendation:

Staff recommends:

1. City Council approve the Jerry Trimble Helicopter Modular Building Placement Extension.

JERRY TRIMBLE • HELICOPTERS •

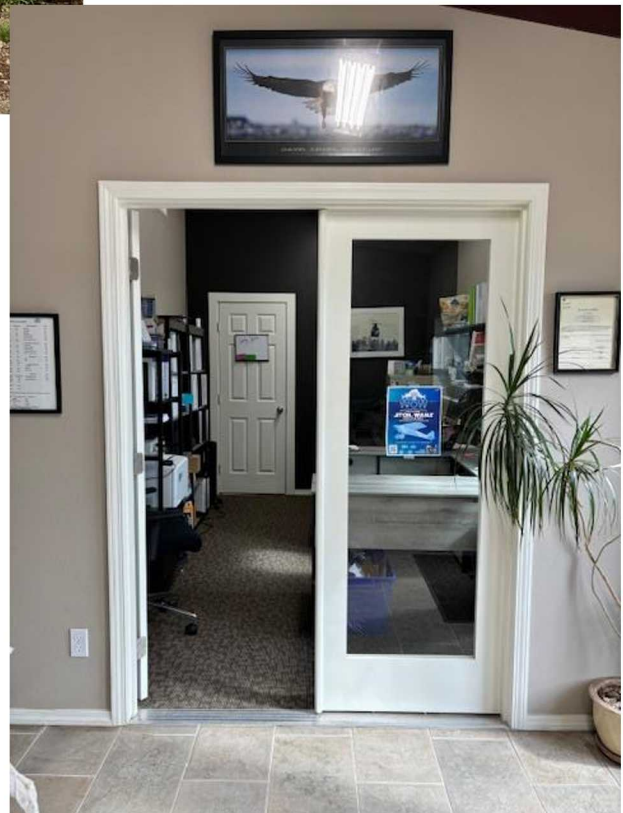
September 1, 2024

Airport Advisory Committee and McMinnville City Council

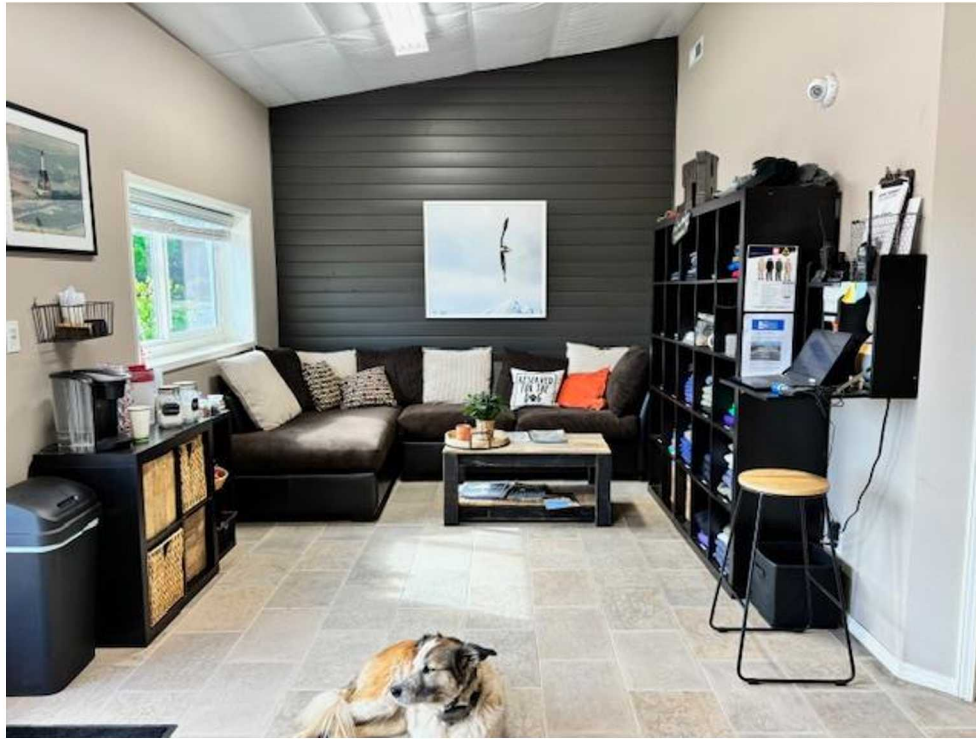
Jerry Trimble Helicopters would like to make a formal request to exercise our two-year extension for the simulator building per the current lease with the City.

The simulator building was inspected on August 19, 2024 and no significant issues were found. The full inspection report has been submitted to Willy Williamson.

In the past 2 years, JTH has moved its primary offices to the NW Air Repair hangar. JTH is currently leasing 5 offices and a lobby area from Graham Goad. JTH remodeled the office space prior to relocating. JTH also installed a new sign outside the offices which advertises all the businesses in the building.

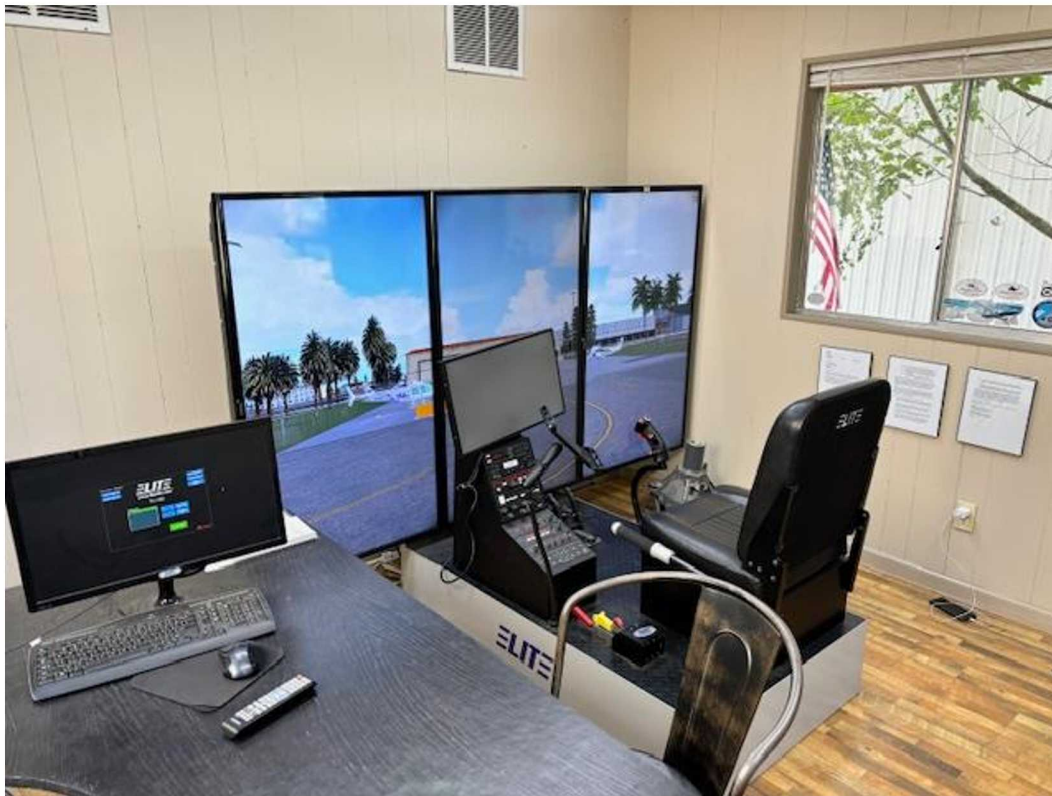
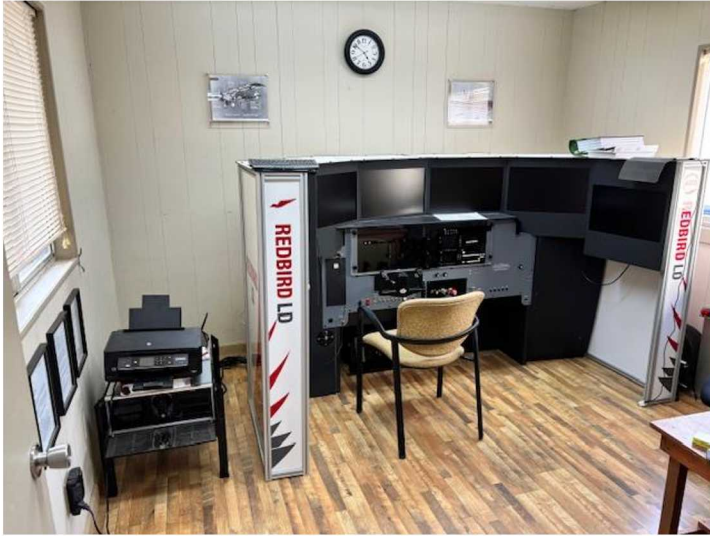


JERRY TRIMBLE • HELICOPTERS •



JERRY TRIMBLE • HELICOPTERS •

The existing simulator building is still being used to house the helicopter and airplane simulator as well as provide needed classroom space.



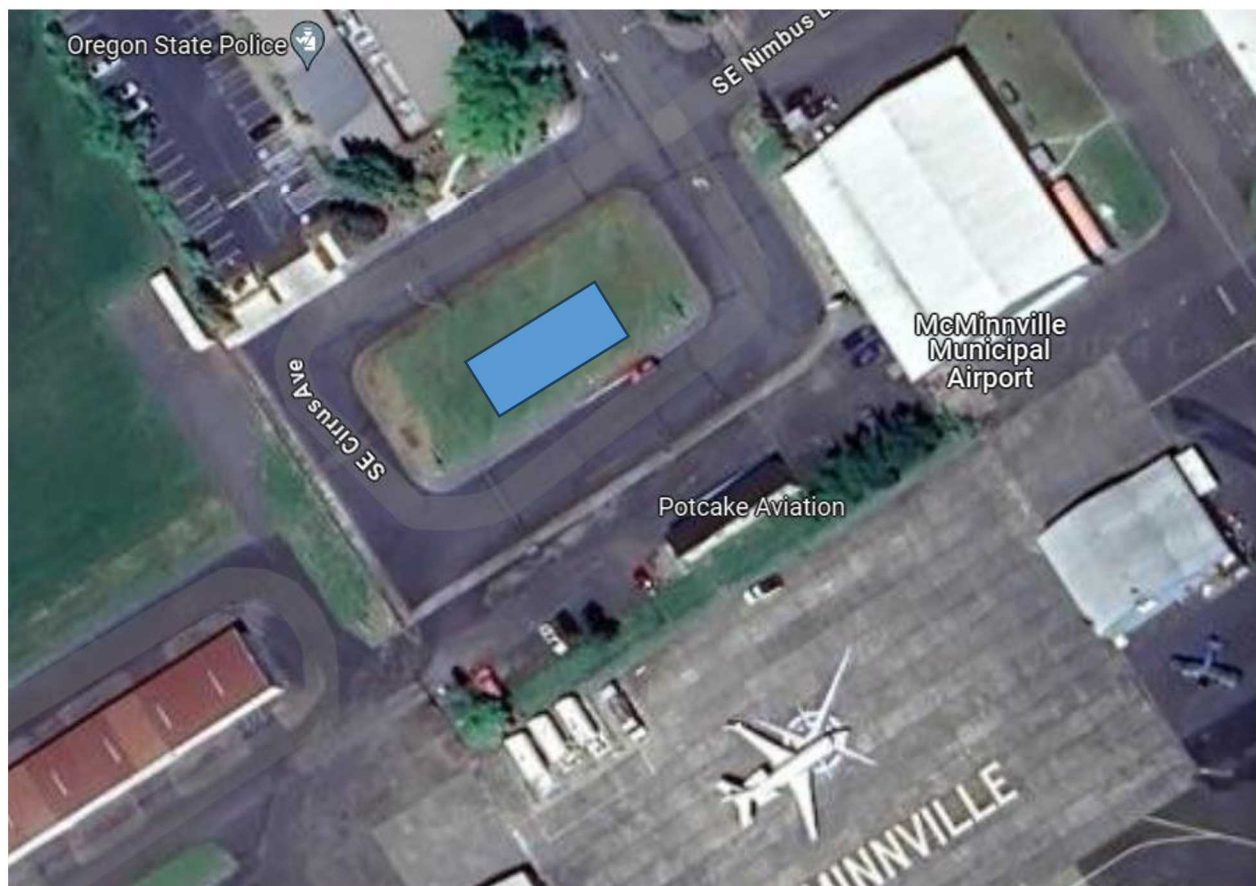
JERRY TRIMBLE • HELICOPTERS •

JTH is working with Willy Williamson to locate an appropriate location for future office space while waiting for the Master Plan to be completed. JTH currently has a 30 day lease agreement with NW Air Repair and has signed a Letter of Intent to convert the monthly lease to a yearly lease.

JTHI Request

JTHI is continuing to pursue the most practical solution to a permanent office space. JTHI has suggested several options but, due to the Master Plan being unfinished, it is still undetermined as to the best location.

We would like to propose to put a temporary modular terminal/FBO building in the circular area between the existing FBO trailer and the State Police building. This placement would allow for the Master Plan to be completed in phases. When the next phase of the Master Plan is completed the modular could be removed.



JERRY TRIMBLE

• HELICOPTERS •

After recording, return to:
City of McMinnville
Attn: Legal Department
230 NE Second Street
McMinnville, OR 97128

AMENDMENT TO LEASE

This Amendment to Lease is entered into on this ^{23rd} ~~28th~~ day of ^{Gov} April, 2022 by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as "Lessor"), and **Gary Wells and Alison Row** (collectively, "Lessee").

RECITALS:

In 1998, Lessor entered into a Lease with Caddis Manufacturing, Inc. to lease from Lessor certain premises located at the McMinnville Municipal Airport ("Lease"). That Lease is recorded with the Yamhill County Recorder's Office as document no. 199823897. The Lease has been assigned several times since 1998, and the current Lessees are identified in the Assignment of Lease recorded with the Yamhill County Recorder's Office as document no. 201719130.

In 2012, pursuant to Resolution No. 2012-10, Lessor agreed to allow the then-lessee to place an office modular building on the Lease premises. That Resolution required the removal of the office modular building by no later than May 1, 2022.

Lessee has requested a term extension of the placement of the office modular building on the Lease premises.

The parties desire to amend the Lease to include the provisions provided herein.

NOW, THEREFORE, Lessor and Lessee agree as follows:

1. **Extension of Term.** The Lease is hereby amended to extend the term date when the office modular building must be removed from the Lease premises from May 1, 2022 to May 1, 2025 ("New Modular Term").
2. **Option to Further Extend.** No less than ninety (90) days prior to the end of the New Modular Term, Lessee may request, in writing, to the City for a two (2) year extension from the New Modular Term, which, if approved, will further extend the New Modular Term to May 1, 2027. The written request from Lessee must include the following information in order for Lessee to receive approval from the City for the additional two (2) year extension:

2.1. Inspections performed by the City building department and the City fire department of the office modular confirming that the office modular is compliant with applicable state and

JERRY TRIMBLE • HELICOPTERS •

local building and fire codes. Lessee is responsible for coordinating with the relevant departments to ensure that such inspections occur.

2.2. Any and all applicable applications for either a remodel to Lessee's hangar or a new hangar that incorporates the necessary offices, classrooms, and restrooms that are currently housed in the office modular building must be submitted and determined to be complete by the City, and which applications may include, but are not limited to, a building permit application.

3. **Temporary Lease Modification.** For so long as the Modular Building remains on the Lease premises, Lessee agrees it will not make use of the of the western 20 feet of the Lease Premises currently used for parking ("Western 20 Feet") and will place no obstructions in the Western 20 Feet. Lessor authorizes Lessee its customers, guests, and invitees to park in designated public parking at no cost or expense to Lessee. For so long as Lessee is not making use of the Western 20 Feet, Lessee's annual rent shall be reduced by the per square footage rate multiplied by 4,000 square feet (the area of the western portion of the Premises). Once the Modular is no longer on Lease Premises, Lessee's use of the Western 20 Feet may resume and Lessee will resume paying the full annual rent, unless the parties agree otherwise.

4. **All Other Terms.** All of the other terms and conditions of the Lease, as previously amended shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Lease shall apply to this Amendment.

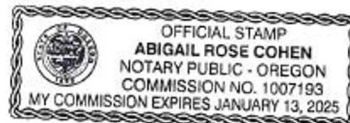
IN WITNESS WHEREOF, the undersigned have executed this Amendment to Lease effective as of the date first above written.

LESSOR:

ACCEPTED on behalf of the public and Lessor by the City of McMinnville, Oregon:



Jeff Towery, City Manager



STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on 4.28, 2022
by Jeff Towery, as City Manager of the City of McMinnville.



Notary Public – State of Oregon

JERRY TRIMBLE • HELICOPTERS •

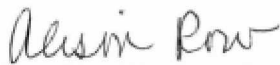
JERRY TRIMBLE • HELICOPTERS •

8/29/2024

Letter of Agreement between

NW Air Repair and Jerry Trimble Helicopters Inc. (JTHI)

- JTHI is currently leasing office and hangar space from NW Air Repair on a 30 day basis per a verbal agreement.
- JTHI desires to enter into a 12 month (or longer) lease with NW Air Repair effective immediately.
- A permanent lease to be signed within 90 days.



Alison Row
President
Jerry Trimble Helicopters Inc

8-30-24
Date



Graham Goad
Owner
NW Air Repair

8-30-2024
Date

RESOLUTION NO. 2024 - 58

A Resolution approving a two-year extension on Jerry Trimble Helicopters Amendment to Lease for the placement of a Modular Building, which is located at the McMinnville Municipal Airport.

RECITALS:

Whereas, On March 13, 2012, City Council approved an amendment to the Jerry Trimble Helicopters (JTH) land lease located at the McMinnville Municipal Airport for the placement of a modular building with an expiration and removal date of May 1, 2022, and

Whereas, On April 23, 2022, City Council approved an Amendment to Lease allowing a 3 year extension for the placement of the modular building, with an opportunity of an additional 2 year extension, if certain criteria are met, and

Whereas, JTH has accomplished substantial expansion of their commercial operation, and has expanded into other buildings at the Airport, and

Whereas, JTH is using their modular building for flight simulator training, and

Whereas, JTH has met or exceeded the criteria contained in the April 23, 2022, Amendment to Lease for the remaining 2 year extension, and

Whereas, The Airport Commission reviewed and considered JTH’s commercial aeronautical activity growth, and therefore recommends City Council approval for the remaining 2 year extension, and

Whereas, The use of the modular building and flight simulators will contribute to the safe operation of aircraft at the Airport and elsewhere.

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

1. That approval of the Extension of Amendment to Lease for the placement of the JTH modular building is hereby authorized.
2. That the City Manager is authorized and directed to execute the Extension of Amendment to Lease for the placement of the JTH modular building.
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 meeting held the 12th day of November, 2024 by the following votes:

Ayes: _____

Nays: _____

Approved this 12th day of November, 2024.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

After recording, return to:

City of McMinnville Attn: Legal Department 230 NE Second Street McMinnville, OR 97128

EXTENSION OF AMENDMENT TO LEASE

This Extension to the Amendment to Lease is entered into on _____, 20____ and between the **City of McMinnville**, a municipal corporation of the state of Oregon (hereinafter referred to as "Lessor"), and **Alison Row** (collectively, "Lessee").

RECITALS:

In 1998, Lessor entered into a Lease with Caddis Manufacturing, Inc. to lease from Lessor certain premises located at the McMinnville Municipal Airport ("Lease"). That Lease is recorded with the Yamhill County Recorder's Office as document no. 199823897. The Lease has been assigned several times since 1998, and the current Lessees are identified in the Assignment of Lease recorded with the Yamhill County Recorder's Office as document no. 201719130.

In 2012, pursuant to Resolution No. 2012-10, Lessor agreed to allow the then-lessee to place an office modular building on the Lease premises. That Resolution required the removal of the office modular building by no later than May 1, 2022.

In 2022, pursuant to Resolution No. 2022-17, Lessor agreed to extend the amendment term to terminate on May 1, 2025, with an option to further extend for an additional two (2) years.

Lessee has requested to enter the final two (2) year term extension of the placement of the office modular building on the Lease premises. The Lessee has met all criteria required for this additional extension that was identified in the Amendment to Lease.

NOW, THEREFORE, Lessor and Lessee agree as follows:

1. **Extension of Term.** The Lease Amendment option to extend is approved. The office modular building must be removed from the Lease premises by May 1, 2027 ("New Modular Term").
2. **Option to Further Extend.** There are no Options to Further Extend.
3. **All Other Terms.** All of the other terms and conditions of the Lease, as previously amended shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Lease shall apply to this Amendment.

Amendment to Lease – Extension
Row

IN WITNESS WHEREOF, the undersigned have executed this Amendment to Lease effective as of the date first above written.

LESSOR:

ACCEPTED on behalf of the public and Lessor by the City of McMinnville, Oregon:

Jeff Towery, City Manager

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 20____ by.

Notary Public – State of Oregon

LESSEE:

Alison Row, an individual

By: _____
Alison Row

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 20____ by.

Notary Public – State of Oregon

Amendment to Lease – Extension
Row

RESOLUTION NO. 2022-17

A Resolution Authorizing the City Manager to Execute an Amendment to the Lease between the City of McMinnville (Lessor) and Gary Wells and Alison Row (collectively, Lessee).

RECITALS:

Whereas, in 1998, Lessor entered into a Lease with Caddis Manufacturing, Inc. to lease from Lessor certain premises located at the McMinnville Municipal Airport ("Lease"), which is recorded with the Yamhill County Recorder's Office as document no. 199823897; and

Whereas, the Lease has been assigned several times since 1998, and the current Lessees are identified in the Assignment of Lease recorded with the Yamhill County Recorder's Office as document no. 201719130; and

Whereas, in 2012, pursuant to Resolution No. 2012-10, Lessor agreed to allow the then-lessee to place an office modular building on the Lease premises, but required that the office modular building be removed by May 1, 2022; and

Whereas, Lessee requested an extension of the lease term for the office modular building; and

Whereas, at the March 1, 2022 McMinnville Airport Commission meeting, the Airport Commission recommended that Lessor extend the lease term for the office modular building for three years; and

Whereas, the Airport Commission also recommended an additional two-year option to extend the office modular lease upon evidence that the office modular building is compliant with applicable laws and regulations and that Lessee has submitted any and all applicable applications necessary to either remodel the existing hangar or build a new hangar to incorporate the uses currently housed in the office modular building.

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

1. The City Manager is authorized to execute an amendment to the Lease, which amendment must be substantially similar to **Exhibit A** attached hereto.
2. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 12th day of April, 2022 by the following votes:

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

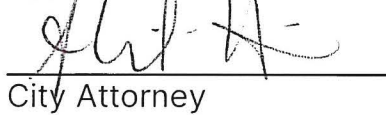
Nays: _____

Approved this 12th day of April 2022.



MAYOR

Approved as to form:



City Attorney

Attest:



City Recorder

EXHIBITS:

A. Amendment to Lease

After recording, return to:
City of McMinnville
Attn: Legal Department
230 NE Second Street
McMinnville, OR 97128

OFFICIAL YAMHILL COUNTY RECORDS
BRIAN VAN BERGEN, COUNTY CLERK

202207224



\$96.00

05/19/2022 02:40:13 PM

DMR-LDMR Cnt=1 Stn=3 SUTTONS
\$20.00 \$5.00 \$11.00 \$60.00

AMENDMENT TO LEASE

This Amendment to Lease is entered into on this ^{GW}~~28~~²³ day of April, 2022 by and between the **City of McMinnville**, a municipal corporation of the State of Oregon (hereinafter referred to as "Lessor"), and **Gary Wells and Alison Row** (collectively, "Lessee").

RECITALS:

In 1998, Lessor entered into a Lease with Caddis Manufacturing, Inc. to lease from Lessor certain premises located at the McMinnville Municipal Airport ("Lease"). That Lease is recorded with the Yamhill County Recorder's Office as document no. 199823897. The Lease has been assigned several times since 1998, and the current Lessees are identified in the Assignment of Lease recorded with the Yamhill County Recorder's Office as document no. 201719130.

In 2012, pursuant to Resolution No. 2012-10, Lessor agreed to allow the then-lessee to place an office modular building on the Lease premises. That Resolution required the removal of the office modular building by no later than May 1, 2022.

Lessee has requested a term extension of the placement of the office modular building on the Lease premises.

The parties desire to amend the Lease to include the provisions provided herein.

NOW, THEREFORE, Lessor and Lessee agree as follows:

1. **Extension of Term.** The Lease is hereby amended to extend the term date when the office modular building must be removed from the Lease premises from May 1, 2022 to May 1, 2025 ("New Modular Term").

2. **Option to Further Extend.** No less than ninety (90) days prior to the end of the New Modular Term, Lessee may request, in writing, to the City for a two (2) year extension from the New Modular Term, which, if approved, will further extend the New Modular Term to May 1, 2027. The written request from Lessee must include the following information in order for Lessee to receive approval from the City for the additional two (2) year extension:

2.1. Inspections performed by the City building department and the City fire department of the office modular confirming that the office modular is compliant with applicable state and

local building and fire codes. Lessee is responsible for coordinating with the relevant departments to ensure that such inspections occur.

2.2. Any and all applicable applications for either a remodel to Lessee’s hangar or a new hangar that incorporates the necessary offices, classrooms, and restrooms that are currently housed in the office modular building must be submitted and determined to be complete by the City, and which applications may include, but are not limited to, a building permit application.

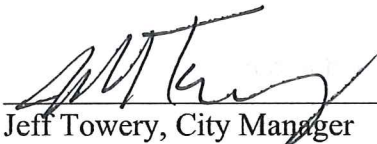
3. **Temporary Lease Modification.** For so long as the Modular Building remains on the Lease premises, Lessee agrees it will not make use of the of the western 20 feet of the Lease Premises currently used for parking (“Western 20 Feet”) and will place no obstructions in the Western 20 Feet. Lessor authorizes Lessee its customers, guests, and invitees to park in designated public parking at no cost or expense to Lessee. For so long as Lessee is not making use of the Western 20 Feet, Lessee’s annual rent shall be reduced by the per square footage rate multiplied by 4,000 square feet (the area of the western portion of the Premises). Once the Modular is no longer on Lease Premises, Lessee’s use of the Western 20 Feet may resume and Lessee will resume paying the full annual rent, unless the parties agree otherwise.

4. **All Other Terms.** All of the other terms and conditions of the Lease, as previously amended shall remain in full force and effect, as therein written. Unless otherwise defined herein, the defined terms of the Lease shall apply to this Amendment.

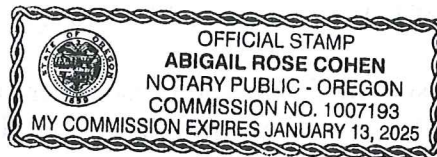
IN WITNESS WHEREOF, the undersigned have executed this Amendment to Lease effective as of the date first above written.

LESSOR:

ACCEPTED on behalf of the public and Lessor by the City of McMinnville, Oregon:



Jeff Towery, City Manager



STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on 4.28, 2022
by Jeff Towery, as City Manager of the City of McMinnville.



Notary Public – State of Oregon

LESSEE:

Gary Wells, an individual

By: *[Signature]*
Print Name: GARY WELLS

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on April 23rd, 2022,
by Gary Wells.



[Signature]
Notary Public – State of Oregon

Alison Row, an individual

By: *[Signature]*
Print Name: Alison Row

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on 04/19/2022, 2022
by Alison Row.

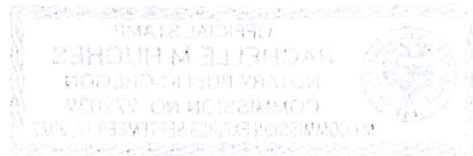


[Signature]
Notary Public – State of Oregon

APPROVED AS TO FORM:

Amanda Guile-Hinman

Amanda Guile-Hinman, City Attorney



July 1 2016
New F.B.O.

**Land Lease Amendment
Gary Wells and Pamela Wells**

The City of McMinnville, a municipal corporation of the State of Oregon, Lessor, and Gary and Pamela Wells, Lessee, hereby agree to amend the land lease dated December 3, 1998 (as recorded in Instrument No. 1998-23897, Yamhill County Records), as amended on August 30, 2004 (as recorded in Instrument No. 2004-17940, Yamhill County records), as assigned on September 24, 2007 (as recorded in Instrument No. 2007-20990, Yamhill County Records), and as amended on July 28, 2010 (as recorded in Instrument No. 2010-10442, Yamhill County Records). All terms and conditions of that lease, as amended and assigned, remain in full force except **Section 2. Business Purpose** shall be revised to read:

“The premises are to be used solely for the use of aircraft hangar buildings and facilities. The Lessee intends to construct on the premises an aircraft hanger building which is to be used for aeronautical purposes and specifically for the purpose of parking and storing aircraft; aircraft repair and maintenance; aircraft flight instruction; and other routine activities associated with aircraft ownership. Additionally, the Lessee will install a modular building on the premises that will provide office, classroom, restroom and other business related facilities associated with the Lease. The owners and occupants of units shall not engage in any other use of the premises without prior written consent from Lessor. The Lessee shall conduct and carry on in said premises only the business for which said premises are leased, and shall not use the premises for illegal purposes. All uses and activities on the premises shall conform to the adopted “Minimum Standards for Commercial Aeronautical Activities.” The modular building shall be removed from the premises by the Lessee on or before May 1, 2022.”

IN WITNESS WHEREOF, the parties hereto have executed this lease amendment on the 15 day of March, 2012.

LESSOR:

By: *[Signature]*
City of McMinnville

Date: 3.15.12



State of OREGON
County of Yamhill
Amended on 11.13.24
Subscribed and sworn (or affirmed)
before me on March 15 2012

LESSEE:

By: Gary Wells
Gary Wells

Date: 11 MAY 2012



State of OREGON
County of Yamhill

Subscribed and sworn (or affirmed)
before me on May 11th, 2012.

Maria Sheldon
Notary Public – State of Oregon
My commission expires: 4/23/2016

By: Pamela Wells
Pamela Wells

Date: 5-2-2012



State of OREGON
County of Yamhill

Subscribed and sworn (or affirmed)
before me on May 2, 2012.

Tracy Lynn Bean
Notary Public – State of Oregon
My commission expires: 12-18-12

Approved as to form:

Staff Report

DATE: November 12, 2024
TO: City Council
FROM: Scott Burke, Information Systems Director
Crystal Wooldridge, Financial Analyst
SUBJECT: Authorize contract for web-based budget and financial transparency software



CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize & deliver municipal services with discipline and focus.

Report in Brief

At two individual Budget Committee work sessions on April 23, 2024, and September 18, 2024, discussions for the potential of moving to a biennial budget and adding a web-based budget platform to the City's technology resources were deliberated.

Feedback from these work sessions indicated that now may not be the time to transition to a biennial budget, but indicated support towards investing in new technology that would elevate staff productivity and results.

Staff is enthusiastic about obtaining software that will provide efficiency and transparency not only for the City's budget but also for general financial information. The software's implementation would be slower than originally planned due to the Finance Director position transition and current Finance operating staff challenges, but efficiencies will be gained along the way that overall will save staff significant processing time. We anticipate some functionality improvements as well during the FY2025-26 budget cycle with full use planned for the following budget year

This software implementation is included in the adopted FY2024-25 budget.

What have we done

An informal request for quotes (RFQ) was sent out to software companies providing purpose-built, web-based budget solutions for local governments that the Government Finance Officers Association (GFOA) includes in its clearing house of available financial resources. We also sent the RFQ to our current accounting system provider but did not receive a response from them.

A group representing Finance, IS and budget user departments (Library and Public Works) was convened to review responses and participate in product demonstrations. Out of the four proposals received and three demonstrations, the RFQ review group came to a unanimous conclusion regarding the solution that would make for the best fit for McMinnville: Euna Solutions (formerly Questica).

Over the last few weeks, we have worked with the preferred vendor to tailor the initial quote to focus in on our highest priority, near term functionality needs. That, along with some additional pricing considerations bring the total cost of bringing it online much closer to our anticipated budget.

One interesting thing to note regarding the budget solutions demonstrated to staff, this was the most economical offering considered. It was a happy outcome that staff's preferred solution from a functionality perspective also was the option with the lowest price point.

On September 20th, a worksession follow-up email was distributed to the Budget Committee, with a link to the recorded software demonstration being one of the included elements.

Based on some of the cybersecurity questions brought up in the Sept. 18 Budget Committee meeting, City IS reached out to Euna to talk more about data integrity and cybersecurity. Euna Solutions also provided a copy of their most recent annual SOC2 security audit, which ensures a company's cybersecurity practices are secure and protect customer data. City IS staff are fully confident in Euna's ability to keep the City's data protected and that cybersecurity best practices are being followed to minimize risk according to industry standards.

Software Enhancements

The Euna Solutions product most aligned with the required functionality in the RFQ. It demonstrated integrated functionality for increased transparency, ease of budget building, and alignment with non-financial objectives, such as the City's Strategic Plan's goals, while emphasizing its commitment to customer support. Their flexibility in configuration options and avoidance of customization was another attractive aspect of the application.

From talking with jurisdictions that work with Euna now (two in Oregon), all were happy with their software, find it's easy to use across all staff groups, and the support team is responsive. Primary value adds, according to references, included time-savings and efficiencies; ease of access and amount of information available to departments; lower risk in terms of data integrity issues. When asked about pain points, two references said there were none in particular and the other noted that the test data base and some reports can run slowly. Some have yet to incorporate features we recommend purchasing – notably the budget book studio module, Euna Solutions' most recent product component launch – and are considering adding that component as well.

From a **transparency and public engagement** perspective, the following characteristics of the budget solution caught our eye:

- Ability to display budget to actual information, updated overnight, with drill down capacity to the account level as well as staff and community member user ability to select different views of budget and actual information via the web interface
- Flexibility to include strategic plan objectives, core services information and any other priority or project tracking capacity we elect to include with the financial data

- Any data sets on non-financial metrics uploaded into the application can also be used for visualizations in table or graphic form for web output, allowing us to make positive movement on the City's data maturity level discussed in the Council goal setting meeting in December 2023.
- Dashboards for external or internal use can be created that draw on financial and performance data
- Budget book studio component of the solution designed to produce an Americans with Disabilities Act compliant document
- "Spotlight" feature that other cities use to focus on reporting back to the public on specific projects such as American Rescue Plan Act (ARPA) projects
- Public feedback and survey capacity; partnership with the Balancing Act solution currently owned by the City
- Integrated forecasting functionality
- Full proposed budget book data refresh capacity for the adopted budget version, something we're unable to provide the public currently

Our current systems are not designed to achieve most of the above-mentioned features. Purchasing this application would represent a significant step forward in our capacity to move the needle on financial data transparency with the community as well as provide more context to the numbers. It also addresses the desire to strengthen financial oversight by providing dynamically updating actual income and expense information to budget as well as ability for the public to look at the City's "checkbook." As previously mentioned, we believe we will need to take a gentler phased-in approach to implement all of the capabilities of the system, but we are very excited about the prospect of (1) delivering more substantive data to the community than we are able to do now and (2) explore dashboard capabilities to provide a more robust financial oversight tool to the governing body.

In terms of **improving each department's budget development experience**, the preferred solution offers:

- Improved department-level budget development capacity including ability to tag items as one-time and continuing operating costs
- User choice to work directly in the system or export their work sheets to excel and import back in when complete
- Integrated templates for add packages that can be kept for future years if not funded when initially proposed
- Workflows to track proposals, feedback and budget approvals of financial data, narrative content and other budget components exist within the system, replacing the need to use email for document swapping and other communications
- Opportunity to communicate and share personnel information differently, which may offer a way to address the most commonly mentioned pain point associated with the budget process from staff
- Ability to produce and retain any number of budget scenarios, capacity not available in the current budgeting platform internal to our accounting software

The system itself will be more user-friendly for all departments relative to the current budgeting development process. Many of the bulleted items above are done now but in a

variety of spreadsheets and other documents that get recycled each year. Reducing pain points should result in higher job satisfaction for those who engage in the budget process relative approach utilizing our current New World Systems (NWS) software and hand-built systems. However, the actual amount of time spent preparing budget projections and writing narratives should be roughly equivalent. In fact, should we choose to invest the time to incorporate performance metrics and/or track our spending by the strategic plan, core services or other city priorities, these public transparency and higher-level management enhancements likely mean additional city-wide tasks for the overall budget effort. The implementation for this main component would be challenging and too demanding to incorporate for the FY 2025-26 annual budget development cycle at this stage of the budget process, further inhibited by current Finance staffing levels. We plan to utilize our current City financial system to develop the FY 2025-26 annual budget, then incorporate Euna Solution's software for the FY 2026-27 annual budget development cycle.

Gains for the Finance and IS departments will also be captured should we move forward with implementing this web-based software:

- Eases project management work of the iterative budget development process with deadline reminders available within the system and via e-mail prompts, progress status graphics and other tools
- Calculations for allocations of support (admin, HR, legal, finance) or other shared services (such as engineering) as well as the IS's distributions to all operating department budgets will be internal to the solution with ability to automatically refresh data throughout the budget during iterative budget development process; replacing a spreadsheet system that requires hand-keying hundreds of budget values into the accounting system, and recalculating and rekeying as information is updated through the budget process
- Position budgeting capacity similar to existing system, relying on current workforce actual data as a baseline for budget
- Financial projection capacity and budget scenario options far superior to current software capacity
- Elimination of an entire layer of data validation and custom budget/fund balancing report work, a labor-intensive process for both the IS and finance departments
- Integrated data graphic capacity, allowing us to completely overhaul the current manually produced and outside the system city-wide analytics provided in the budget book, also reducing risk of error in these data tables and graphs
- Putting together the budget book itself will also move from a hand project of merging dozens of disparate files in excel and word formats and then formatting and page numbering a combined PDF document
- New capacity to automatically generate and send reports out via email to governing body, management and staff
- Current report generation tools attached to the existing New World budget system are becoming dated and require increasing amounts of support time each year to update and support; newer web based reporting tools will relieve this burden from IS and Finance and position the City to be able to produce new budget reports and information documents for years to follow.

The biggest time savings offered from the new budget software system itself, and resulting increase in job satisfaction by eliminating several time consuming, hand-work requirements of the current budget process, will accrue to the Finance and IS departments. Then in following years, to the extent that this results in these support departments being able to advance in other internal process improvement, system security and/or management reporting capacity, the organization as a whole will benefit from this added staff capacity indirectly.

Capital budgeting capacity was incorporated into the RFQ as well, knowing that the creation of a city-wide, longer-term capital improvement budget process is something we'd like to bring forward in the next few years. Euna has a capital budgeting option as well and we looked at it during the product demonstrations. Functionality in this module includes ability to tag projects with GIS data, produce mapped images of capital projects along with other project-specific financial data, prioritization weighted criteria information and photographs. The capital budget module may be used as an independent project with its own timeline, workflows, public transparency components, and publication output that is able to be integrated into the operating budget without separate data input needs. When we are ready to move forward with this project, a project amendment with Euna Solutions to add the capital budgeting function can be made.

Financial impact

The recommended solution is \$41,875 in one-time implementation costs with an annual fee of \$39,396, increasing at 3% per year. The FY2024-25 budget includes \$35,000 for one-time and \$35,000 for annual costs for this project, supported by repurposed ARPA project dollars (now held in committed fund balance) originally slated for grant management. Unfortunately, the budget solutions proposed in the RFQ exceeded our anticipated budget.

The FY2024-25 adopted budget also includes a \$35,000 investment in designing business process improvements to ease communication and tracking of financial information across the City. By delaying work for this project (also funded by repurposed ARPA dollars), the net impact on the current year budget will actually swing positive.

Budget Application Cost		
FY2024-25 Budget for Application		
one time cost	35,000	20k in fin, 15k one-time in IS
carrying cost	35,000	in IS
	70,000	
Contract Actuals FY2024-25		
one time cost	41,875	
carrying cost	39,396	
	81,271	
Variance	(11,271)	
FY2024-25 Budget for Business Process Improvements		
one time cost	30,000	all in Fin
carrying cost	5,000	in IS
	35,000	delay implementation
FY2024-25 Budget Savings total		
	23,729	

Moving to the new budgeting system will allow us to make changes to our existing financial software spends to save more money, reducing the financial outlay required for finance systems over the course of the initial four-year contract. We anticipate being able

to discontinue two modules used in NWS, saving \$5,000 in annual fees, then a third NWS module after the new budget software has been implemented for an additional \$3,000 annual savings.

Longer term, the financial projections capacity of the solution will also allow us to consider eliminating the software solution purchased for that purpose at \$6,000 per year when that contract expires in FY2026-27. Other current technology spend reductions may also be possible and will be explored as we become familiar with and stand up the full capacity of Euna's product.

The repurposed ARPA project funds will be able to pay for the full carrying cost of the attached contract in FY2025-26 and FY2026-27 as well as still fund additional internal business process improvements for the City. In year four of the contract, the cost of the budgeting solution will become a shared cost across the organization.

While our accounting system provider, NWS, didn't have a budget application for us to consider, it does offer a web-based, financial data transparency module with ability to show budget to actual information with drill down, self-service views into our financial data. It does not include dashboard capacity, ability to incorporate performance data or to organize and share budget information by priority category views. We priced this to give us insight into the value for money of the budget applications as a whole; this NWS module alone would cost \$13,200 per year. While it's certainly not an apples-to-apples comparison, it does give an indication that the total cost for all the functionality included in the budget application is a reasonable value.

Council options

1. Authorize the City Manager to sign the contract for the Euna budget application for four years, totaling \$206,693.17. (staff recommendation)

The recommended budget solution overdelivers on our budget transparency objective. The tool will provide the community self-service income and expense information with just a one-day data lag. It also opens up potential for:

- meaningful priority-based budgeting opportunities
- additional public transparency, communication and engagement options
- capacity to create governance dashboards on financial metrics and other key indicators
- a more efficient budget development process

All the above represent enhancements that we will need to phase in and build into our current processes and financial reporting cycles over the next few years.

2. Reject the contract resolution

This will mean the status quo for both budget process and financial transparency for the community.

Attachments

1. Resolution No. 2024-59
2. Euna RFQ response

RESOLUTION NO. 2024 – 59

A Resolution approving entering into a contract with Euna for a budget and financial transparency software subscription.

RECITALS:

WHEREAS, on June 2024, the City of McMinnville issued an informal Request for Quotes (RFQ) for a web-based budget application; and

WHEREAS, on August 2024, the RFQ review committee evaluated the proposals received and brought back three proposers for a product demonstration; and

WHEREAS, the staff review committee unanimously agreed that the best option for the City was to contract with Euna for a web-based budget application that also will provide more general financial transparency functionality to the community; and

WHEREAS, the City desires to contract with Euna for its budget and financial transparency software subscription (SAAS agreement) for four years with the option of annual renewals. The contract also includes initial implementation services as a one-time cost.

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

1. That the City Manager is hereby authorized to execute a Professional Services Agreement, in a form acceptable to the City Attorney, with Questica LTD for budget software subscription and related professional services for four years, totaling \$206,693.17.
2. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 12th day of November 2024 by the following votes:

Ayes: _____

Nays: _____

Approved this 12th day of November 2024.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder



Euna Solutions Response to:

The City of McMinnville

Request for Quote: Budget Application

Due Date: August 5, 2024



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Cover Letter

August 5, 2024

Crystal Wooldridge
Financial Analyst
City of McMinnville

RE: Request for Quote: Budget Application

Dear Ms. Wooldridge,

Euna Solutions is thrilled with the possibility of partnering with the City of McMinnville in its effort to improve the efficiency and transparency of its budget process.

We welcome an opportunity to leverage our 26 years of relevant experience providing budgeting software to the public sector. Our experience includes integrating with Tyler New World (NWS) and Balancing Act, serving customers who budget biennially, serving organizations that are similar sized to McMinnville, and proudly serving a number of Oregon public sector customers, a few of which include Multnomah and Washington counties, and the cities of Tualatin and Oregon City.

Specifically, we look forward to helping the City of McMinnville:

- Streamline processes by transitioning to a comprehensive, user-friendly software solution that is purpose-built for public sector budgeting and forecasting, and includes a seamless integration with Tyler New World (i.e., importing actual expense and revenue data from NWS into Euna Budget, and exporting budget information from Euna Budget into NWS)
- Adapt to changing circumstances by efficiently creating and comparing unlimited versions and 'what-if' scenarios, building in-year projections and generating multi-year forecasts, using actuals and historical data imported from Tyler New World
- Increase departmental efficiency, collaboration and accountability by enabling staff to enter justification and include documentation at the line-item level for initial requests and budget adjustments, tag other users, and easily monitor their budgets year-round
- Enhance data-driven decision making by comparing budgets, including amendments, to near real-time actuals that are automatically imported each night from Tyler New World
- Improve transparency and engagement by leveraging data directly from Euna Budget to share operating and capital project budgets, including funding sources, with staff and the public through interactive Web-based ADA-compliant visualizations that are integrated to Balancing Act
- Efficiently publish an ADA and GFOA-compliant printable digital budget book to engage citizens.

We propose a Software-as-a-Service (SaaS) subscription of our industry leading Euna Budget solution, powered by Questica, our OpenBook transparency tool, our Budget Book Studio tool, and our inhouse professional services for implementation, integration, configuration, training, and post-implementation customer support. Euna is unique in providing a fully integrated solution offered with a consistent and well-organized user-interface that is purpose-built for streamlining and simplifying public sector budgeting.

In 1998, Euna (previously Questica) implemented its first solution for public sector budget and forecast development and maintenance, which has been continuously improved based on customer feedback we've received over these past 26 years. About seven years ago, we added our transparency product and more recently our budget book studio component – a path that contrasts sharply with other vendors that serve both public and private sectors, or initially offered transparency and reporting tools and only more recently added the detailed capabilities to develop and maintain budgets and forecasts.

Some key considerations that set the Euna team and Euna Budget solution apart include the following:

- **Integration Experience:** Integrations are essential, especially automatically importing actuals from the financial system nightly. Without automation, accurately analyzing a budget's health is difficult and you risk making decisions based on old data, or sharing dated information with others including the public, and your staff spends precious time moving and validating data manually. With seamless integration, our customers view dashboards or reports to assess how the original and amended budget is performing against actuals, having confidence that information is up to date and reliable. Euna Budget also includes one-button on-demand integrations to export final and amended budgets to the financial system.
- **Full circle, end-to-end budgeting solutions:** Euna provides a single and intuitive solution with modules and capabilities to address the City's budgeting needs from start to finish. A consistent, well-tested user-interface is deployed across the solution – from building and maintaining operating, personnel, and capital budgets, to publishing interactive, engaging visualizations and digital budget books.
- **More configurable, less customizations:** Euna's 26 years in public sector budgeting means we've seen best practices across nearly 1,000 public sector organizations. Rather than customize the platform for each approach, Euna builds in incremental best practices as configurable options. Ultimately, this flexibility leads to quicker, less costly, and more stable implementations for long-term ROI.
- **You are in control:** Euna Budget is designed for client-side administration, with security, reports, workflow, and more, configurable by the admin user. We use a single tenant architecture, so each customer has a unique and segregated instance of our software and may choose when to apply software updates, based on their convenience and schedule.
- **Right sized for you:** Euna is big enough to support large organizations, yet nimble enough to remain agile. We have the resources needed to support large-scale, complex implementations while remaining flexible to accommodate the City's unique requirements. We develop and maintain our software and manage all aspects of customer interactions to eliminate communication delays and blurred areas of responsibility that can occur when the software vendor and the reseller/implementation team are from different organizations.

We look forward to discussing Euna's value and return on investment for the City of McMinnville.

Sincerely,

Chris Olsen

Chris Olsen

Senior Account Executive

877-707-7755 ext. 4582

Christine.Olsen@eunasolutions.com

Required functionality

	Required functionality	Y/N	Module	Additional Information
1	Supports biennial budget and Oregon budget reporting requirements*	Y	Euna Budget	<p>Yes, Euna Budget enables biennial budget development and maintenance. Our professional services team has experience implementing our software for customers who budget biennially.</p> <p>Any data that exists within the Euna Budget can be used for reporting purposes within the system and/or extracted for external presentation and analysis.</p> <p>Our Budget Book Studio (BBS) tool leverages data directly from Euna Budget to produce a GFOA- and ADA-compliant digital budget book that can also be printed. It can produce the table found in the link below, although column order may differ. BBS can display a cover page that you wish to design and match headers and footers.</p> <p>*****.mcminnvilleoregon.gov/sites/default/files/fileattachments/finance/page/211/2024-25_mcminnville_adopted_budget.pdf</p>
2	Interface with accounting system: pull in current year actual information, ideally at multiple times during budget development process; pull in prior year actuals and prior year budgets; ability to combine single year actuals to reflect biennial period actuals	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>Connections and insights to data are paramount. Access, unified views, and integrating data from the accounting system and often from other sources into a single coherent data store is a necessity for reliably analyzing and sharing information – which is why all Euna implementations include integrations.</p>

				<p>Euna has developed several options to enable deeper connections to data:</p> <ul style="list-style-type: none"> • Grid Import/Export • RESTful Application Programming (API) • Euna Integration System (EIS) <p>Our proposed solution will utilize EIS to import actuals from the NWS financial system on a scheduled basis (e.g., nightly). During implementation, our team will work with you to upload two (2) prior years of actuals and budget data.</p> <p>The budgets developed in Euna Budget and the actuals imported will remain in the system to build your history.</p> <p>Euna Budget can combine single years actuals to reflect biennial period actuals.</p>
3	Interface with accounting system: export out appropriated budget data for the biennial period with ability to do so in either one two-year or two one-year budget files	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.
4	User-friendly budget development process for “steady state” programs and activities across a two-year time horizon	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.
5	User-friendly process for proposing “add packages,” including for new positions, and workflow for multiple users to weigh in on prioritizations and final prioritization decisions	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>During implementation, forms will be configured for the various types of relevant “add packages” (or what we refer to in Euna Budget as Change Requests or Decision Packages).</p> <p>The content of the forms may differ depending on the type of add package.</p>

				<p>In addition to being able to establish different workflows for Operating, Personnel and Capital budgets, the same capability exists for different types of Change Requests, giving users the ability to propose add package requests as needed, and enabling authorized staff to view and approve them. For example, a new position or position change request, a new program request, and a budget transfer type request are all likely to have different workflows and approval processes.</p>
6	User-friendly process for proposing and prioritizing capital replacement needs across a two-year horizon	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>Users can construct their capital projects on a monthly, quarterly, annual, or biennial period basis, enter narrations or explanations for their proposals or requests, and categorize them based on different criteria such as Capital Assets, Fund(s), Project Status, or other user-defined attributes.</p> <p>Capital requests may impact a single fiscal year or may span multiple years. Additionally, multiple scenarios can be created for each project, and requests can be ranked for prioritization.</p> <p>Capital requests get routed through the system's configurable workflow for approvals.</p>
7	User-friendly process for proposing and prioritizing capital projects, including multi-year capital projects	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p>
8	Ability to run budget scenarios during budget preparation process	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p>

				<p>The Scenarios feature within Euna Budget enables authorized users to create unlimited budget versions and/or 'what-if' scenarios, allowing the City to perform its multi-scenario and multi-year planning. Authorized system users may copy a budget on any costing center (or the City's equivalent), capital project, or change request/decision package and create unlimited 'what-if' scenarios of that particular budget data.</p> <p>Scenarios may be based on changing variables such as labor costs, tax rates, inflation, etc. Activating scenarios enables users to evaluate the impact each set of assumptions might have on the overall budget.</p>
9	Ability to produce a line-item detail budget report and a rolled up, less detailed budget presentation	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.
10	User-friendly way to list more detailed information for a single line item that rolls up to a single line- item total	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.
11	User-friendly way to calculate personnel costs for on-going personnel, in a biennial setting, including special personnel circumstances (promotions, retirements, reclassifications, etc.), ongoing open positions	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>The Euna Budget Personnel module is well suited to support the City's position budget – it is essentially a calculator that supports the ability to accurately model and forecast all costs associated with positions (filled and vacant) and employees (FT, PT and Temp) to accommodate the workforce budget.</p> <p>Step or pay increases, cost of living adjustments, new benefits, planning for special personnel circumstances such as promotions and retirements are intuitively handled.</p>

				<p>A position can be associated with an incumbent employee, primarily for the purpose of calculating employee specific benefits such as the applicable health care option. The position's incumbent employee or their grade can be changed in any given month to model the normal changes as people are hired, promoted, and reassigned.</p> <p>Employees may be allocated to multiple positions to model those who have more than one job. Similarly, the budget for a single position can be split between any number of departments and/or funds, including grants, using percentages, fractions of FTEs, or hours.</p>
12	User-friendly way to budget for part-time and temporary staff positions by hours as is needed in our parks and recreation department, library department, and to lesser extent some other departments and funds	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.
13	User-friendly way to do "what if" scenarios for a new staff position	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>As indicated earlier, Euna Budget supports unlimited budget versions and 'what-if' scenarios, including assessing the impact of new positions.</p> <p>'What-if' scenarios can be created at the overall budget level, costing center level, by project budget, and by change requests or decision packages such as new staff adds.</p> <p>System reports are available to view and compare the datasets of one budget scenario vs. another.</p>

14	Ability to apply personnel adjustments to groups of positions (ex. different max/min CoLAs for different employee groups; different health insurance increases for different employee groups) and automate calculation of step increases by step month	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>Euna Budget uses the term “modifier” to represent any cost that is not the base salary/base wage of a position (e.g., COLA, FICA, Medicare, pension, life insurance, special pays). Modifiers can be a percentage of other costs, typically base wage, or the value can be independent of other costs and even looked up from other tables in the system to allow ease of management from one year to the next. With opt-in settings, recurrence, graduated/ tiered values, and the ability to cap payments, Euna Budget’s modifiers are an ultra-effective tool for managing payroll calculations.</p> <p>Modifiers and pay/step increases typically result in adjustments that impact multiple positions based on their employee group, although they can also be updated for individual personnel if and as needed. Adjustments can be date based (i.e., occur automatically based on step month or anniversary date) or can be scheduled to calculate based on a completely different designated effective period.</p> <p>Euna Budget’s Personnel module is essentially a calculator that supports the ability to accurately model and forecast all costs associated with positions (filled and vacant) and employees (FT, PT and Temp) to accommodate the workforce budget. Step or pay increases, cost of living adjustments, new benefits, etc., can all be efficiently budgeted.</p>
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15	Ability to produce city-wide and general fund focused analytics - see p. 12-24 of FY2023-24 proposed budget for the kind of graphics and narrative descriptions desired. Note, the City is more than open to updated presentations of similar information and new graphic analysis options	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget. Any data that exists within the Euna Budget can be used for reporting purposes within the system and/or extracted for external presentation and analysis.
16	Ability to compile information on unfunded add packages, capital replacements and/or capital projects to be included in proposed budget document	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget. Authorized users can create Capital projects and the like, copy the packages, rename them, and have multiple scenarios. An example would be to have distinct scenarios, some including funded projects and others representing unfunded projects. The City could then switch between the scenarios to gauge their effects on the Reserve and Fund balances, and on the overall budget.
17	User-friendly way to create and update budget narrative information and add pictures or outside graphics for departments, funds and/or budget priorities	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.
18	Workflows allowing for efficient communication of feedback/questions on, updates to and approval of budgetary data and narrative content across users	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget. Euna Budget workflow functionality increases operational efficiency, transparency, and collaboration. Budgets, including the City's Add Packages, follow a controlled process with a configurable user-defined workflow-based approval. Processes are efficient because once the workflow functionality is set up, the system automatically notifies users via system notification and/or email when their participation is required.

				<p>Comments, notes, and attachments may be added to budget requests, including detailed budget line items, and an unlimited number of fields may be added to a line item and displayed in a pop-up form where users can set the appropriate 'tags' or attributes. Fields may be designated as mandatory to reduce the back-and-forth between end-users and budget staff. Data querying and reporting can also be done on these bases.</p> <p>As the budget is promoted through the City's user-defined stages, user permissions (security settings) are triggered, providing the reassurance that only the appropriate individuals can modify or view the budget at each stage.</p>
19	User-friendly way to create and update the budget message components supplied by different users	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>As indicated above, users may create comments, notes, and/or include attachments to their budget requests, including at the detailed budget line-item level.</p> <p>As the budget is promoted through the City's user-defined stages, user permissions are triggered such that only authorized individuals can view and update the budget and budget messaging at each stage.</p> <p>Euna Budget includes various Budget Stage and Workflow reports, enabling an efficient manner for authorized users to view the status of budgets and the corresponding messaging.</p>

				Additionally, dashboards identify which departments are at which stage at any given time, enabling a user-friendly way to monitor budget development and view budgets' workflow status.
20	Solution for integrating strategic plan, Council goals, special initiatives (exs ARPA, DEI, climate change), core service levels, into budget presentation	Y	Euna Budget Book Studio	<p>Yes, this is an out of the box offering by Euna Budget Book Studio.</p> <p>The goal and initiative may be specified on each line item and used in presentations.</p>
21	Ability to compile all elements of the proposed budget document into consolidated document both in on-line and PDF output	Y	Euna Budget and Budget Book Studio	<p>Yes, this is an out of the box offering by Euna Budget and Budget Book Studio.</p> <p>Euna Budget includes 80+ out of the box reports that may be used online or saved as a PDF file.</p> <p>Euna's Budget Book Studio is a user-friendly and comprehensive document management and financial reporting tool that enables organizations to create, collaborate, compile, edit, approve, and publish a digital budget document, which can also be exported to a PDF output to allow printing requirements to be satisfied.</p>
22	Ability to produce more than one budget document – the primary budget is for the City but we also produce a budget for the urban renewal agency that does not include staffing costs	Y	Euna Budget Book Studio	Yes, this is an out of the box offering by Euna Budget's – Budget Book Studio.
23	Ability to attach documents as back-up for budget proposals	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>Comments, notes, and attachments (e.g., documents, scans, or links) may be added to the budget, to budget proposals, or even to the detailed budget line items.</p>

24	Ability, when creating the budget, to have set levels or milestones that track budget development during the preparation phases	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>An unlimited number of City-defined stages may be created in the system. Each stage will be labeled by the City to match your process.</p> <p>Upon completion of data entry/budget requests, users are responsible for promoting their budgets to the next workflow stage via electronic approval. Workflow also works in reverse, where budgets can be demoted, or sent back to the submitter.</p> <p>The system records the budget at each stage, so all changes are logged and visible to authorized users. Reports and dashboards show the stage of each department at any given time. Per the below sample, dashboards provide an efficient way to monitor budget development.</p>
25	Ability to have user-based security	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>Euna Budget provides robust security profile functionality, allowing administrators to define and manage access permissions with precision, enhancing data security. Role-based security ensures that users have streamlined access to only the data and functions that they need.</p>

Optional functionality and future areas of interest

	Optional or Future Functionality	Y/N	Module	Additional Information
1	Supports supplemental budget process	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget via the Change Requests functionality.
2	Budget to actual reporting at mid-point of the biennial period and option to provide monthly or quarterly budget to actual reporting	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget. Budget to Actual reporting may be executed anytime. The actuals import will be scheduled (e.g., nightly) and may be run on demand, if desired, with the click of a button.
3	Ability to prepare more than one biennial budget scenario for publication should the need arise	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.
4	User-friendly process for departments to identify expenditures in current year budget that will all or in part need to be moved to proposed budget for timing purposes		Euna Budget	Yes, this is an out of the box offering by Euna Budget via the Prepare Next Budget Year (BNBY) functionality.
5	Ability to calculate and distribute support department costs to departments/funds across the organization by different metrics	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget via the Allocations functionality.
6	Ability to calculate reserve needs by funds based on operating costs for the budget period	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget via the Reserve Forecast and Fund Balance Forecast functionality.
7	Ability to identify and present budget data by priority, as opposed to solely by fund/department	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget. Each budget line item may include a field to identify its priority. This may be designated as a mandatory field.
8	Ability to update analytics and graphics from proposed budget document to final data in adopted budget to create refreshed document based on Council appropriations	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.

9	Ability to produce summary and line-item detail documents outlining staff proposed budget updates between budget versions. Proposed budget document to approved data at budget committee and approved budget to adopted budget at Council appropriation step.	Y	Euna Budget	Yes, this is an out of the box offering by Euna Budget.
10	Interface with forecasting system: export out appropriated budget data.	Y	Euna Budget	<p>Yes, this is an out of the box offering by Euna Budget.</p> <p>While budget data can be exported from Euna Budget for interfacing with the City's existing forecasting tool, it is important to note that forecasting (year-end and multi-year) can also be performed directly within the budget system and can be done so in a very efficient manner using inherent Euna Budget functionality.</p>
11	Interface with Balancing Act community engagement tools on budget questions, resource prioritization issues, etc.	Y	Euna Budget and Euna Open-Book	<p>This functionality has been included a part of our proposed solution.</p> <p>Euna and Polco (Balancing Act's parent company) have a strategic partnership that integrates our innovative budget platforms with their community engagement tools (i.e., Balancing Act by Polco). The integrated solutions increase resident participation, enhancing budget transparency and ensuring fiscal decisions are data-driven and are aligned with community needs.</p>
12	Interface with CitizenLab community engagement tools on budget related questions and issues	Y	Euna Budget	<p>Euna Budget can import .CSV files created from CitizenLab or export .CSV files that may be consumed by CitizenLab. However, more information is needed about what data should be imported or exported.</p>

13	Ability to utilize City's fonts (poppins medium for headers, inter for body type) and standard departmental colors throughout document as desired and in graphic output produced from budget/financial data	N	Euna Budget Book Studio	<p>The Euna Budget Book Studio tool currently supports a select set of fonts best suited for Accessibility/ADA-Compliance.</p> <p>However, our product roadmap includes a feature that will allow users more flexibility in terms of uploading their own fonts.</p>
14	Budget document components that meet GFOA budget award requirements (City does not currently participate in that program) – future possibility	Y	Euna Budget Book Studio	<p>Yes, this is an out of the box offering by the Euna Budget Book Studio.</p> <p>Euna's Budget Book Studio (BBS) component will enable the City to develop a GFOA and ADA-compliant budget book solution with best-in-class accessibility support by leveraging budget, other financial, and non-financial information directly from Euna Budget. BBS includes a built-in GFOA compliance tracker that may be presented to the GFOA along with your budget book and a built-in ADA compliance tracker.</p>
15	Ability to create a Capital Improvement Budget document that the appropriate years' data flows into budget document – future possibility	Y	Euna Budget and Euna Budget Book Studio	<p>Yes, this is an out of the box offering by Euna Budget and the Euna Budget Book Studio.</p>
16	Ability to integrate performance data into the budget by departments, funds and/or budget priority – future possibility	Y	Euna Budget and Euna Budget Book Studio	<p>Yes, this is an out of the box offering by Euna Budget and the Euna Budget Book Studio.</p> <p>Euna Budget includes a Performance module and static ledger.</p>

Vendor and product information form

Vendor name: Euna Solutions Date: August 5, 2024
 Contact person: Chris Olsen, Senior Account Executive Phone: (877) 707-7755 ext. 4582
 Contact email: christine.olsen@eunasolutions.com
 Address: 363 W. Erie St., Floor 7, Chicago, IL 60654

If you need more space to respond to the seven items below – or have existing graphics or prepared documents that address them – that’s fine. Please note in the blanks in this form where we can find the information in your submission.

1. List of cities and/or other local governments, with contact information, using your product. We are particularly interested in seeing Oregon jurisdictions and at least one example of biennial budget output. In addition, include and identify an example of a government that uses NWS accounting (if you have a client utilizing this software).

Euna Response:

In addition to the following references, we want to note that we are currently implementing Euna Budget for the Town of Vail, Colorado, which like McMinnville, uses Tyler New World.

Client	Client Contact
Washington County, OR	Name: Steve Kang, Budget Manager Phone: 503-846-8818 Email: steve_kang@washingtoncountyor.gov Comparability: Local Oregon Jurisdiction
City of Tualatin, OR	Name: Don Hudson, Assistant City Manager/Finance Director Phone: 503-691-3050 Email: dhudson@tualatin.gov Comparability: Local Oregon Jurisdiction
City of Bellevue, WA	Name: Evan Phillips, Director of Financial Strategy and Performance Phone: 425-452-2831 Email: ephillips@bellevuewa.gov Comparability: Budget Biennially
City of Goodyear, AZ	Name: Silke Blaine Phone: 623-932-3015 Email: silke.blaine@goodyearaz.gov Comparability: Use a Tyler ERP, specifically Tyler Enterprise (fka Munis)

2. Describe approach to integrating data from and to the accounting system. Include whether you have specific experience integrating with NWS.

Euna Response:

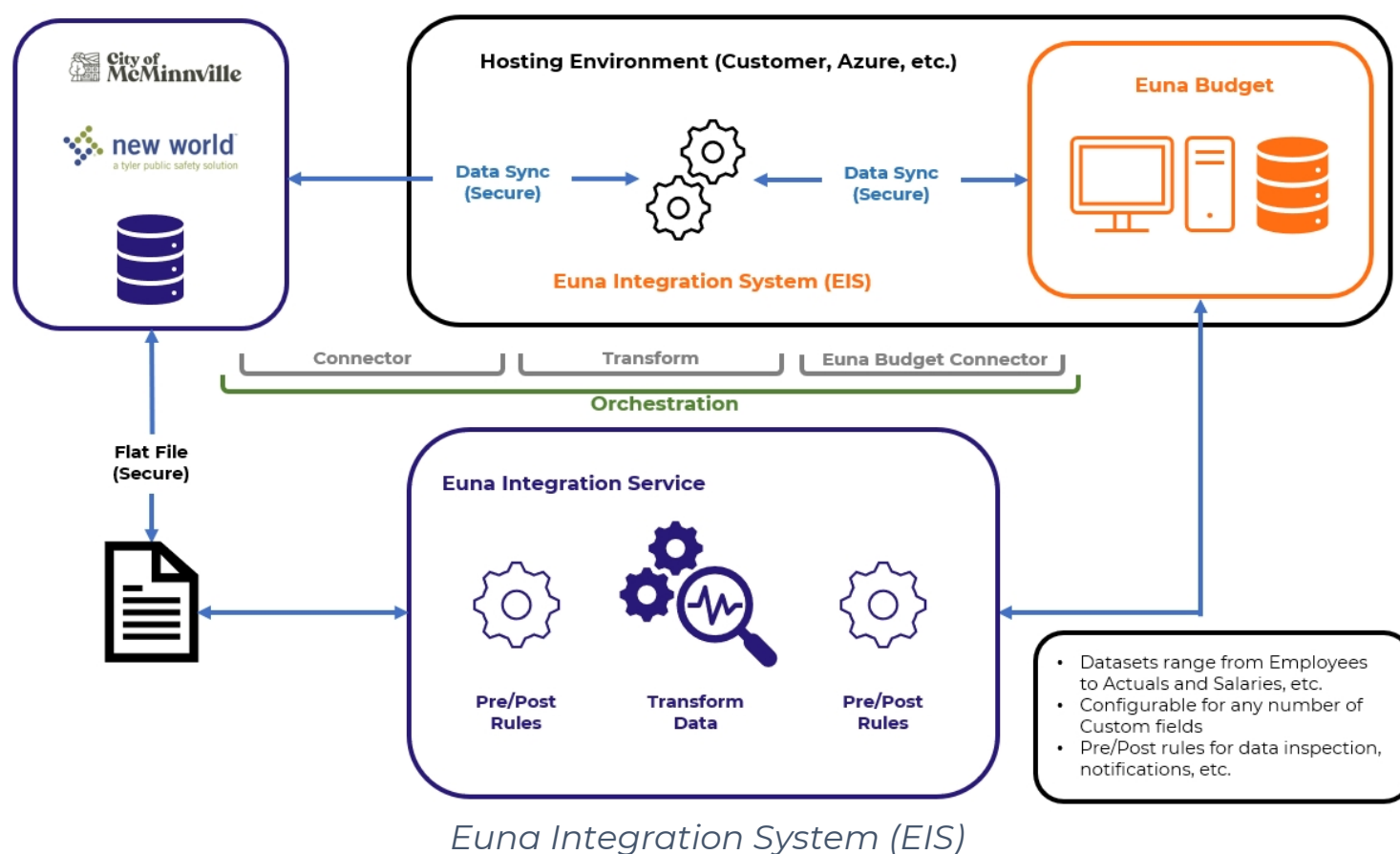
Euna Budget is a 26-year proven budgeting software tool that has integrated with more than 50 financial systems. We are currently integrating with NWS as a part of our integration services for the Town of Vail, Colorado. Euna’s implementation services include seamless integration between Euna Budget and the City’s existing Tyler New World (NWS) system.

Modern budgeting software systems regularly require deeper connections to data, and Euna has developed several options to address these common needs.

- Euna Integration System (EIS)
- RESTful Application Programming Interface (API)
- Grid Import/Export

The Euna Integration System (EIS) is the most powerful tool for importing/exporting large volumes of data and for reconciling data between systems with pre and post processing rules.

Steady state import/export to and from the City’s NWS Financial System will be governed by the Euna Integration System (EIS), our specialized database-independent tool developed to exchange data between Euna Budget and external systems in batch on a scheduled basis (e.g., nightly) or on demand as needed.



EIS can use two different integration approaches using an Extract, Transform, and Load (ETL) methodology to import or export any data in Euna Budget:

- First is a loosely coupled approach using flat files (e.g., CSV, XML, or JSON). Customers often choose this approach because it is less intrusive, quicker to implement, more cost effective, and provides added flexibility when an organization changes its systems or data sources.
- Next is a SOAP-based service that communicates through the EIS tool to push and pull data.

The EIS system consists of a series of interchangeable “connectors”. A connector is added depending on how the data is going to be moved. We have pre-built connectors that will utilize SQL Database Queries, Web Services, XML, ODBC, OLEDB, delimited flat files, etc. Data is transformed so that it can be reconciled between systems or cleansed to load only proper data.

A few examples include:

- Translating coded values (e.g., source Revenue is coded R but target system is Rev)
- Deriving calculated values (e.g., Monthly Cost = Total Cost / 12)
- Joining data (e.g., GL Account code = GL Account Number + – + GL Account Title)
- Splitting data (e.g., Compensation = Salary + Benefits)

We propose the below integrations for the City:

Operating and Capital Actual Data Import	Actuals are automatically imported into Euna Budget from the Financial System. This process can be set up to occur at any timeframe, but most often takes place on a nightly basis, enabling users to see Budget vs. Actuals that are never more than 24 hours old.
Operating and Capital Approved Budget Data Export	When the budget is approved/adopted, it is typically moved from Euna Budget into the Financial System of record.
Operating Budget Adjustments	As adjustments are made throughout the year (e.g., transfers, new budget requests, etc.), these changes can be synchronized between Euna Budget and the Financial system so that budget revisions remain current in both systems.

3. Describe typical implementation timeline including approach to staff orientation and training.

Euna Response:

Euna will complete all necessary implementation work in a professional manner that meets the requirements of the City. We will ensure that the system is correctly configured to meet all your functional requirements and will coordinate functional testing to ensure accuracy of configurations.

The Euna Budget Implementation Plan is broken into several phases and unique tasks:

Phase 1 - Analysis and Project Management

Phase 1 consists of Analysis and effective Project Management, which are critical to the success of this project. From a high-level perspective, Euna’s overall project management deliverables for the City of McMinnville will include the following:

1. Budget Process Improvement Consulting

Euna’s implementation services include a consultative approach to optimize the City’s budgetary and forecasting processes. Specifically, our consultants lead a review of your organization’s current state to identify possible improvements in accuracy, effectiveness, and efficiency, and work with your team to ensure viable solutions are considered and noted.

2. Change Management

To support the City’s transition to the new Budget Software, Euna’s experts will guide your team through the process of change management, as integrating a strategy into your project will help support the effective execution of the plan by aligning the stakeholders to a common goal. Our framework ensures that your team communicates the strategy effectively and develops the necessary execution capabilities to support the implementation.

3. Discovery

A series of workshops will be scheduled:

Workshop name	Detail
Operating module workshop	Discuss the City’s current operating budget processes, operating data import details, Euna Budget Operating module functionality and proposed integration with the City’s Tyler New World.
Personnel module workshop	Discuss the City’s current position budget processes, position data import details, Euna Budget Personnel module functionality and proposed integration with Tyler New World.
Capital module workshop	Discuss the City’s current capital budget processes, capital data import details, Euna Budget Capital module functionality and proposed integration with the Tyler New World system.
Testing workshop	Discuss Testing and User Acceptance methodology, roles and responsibilities.

Based on the discovery process, Euna’s Project Manager will create a summary that outlines key findings – a strategy to address any new needs identified through the process.

4. Gap Analysis

A significant part of the Euna Budget implementation is the functional analysis step (also known as “gap analysis”). Although this begins formally after Euna has been selected and the agreement has been executed, a good part of the functional analysis takes place prior to contract signing. This step helps both the City and Euna to understand how the Euna Budget solution can be best configured to meet your organizational needs, thus mitigating project risks that might otherwise occur. Together, we evaluate, review, and discuss the City’s current budget processes and data requirements, mapping them to Euna Budget.

5. Workflow

The workflow plan for the project is a working document that will be presented to the City to ensure that there is general agreement on the strategy.

6. Plan Documentation

We will create a Project Plan and Timeline, as well as Testing and User Acceptance documents. The Euna Project Manager will assemble these documents in a shared document repository.

7. Plan Approval

The plan will be submitted to the City for review and comment. Euna and the City will have worked together closely to this point, so there should be no last-minute surprises. The expectation is that minor changes and refinements may be required at this point. Indeed, such minor changes will likely happen throughout the implementation.

Phase 2 – Implementation

Phase 2 consists of several steps that add successive functionality to Euna Budget. There is some flexibility to how each of these components will be implemented, but we are proposing that the following plan be used:

1. Component Kick-off

Each component will start with a kick-off meeting, where the implementation plan is reviewed so that the focus on success and goals is maintained.

2. Overview Sessions

The Euna Budget functionality will be presented to the City's Budget Administrators/power users so that they are familiar with each module, are able to participate in its configuration, and understand the needs of data imports.

3. Configuration

The components in the Euna Budget system will be configured to provide the City's desired functionality and accommodate related data imports.

4. Data Import

Two (2) years of the City's historical data will be imported. Should the City wish to import additional prior years, they may do so at their discretion. Our team can assist in identifying the required data needed.

The purpose of having historical data in the system is three-fold:

- 1) Many reports require multi-year data for trending
- 2) Historical data is the best and easiest way to verify the system structure
- 3) Provides real data for training

5. Customizations and Report Development

If required, customized functionality/reporting will be introduced and reviewed. This task benefits from the data import, as any screens or reports will reflect the actual and familiar data imported.

Report development will be staged as follows:

- 1) Reports required for budget development
- 2) Reports required for high-level review and approval
- 3) Reports required for on-going budget management

6. Security Setup

Creating different security roles and ensuring each user is assigned to appropriate roles. This step may include disabling certain accounts, views, or out-of-the box reports for some users.

7. Financial and HR System Integration

Configuring interfaces to your Tyler New World systems according to the scope of services.

8. Testing

System testing, system backup testing, integration testing, stress/performance testing, and user acceptance testing (UAT) as outlined in the test plan. The Euna Project Manager will assist and act as a facilitator through this process.

9. Training

Euna will remotely deliver comprehensive Train-the-Trainer training services to the City. Training courses are recorded and provided for future reference and ongoing learning.

10. Go-live

Euna considers the implementation to be complete and the Euna Budget solution to be in a 'go-live' state when the system is opened to users for the development of a new budget, or when an end user has begun using the system for the purpose of managing the current fiscal year's budget, whichever is first. This step only occurs upon completion of testing and training activities.

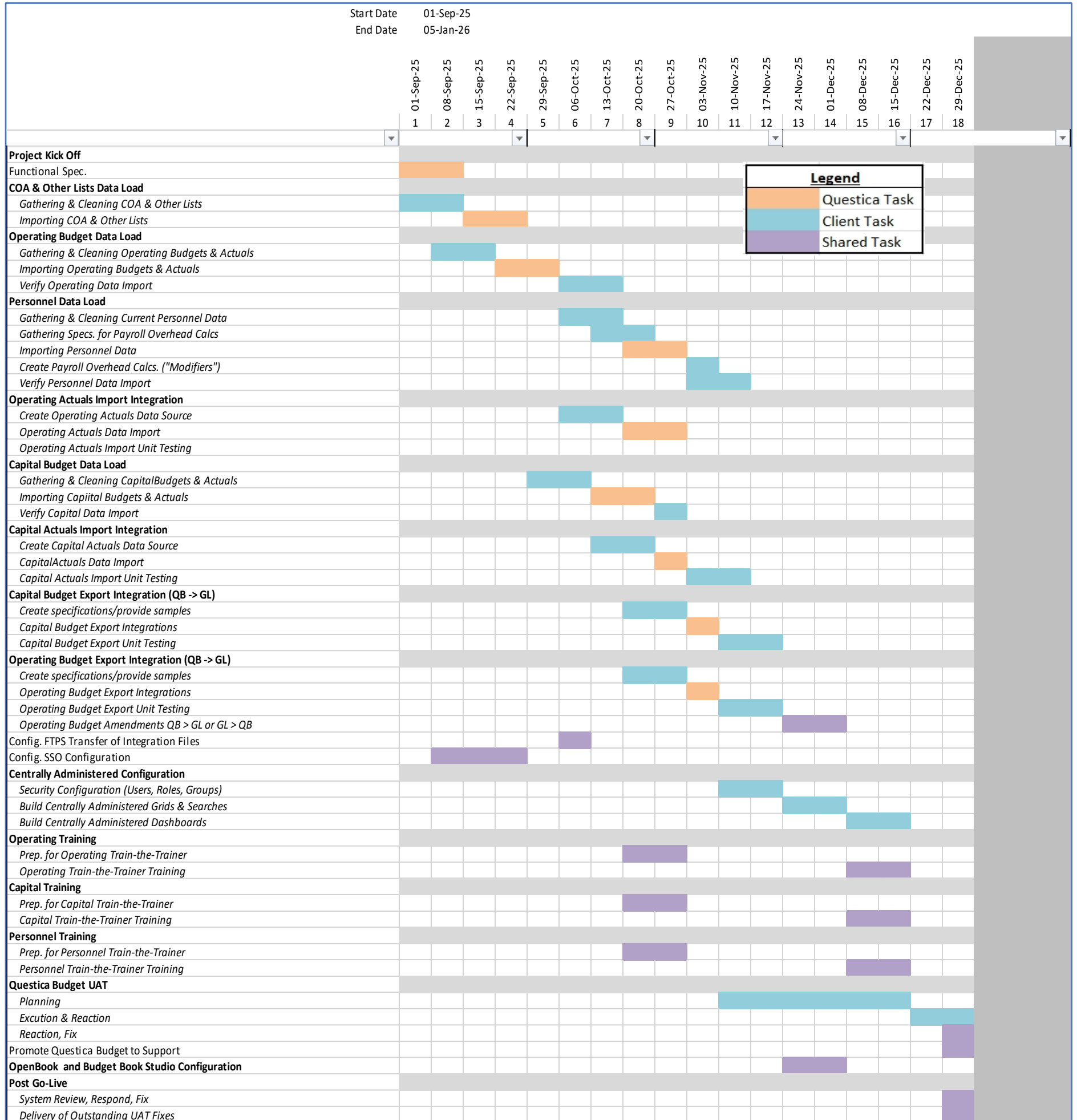
11. Post go-live

Post "Go-Live," your implementer will remain your primary contact for all Euna Budget related issues until the time it is mutually agreed that support will take over as primary contact. Normally this occurs within 90 days. After this period, a hand-off is made from your implementer to our Professional Services staff who will be responsible for seeing to your longer-term support needs.

Estimated timeline:

Based on prior experience with cities of similar size and complexity as the City of McMinnville, and our understanding of the implementation items in scope, a typical implementation would likely span roughly 4 months. Please note that the timing, however, is not absolute and only serves as a sample of what the city could expect. The duration can be compressed if needed to better suit your timeline, as the schedule is dictated more by City's resource availability, change management, and data integrity than by Euna's availability. The tentative timeline below reflects a 4-month plan.

In our experience, developing a detailed timeline jointly between Euna and our customer sets up the project for success. Thus, the implementation phase will begin with having a mutually agreeable project plan and timeline in place.



Sample Implementation Timeline

4. Describe product support after implementation period.

Euna Response:

Euna offers a distinct advantage in providing both implementation services and post go-live ongoing support. As part of the City’s software subscription agreement, Euna provides ongoing support that allows for a seamless transition from implementation to post-implementation activities, establishing a foundation for long-term success. Ongoing support includes maintenance services, software support, and technical support. Maintenance and support services commence upon contract signing.

Customer support is available via telephone, email, or Customer-only Portal, and there are no formal limits put in place on the number of calls, contacts, or incidents that customers may log. Support requests should be initiated by the City’s system administrators or SME leads using Euna Budget. An online Help system within Euna Budget is always available to all users.

Technical support is provided toll free (1.877.707.7755) by tenured and knowledgeable Euna staff. Standard support hours are 5:00 AM to 5:00 PM Pacific Time Monday through Friday, excluding major holidays in North America. If needed, live after-hours support may be arranged.

Response time is generally no longer than two hours, although it is often immediate. Our support staff is licensed to use the Zoom meeting product to share a screen with callers, and our goal is to resolve any issues on the first call whenever possible.

Our customer-only Portal is available 24/7 at <https://questica.itclientportal.com> to create and track support related tickets. The Portal includes EunaHelp (also accessible within the software) which provides a wealth of online context sensitive help documentation available at every user’s fingertips, includes a searchable knowledge base, and contains video training that span all user types.

In addition to the above-described support channels, the City will also have a dedicated Euna Customer Success (CS) resource that can be considered a direct ‘go to’ individual. Other vendors in our space often offer a dedicated resource as a “premium” service that comes at an added cost and is the only way you’re guaranteed quicker incident response times. As a Euna partner, however, a dedicated Customer Success resource is simply part of our partnership.

Support calls are classified into the following criteria:

Priority 1:	Urgent (example: system is unavailable to users) – Support staff immediately ceases any other activity and works toward a solution, and if possible, remains on the phone with the customer until resolved.
Priority 2:	Important (example: software bug) – Support staff works to resolve the issue within the same business day.
Priority 3:	Minor (example: minor nuisance or irregularity) – To be considered in the next development cycle – may require a hotfix.

All support issues, customer needs and suggestions are tracked through our Customer Relationship Management tools, and all support calls/emails are entered and assigned a tracking number.

Software Issue Escalation

Software issues have the following classifications:

- Low: To be considered in the next development cycle
- Medium: To be considered in the next development cycle
- High: Addressed in the next Build
- Critical (Work Stoppage): Addressed immediately

Once contact has been established with our technical support team, service tickets are escalated automatically (to development) via email to ensure all response commitments are met. If needed, customers can escalate support issues in the following manner:

Escalation Level	Euna Management Level
First Level	Technical Support Representative
Second Level	Technical Support Manager/Customer Success Director
Third Level	Vice President, Professional Services

5. Describe how security access/rights within the product is managed and used.

Euna Budget provides robust security profile functionality, allowing administrators to define and manage access permissions with precision, enhancing data security. Euna Budget’s role-based security ensures that users have streamlined access to only the data and functions that they need.

End-user security is role-based and once established, City budget administrators determine who can view, edit, promote (advance), demote, and lock budgets at each stage of the budget workflow. Unique workflows may be defined for operating budgets, capital budgets, and change requests or decision packages. Workflow can even vary based on the type of decision package. For example, a request for a new position may require more approval steps than a budget transfer type request.

6. Describe technology specifications of your system including any suggested minimum user system requirements to utilize the product effectively

Euna Response:

Euna Budget is a 100% web application based on cloud deployment using Microsoft Azure for hosting, managed by Euna and Azure. Hosting services eliminate the need for the City to maintain an extensive hardware, server (virtualized or not), and storage environment to support the system.

Euna Budget is compatible with Windows Operating System Vista 7, 8, and 10. As a browser-based application, no Euna software is downloaded onto the end-user’s device, thus eliminating the burden of installing and maintaining a large-scale user base.

The City only needs to equip its users with minimum workstation environments as follows:

- A 2.0 GHz processor or better with 2 GB of RAM
- A web browser including Microsoft Edge, Firefox, Chrome (latest browser release)
- Microsoft Excel® 2007 or newer (spreadsheet export/import and/or saving reports as Excel)
- Microsoft Word® 2007 or newer (scheduled reporting and/or saving reports as Word)
- Euna recommends bandwidths of 50-100 Mbps for optimal performance.

7. Describe your system’s data security approach and provide uptime statistics or similar information

Euna Response:

Euna Solutions (formerly Questica Ltd.) is a SOC2 Type 2 compliant provider and has undertaken a 3rd party audit to ensure that client data is managed securely and that internal controls are in place to protect the client’s security interests.

Euna’s hosting services provided by Microsoft Azure US, also SOC2 Type 2 compliant, are world-class, include excellent uptime, continuous point-in-time backups, and many more security benefits. A variety of technical controls are also in place to secure the client data including, but not limited to, Next-Generation firewalls, IDS/IPS, network segmentation and network security analytics.

Euna maintains the following data encryption protocols for data traveling to/from the cloud-based instance of Euna Budget:

- AES 256-bit encrypted storage to ensure data is secured while at rest
- TLS 1.2 SHA2 256-bit encrypted channel to provide data security while in transit

Since all hosted services are provided via Microsoft Azure, information regarding Azure’s compliance audits can be found here: <https://learn.microsoft.com/en-us/compliance/regulatory/offering-home>.

Euna relies on Microsoft Azure datacenter security to mitigate physical security, hardware disposal, redundancy options, provisions for natural disasters such as fire, loss of electricity, flood, overheating, and network access. Azure has a disaster recovery and business continuity plan in place, and it is tested regularly.

Azure uses Geo-redundant storage (GRS) that is designed to provide at least 99.99% (16 9's) durability of objects over a given year by replicating data to a secondary region within the same Azure Network. Therefore, each customer’s data is durable and available even in the case of a complete regional outage or a disaster in which the primary region is not recoverable.

Data Backup

Euna Budget has two parts, the application files (aka the site) and the database. The site changes much less frequently than the data; therefore, we maintain a backup policy for each.

Location	Production	Sandbox
Sites	Weekly for 4 weeks	Weekly for 4 weeks
Databases	Point in time for 35 days Weekly for 12 weeks Monthly for 12 months	Point in time for 14 days Weekly for 4 weeks

Data Recovery

Euna’s Recovery Time Objective (RTO) is 4 hours during regular business hours which cover 5:00am to 5:00pm PT. The RTO outside of regular business hours is 16 hours. Our standard is to perform continuous point in time backups supporting 2-hour Recovery Point Objective (RPO).

Price Quote information

Please provide pricing information for product module(s) that the City of McMinnville would need to be able to meet the required functionality items. Please describe how your pricing model works in terms of tiers that might be in place with number of users, modules, contract duration, size of community, etc.

Please also provide pricing for any additional modules that speak to future or optional functionality. While we don't anticipate contracting for these modules (unless needed for required functionality as well), it will help us with our decision making on the best solution for us if the product line has expansion options that the City may wish to add at a later time.

Please differentiate between one-time costs and annual costs. Including any integration, special programming, custom reporting and/or third-party services you believe will help us meet our goals for this project.

We believe we will best be served by a web-based solution but if you have an on-premise system, pricing both options would be appreciated.

Please also let us know if you participate in any cooperative purchasing organizations or the State of Oregon's system. If you do, please include a link to or copy of the contract information available.

Euna Response:

Euna Solutions participates in numerous cooperative purchasing organizations including NASPO, NCPA, or Omnia. <https://www.carahsoft.com/buy/slg-contracts/oregon-state-contracts/state-oregon-cloud-solutions-contract-naspo>.

Another option is to leverage cooperative language that is included in an agreement that resulted from an RFP competitive bid awarded to Euna Solutions by an Oregon organization (i.e., piggyback).

Please find our pricing and pricing information on the following pages.

Description	Amount
Software as a Service	
Euna Budget Software Subscription	Included \$ 49,603
Euna provides server, database, software, server management, software maintenance and 1 framework seat license for Operating, Personnel, Capital	
Unlimited Operating License Seats	Included
Unlimited Personnel License Seats	Included
Unlimited Capital License Seats	Included
Unlimited Read-Only Licenses	Included
OpenBook Core Software Subscription	Included
OpenBook Add-in: Budget Book Studio	Included
Total Year 1 SaaS Subscription	\$ 49,603
Professional Services (Per Statement of Work)	
Design, Analysis & Configuration	Included
Project Management	Included
Training	Included
Customizations	Included
IT Services	Included
Custom Reports	Not Included
Consulting	Not Included
Total Professional Services:	\$ 47,430
Grand Total Year 1	\$ 97,033

Pricing valid until October 31, 2024
Pricing is in US dollars.
Applicable Taxes Extra.

- ◆ Euna annual subscription is based on a 3-year term
- ◆ Euna will apply a 3% inflationary increase beginning in year 2

Terms of Payment

◆ **Software:**

- 100% upon Contract Effective Date (Net 30)
- Year 2 due 365 days from Contract Effective Date and annually thereafter

◆ **Professional Services:**

- 25% due the earlier of software installation or 30 days from Contract Effective Date
- 25% due the earlier of historical Operating budget available for validation or 60 days from Contract Effective Date
- 25% due the earlier of Operating actuals import integration configuration created & tested or 90 days from Contract Effective Date
- 25% due the earlier of completion of training or 120 days from Contract Effective Date

Summary

We appreciate this opportunity to respond to the City of McMinnville's RFQ for a Budget Application.

We are thrilled at the prospect of partnering with the City to implement our comprehensive cloud-based SaaS budget software system purpose built for the public sector, enabling your team to move to its desired biennial budget process and attain its goal of added efficiencies and increased transparency.

Our track record of success is unmatched, and we intend to keep it that way. With Euna, you will have 'one hand to shake' and can be confident in **getting it right the first time!**

Chris Olsen

Senior Account Executive

877-707-7755 ext. 4582

Christine.Olsen@eunasolutions.com





230 NE Second Street • McMinnville, Oregon 97128

Staff Report

DATE: November 12, 2024
TO: Mayor and City Councilors
FROM: David Ligtenberg, City Attorney
SUBJECT: Municipal Advisor Services contract with Piper Sandler

Strategic Priority & Goal:



CITY GOVERNMENT CAPACITY

Strengthen the City's ability to prioritize and deliver municipal services with discipline and focus

Report in Brief:

The City issued an informal Request for Proposal (RFP) for Municipal Advisor Services on September 13, 2024, and received four proposals by the October 10 deadline. The consensus highest score from the evaluation group (made up of the City Attorney, Parks and Recreation Director and Finance Director of the City of McMinnville) was the firm Piper Sandler. After deliberation on the scores, an Intent to Award Notice in favor of Piper Sandler was issued on October 18, 2024.

Discussion:

The City issued the RFP because under the City's ordinance on public contracting, Ordinance 5009, we are required to follow the Oregon Administrative Rules Ch 137, Div 48 rules. For contracts anticipated to be less than \$250,000 an informal RFP process is described and was followed in this instance.

A municipal advisor, with a fiduciary responsibility to the City, is a critical member of the professional services team needed given the anticipated bond issuances, should the voters approve a general obligation bond for the Culture, Parks and Recreation project.

The municipal advisor firm proposals were evaluated based on factors recommended by the Government Finance Officers Association (GFOA) and the Municipal Securities

Rulemaking Board (MSRB) such as firm qualifications, specific approach to bond issuances, and fees for services provided.

The contract is for bond issuance services with fees described by a formula based on the type of bond issuance and size of borrowing. It also includes professional services from the firm, by contract and MSRB rules, to act as a fiduciary advisor to the City for other general debt and related questions.

The Resolution presented to the Council approves entering into a contract with Piper Sandler.

The contract will be for five years with the option for five additional annual extensions.

Fiscal Impact:

The bond-related services will be paid for with bond issuance proceeds, the customary way that professional services associated with municipal bond issuances are treated financially in the United States. Municipal advisor services associated with other debt and related activities will be budgeted and paid for by the fund(s) benefiting from that advice and support.

Council Options:

1. Approve the Resolution, authorizing the City Manager to execute a contract with Piper Sandler & Co. for Municipal Advisor Services.
2. Do not approve the resolution and contract. This would require further negotiations and/or a new RFP process depending on the reason for not approving the contract for municipal advisor services and delay the ability of the City to secure professional services in this area.

Attachments:

1. Resolution No. 2024-60

RESOLUTION NO. 2024 -60

A Resolution authorizing the City Manager to enter into a Professional Services Agreement with Piper Sandler & Co. for Municipal Advisor Services.

RECITALS:

WHEREAS, on September 2024, the City of McMinnville issued an informal Request for Proposals (RFP) for Professional Municipal Advisor Services, including for anticipated bond issuances; and

WHEREAS, on October 2024, the RFP review committee evaluated the proposals received and determined that it is in the best interest of the City to contract with Piper Sandler for professional municipal advisor services; and

WHEREAS, the City desires to contract with Piper Sandler to provide professional municipal advisor services for five years with the option of providing municipal advisor services to the City for five additional years.

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

1. That the City Manager is hereby authorized to execute a Professional Services Agreement, in a form acceptable to the City Attorney, with Piper Sandler & Co. for Municipal Advisor Services.
2. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 14th day of November, 2024 by the following votes:

Ayes: _____

Nays: _____

Approved this 12th day of November, 2024.

MAYOR

Approved as to form:

Attest:

CITY ATTORNEY

CITY RECORDER



City of McMinnville
Public Works Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7313
www.mcminnvilleoregon.gov

STAFF REPORT

DATE: November 1, 2024
TO: Jeff Towery, City Manager
FROM: Geoff Hunsaker, Public Works Director
SUBJECT: Ordinance 5150 – Amending Title 13 (Public Utilities) of the McMinnville Municipal Code

Report in Brief:

These proposed code amendments are for changes to two sanitary sewer programs. The first is a required regulatory change to the Local Limits in chapter 13.05. The second set of amendments are to chapters 13.04, 13.07, and 13.08 regarding the Defective Private Sewer Lateral (DPSL) program and the associated references in other sections, as well as some minor grammatical corrections.

Background:

Local Limits:

In the spring of 2022, the City was directed to evaluate the local limits of the Water Reclamation Facility in response to the most recent pretreatment audit that was conducted by Oregon Department of Environmental Quality (DEQ). Once the report was completed, DEQ was given a copy to review and confirm it met all their requirements. The City solicited for public comments on the subject for 35 days from December 22, 2023, thru January 26, 2024 as required under 40 Code of Federal Regulations (CFR) 403.18(b)(1)(ii) and 403.11(b)(1)(i). The City did not receive any comments or requests for a public hearing.

Local limits are limits on pollutants that are discharged to the wastewater treatment system. Unlike other pollutant limits, local limits are calculated to specifically protect the local wastewater treatment facility and associated treatment processes. The previous local limits evaluation was completed thirteen years ago.

The updated local limits take into account:

- Process changes and updates made to the Water Reclamation Facility since 2011.
- Growth in the service area that may have changed wastewater loadings to the Water Reclamation Facility.

- The need to evaluate if standards used to develop local limits have changed. These standards include water quality standards, NPDES permit limits, biosolids, and worker health and safety.

Some of the local limits went up and some of the limits went down based on the new evaluation. The evaluation determined that the local limit for mercury could increase without adversely affecting the treatment processes, but the City has decided to keep it at the lower, more protective, 2011 local limit. The changes to the local limits were approved by the Environmental Protection Agency (EPA) and DEQ.

Defective Private Sewer Lateral (DPSL) program:

The current DPSL program has not had monetary adjustments since Ordinance 4642 in June of 1997. Between December 1997 and October 2024 the construction cost index has increased 238%. Local costs to replace private sewer laterals have also increased. In 1997, costs averaged \$1,500 – \$2,500. Now the average cost is \$4,000 - \$5,000 per lateral.

With the amount of construction and growth McMinnville has seen in recent years, staff have found that property owners are struggling to find contractors available to meet program deadlines. The current deadlines of 90 days for the Grace Period when the incentive can be received and 10 months for the Suspension Period have been in place since Ordinance 4653 in November of 1997. Since then, the amount of work has grown faster than the number of contractors available to do the work.

Discussion:

Local Limits:

The updated local limits are a required regulatory update under the City's National Pollutant Discharge Elimination System (NPDES) permit. From time to time the City will be required to update the local limits, and while the NPDES permit requires the City have the Local Limits program in the municipal code, it does not require the actual values be in the code. Staff is recommending removal of the local limits values from the code, and instead the values would be documented on the City website and administratively updated in the future.

Defective Private Sewer Lateral (DPSL) program:

As the City of McMinnville continues to grow and put more strain on the City's sanitary sewer system, staff recommend an update to the DPSL program found in McMinnville Municipal Code 13.07 (Sanitary Sewers – Building Sewer Maintenance and Repair). The intent of the amendment is to ensure the incentives and penalties match today's current costs. Staff also want to make sure that property owners have enough time to secure a contractor and get the work completed without incurring penalties.

Staff is proposing increases of 200% to the incentive rebate (10% of the replacement cost with a limit of \$500 from 10% of the replacement cost with a limit of \$250) and penalty amount (\$100 per Equivalent Dwelling Unit (EDU) from \$50 per property). The verbiage changes of "per property" to "per EDU" is in relation to the growing number of multi-family housing units within the City and to ensure an equitable incentive and penalty to all property owners.

The recommended increases to the Grace Period to 180 days and the Suspension Period to 12 months gives property owners of McMinnville a better chance to receive the incentive and avoid the penalty. Staff also recommends the removal of the requirements to fill out and return a form to qualify for the 12-month penalty suspension period.

Fiscal Impact:

Over the past nine years the DPSL program has seen incentive rebates of just over \$1,000.00 and penalties of just under \$8,000.00. Staff anticipates that the changes proposed will even out these two amounts.

Attachments:

1. Ordinance 5150 Amending Title 13 (Public Utilities) of the McMinnville Municipal Code
 - a. Exhibit 1 - Chapter 13.04 Clean version and Redline version.
 - b. Exhibit 2 – Chapter 13.05 Clean version and Redline version
 - c. Exhibit 3 – Chapter 13.07 Clean version and Redline version
 - d. Exhibit 4 – Chapter 13.08 Clean version and Redline version

ORDINANCE NO. 5150

AN ORDINANCE AMENDING McMinnville Municipal Code Title 13 (Public Utilities) to make changes to the local limits and defective private sewer lateral program.

RECITALS:

WHEREAS, the City of McMinnville’s (“City”) Pretreatment Program which included local limits was approved by the Oregon Department of Environmental Quality (DEQ) on October 25, 1992; and

WHEREAS, changes were made to Title 13 of the McMinnville Municipal Code (MMC) in 2015 to clarify the previous ordinance, update the local limits, and comply with DEQ directives, pursuant to Ordinance 4987; and

WHEREAS, the City was directed by DEQ to evaluate the local limits in 2022; and

WHEREAS, the updated local limits were approved by DEQ and the Environmental Protection Agency (EPA); and

WHEREAS, the City created a Defective Private Sewer Lateral (DPSL) program in June of 1997; and

WHEREAS, the City has not increased the penalty or rebate amounts since 1997 while constructions costs have risen over 200%; and

WHEREAS, City staff recognizes property owners are having difficulty finding contractors to make the improvements within program time periods; and

WHEREAS, City staff now recommends these amendments to the municipal code.

NOW THEREFORE, THE COMMON COUNCIL OF THE CITY OF McMinnville ORDAINS AS FOLLOWS:

1. McMinnville Municipal Code Chapters 13.04, 13.05, 13.07, and 13.08 are amended as shown in **Exhibit 1-4**: [underlined language is new, strikethrough language is to be repealed].
2. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the Common Council of the City of McMinnville this 12th day of November, 2024 by the following votes:

Ayes: _____

Nays: _____

Abstain: _____

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

EXHIBIT:

1. Exhibit 1 - Chapter 13.04 Clean version and Redline version.
2. Exhibit 2 – Chapter 13.05 Clean version and Redline version
3. Exhibit 3 – Chapter 13.07 Clean version and Redline version
4. Exhibit 4 – Chapter 13.08 Clean version and Redline version

Chapter 13.04

SANITARY SEWERS – GENERAL REGULATIONS*

Sections:

- 13.04.010 Sanitary Sewer System – City’s Declaration of Intent to Acquire.
- 13.04.020 Intent and Purpose.
- 13.04.030 Objectives.
- 13.04.040 Definitions.
- 13.04.050 Abbreviations.
- 13.04.060 General Organization and Operation.
- 13.04.070 Use of Public Sewers Required.
- 13.04.080 Private Wastewater Disposal.
- 13.04.090 Building Sewers and Connections.
- 13.04.100 Monitoring of building Sewers.

* For statutory provisions on city power to operate a sewer system, see ORS [224.140](#) and [454.215](#)

13.04.010 Sanitary Sewer System – City’s Declaration of Intent to Acquire.

Pursuant to the general laws of the state of Oregon and the charter of the city, the city council declares its intention to own, acquire, construct, equip, operate and maintain, either within or without the corporate limits in whole or in part, sewers, including maintenance, enlargement, or extension of the present sewer system of the city, wastewater treatment or disposal plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations or ejector stations, with all appurtenances necessary, useful or convenient for the treatment and disposal of wastewater. (Ord. 4987, 2015).

13.04.020 Intent and Purpose.

The intent and purpose of Chapters [13.04](#) through [13.12](#) MMC is to provide for the orderly functioning of the Publicly Owned Treatment Works (POTW) for the city; and to enable the city to comply with applicable state and federal laws, particularly the Clean Water Act of 1977 (and amendments thereto) and the general pretreatment regulations ([40 CFR Part 403](#)). Except as otherwise provided herein, the Director shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Director may be delegated by the Director to a duly authorized city employee. (Ord. 4987, 2015).

* For statutory provisions on city power to operate a sewer system, see ORS [224.140](#) and [454.215](#)

13.04.030 Objectives.

The objectives of Chapters [13.04](#) through [13.12](#) MMC are:

- A. To provide control of construction and use of the wastewater system;
- B. To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting biosolids;
- C. To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, into receiving waters or the atmosphere or otherwise be incompatible with the system;
- D. To improve the opportunity to recycle and reclaim wastewater and biosolids from the system;
- E. To provide for equitable distribution of the cost of the municipal wastewater system in compliance with the Environmental Protection Agency's requirements;
- F. To assure the financial self-sufficiency of the sewerage system;
- G. To enable the city to comply with its National Pollutant Discharge Elimination System permit conditions, biosolids use and disposal requirements, and any other federal or state laws to which the Publicly Owned Treatment Works is subject;
- H. To protect the health and safety of the wastewater treatment works personnel who may be affected by wastewater or biosolids in the course of their employment and to protect the health and safety of the general public.

In activating the objectives of Chapters [13.04](#) through [13.12](#) MMC, it shall be the policy of the city to actively promote the health of the industrial community through accommodation, assistance and cooperation; consistent with the city's responsibility to protect the waters of the state from pollution and to secure the health, safety, and welfare of the residents of the community. To that end, Chapters [13.04](#) through [13.12](#) MMC shall be implemented using good professional judgment with associated decisions taking all known facts into consideration.

Chapters [13.04](#) through [13.12](#) MMC provide for the regulation of the Industrial Users of the municipal wastewater system through the issuance of control mechanisms such as permits (both individual and general and best management practices (BMPs)), and through enforcement activities; assures that existing customers' capacity will not be preempted; and requires Industrial User reporting. (Ord. 4987, 2015).

13.04.040 Definitions.

A. Unless the context specifically indicates otherwise, the following terms and phrases, as used in Chapters [13.04](#) through [13.12](#) MMC, shall have the meanings hereinafter designated:

1. “Act” or “the Act” means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, [33](#) USC [1251](#), et seq.
2. “Ammonia Nitrogen (NH₃)” means the total free ammonia nitrogen measured as nitrogen and expressed in milligrams per liter.
3. “Authorized Representative of the Industrial User” means
 - a. If the Industrial User is a corporation:
 - i. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - ii. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for industrial wastewater discharge permit or general permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. If the Industrial User is a partnership or sole proprietorship: a general partner or proprietor, respectively.
 - c. If the Industrial User is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - d. The individuals described in subsections [\(A\)\(3\)\(a\)](#) through [\(A\)\(3\)\(c\)](#) of this section may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

4. “Available sewer” means any sewer that can be used without the need to acquire easements and where sufficient grade and capacity exists to serve the property and where the public sewer is within 300 feet of the property.
5. “Biochemical Oxygen Demand (BOD5)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).
6. “Best Management Practices or BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in MMC [13.05.010\(A\)](#) and [\(B\)](#) in accordance with [40 CFR 403.5\(a\)\(1\)](#) and [\(b\)](#). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
7. “Building drain” means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes within or adjoining the building or structure, and conveys the same to the building sanitary sewer.
8. “Building Official” means the building official for the city, or his or her duly authorized representative or agent.
9. “Building sewer” means the portion of a sanitary sewer system extending from the street right-of-way or public easement line, including the connection to the lateral, to the building cleanout, or if no cleanout exists, to a point five feet outside the building. The building sewer receives the discharge of the building drain and conveys it to a public sewer.
10. “Building storm sewer” means that part of the piping of a stormwater drainage system which begins at the connection to the building storm drain at a point five feet outside the established line of the building or structures, and conveys stormwater, surface water, and other unpolluted water to the public storm sewer, street, and other point of disposal.
11. “Business building” means and includes buildings used wholly or in part for the conducting of any commercial, retail, or wholesale business or service agency, but this enumeration shall not be deemed exclusive, and all other buildings or premises used for any commercial purpose other than a residence or for manufacturing and industrial purposes shall be deemed a business building.
12. “Categorical Industrial User” means an Industrial User subject to a Categorical Pretreatment Standard or categorical standard.
13. “Categorical Pretreatment Standards” or “Categorical Standard” means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act ([33 U.S.C. Section 1317](#)) that apply to a specific category of users and that appear in [40 CFR Chapter I, Subchapter N, Parts 405-471](#).

14. “Chemical Oxygen Demand (COD)” means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.
15. “City” means the municipality of McMinnville, Oregon, a municipal corporation of the state of Oregon, acting through the city council or any board, committee, body, official or person to whom the city council shall have lawfully delegated the power to act for or on behalf of the city.
16. “Collection system” means facilities maintained by the city for collection, pumping, conveying and controlling wastewater.
17. “Combined sewer” means a sewer that is designated as both a sanitary sewer and a storm sewer.
18. “Composite sample” means a sample made up of a number of combined individual grab samples collected at uniform intervals based on an increment of either time or flow.
19. “Control manhole” means a manhole installed as required by the Director under the provisions of Chapters [13.04](#) through [13.12](#) MMC; or if no manhole has so been installed, the term “controlled manhole” means such a point, as shall be determined by the Director to which industrial wastewater is produced on the premises and discharged into a sanitary sewer are accessible for testing.
20. “Cooling water” means the water discharged from any use to which the only pollutant added is heat.
21. “Daily maximum” means the maximum value of a particular parameter recorded from effluent samples collected during a calendar day.
22. “Daily Maximum Limit” means the maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.
23. “Defects” mean cracks, broken pipe, crushed pipe, open or offset joints, root intrusion, or other imperfection in a sanitary sewer pipe which can potentially allow entry of ground water into the sanitary sewer system. Defects shall also include direct connections as defined below.
24. “Direct connections” mean the connections of roof drains, foundation drains, or similar conduits to the sewer lateral or main which may allow entry of rain, surface drainage, or ground water into the sanitary sewer system.
25. “Direct discharge” means the discharge of treated or untreated wastewater directly into the waters of the state of Oregon.
26. “Director” means the Public Works Director or their duly authorized representative or agent.
27. “Discharge” means the deposit of pollutants into the city sewerage system.

28. “Dormitory,” “fraternity,” or “sorority” means a building designed, intended, or used for accommodation for students or living groups of unrelated persons which may or may not furnish meals with said accommodation.
29. “Drainage water” means stormwater, ground water, surface drainage, subsurface drainage, spring water, well overflow, roof drainage or other like drainage other than wastewater or industrial wastewater.
30. “Dwelling unit” means a facility designed for permanent or semi-permanent occupancy and provided with minimum kitchen, sleeping, and sanitary facilities for one family.
31. “Engineer” means a Professional Engineer licensed by the state of Oregon as defined by ORS 672.002.
32. “Environment” means any naturally occurring river, stream, creek, or other waterway, and land mass, the atmosphere, or any subsurface water, aquifer, or groundwater or any manmade edifice directly or indirectly connected to the waterways, land masses, atmosphere, or groundwater as herein listed.
33. “Environmental Protection Agency or EPA” means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.
34. “Equivalent Dwelling Unit” (EDU) means a nonresidential unit which is deemed equivalent to a residential dwelling unit as provided herein or as provided in the Oregon Plumbing Specialty Code.
35. “Existing source” means any source of discharge that is not a “New Source.”
36. “Fixture Unit” (FU) means fixture load values for drainage piping and shall be as specified in MMC [13.08.050\(A\)\(2\)](#). and as specified in the Oregon Plumbing Specialty Code and Administrative Rules.
37. “Flow” means the daily total of wastewater flow from an industrial or residential source.
38. “Frontage” shall be measured along the adjacent street or along the sewer itself where it traverses a parcel. Frontage measurements will be only for those portions of a parcel being developed including parking lots, lesser structures, and general improvement. The balance of the parcel shall be subject to future charges at rates then in force.
39. “Garbage” means solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage, and sale of produce.
40. “Governmental building” means and includes buildings used wholly or in part by the city service districts, Yamhill County, the State, and the United States Government or any agency of the before-mentioned governmental divisions.
41. “Grab sample” means a sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed 15 minutes.

42. “Grace period” means the 180 calendar day period beginning on the date of the notice of a defect. The city may make incentives available during the grace period to encourage property owners to replace defective building sewers. Penalty assessments shall begin at the end of the grace period.
43. “Holding tanks or septic tank waste” means waste from chemical toilets, campers, trailers, coffee stands, or septic tanks.
44. “Indirect discharge” means the introduction of pollutants into a POTW from any nonresidential source regulated under Section 307(b), (c), or (d) of the Act.
45. “Industrial or manufacturing building” means and includes buildings used wholly or in part for the manufacturing and fabrication of any article or thing.
46. “Industrial User” means any person, including a mobile waste hauler, who discharges wastewater from a source other than a residential dwelling unit(s) directly connected into the city wastewater system. An Industrial User is a source of indirect discharge.
47. “Industrial wastewater discharge permit” means a permit to discharge industrial wastewater into the city sewer system issued under the authority of Chapters [13.04](#) through [13.12](#) MMC and which prescribes certain discharge requirements and limitations. This may be an individual or general permit, which may incorporate best management practices (BMPs).
48. “Industrial wastewater” means any nonresidential liquid, gaseous substance, or semisolid from any producing, manufacturing business or trade, or processing operation of whatever nature (as distinct from residential wastewater).
49. “Inflow/Infiltration” (I/I) Infiltration is groundwater that enters the sanitary sewer system through leaks in the sewer pipe and lateral. Inflow is stormwater that enters the sanitary sewer system through direct connections.
50. “Instantaneous limit” means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
51. “Institution” means any building or group of buildings used as a correction facility, schools, care facilities, hospitals and similar; publicly or privately owned.
52. “Institutional building” means and includes a building used wholly or in part by an institution.
53. “Interference” means a discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its biosolids processes, use or disposal; and therefore, is a cause of a violation of the city’s NPDES permit or of the prevention of biosolid use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations including: Section

405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state biosolids management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

54. “Lateral” means any side lateral pipeline off a sewer main which is in the public right-of-way or easement, operated and maintained by the city and to which a building sewer connects or may connect.

55. “Lateral or building sewer preventive and corrective maintenance” means those activities required to preserve or restore functional operation and the free-flowing condition of the sewer. These activities include, but are not limited to, inspection, root and blockage removal, and cleaning.

56. “Lateral or building sewer structural maintenance” means those construction, pipe repair, and pipe replacement activities required to correct defects and preserve the structural integrity and watertight condition of the sewer.

57. “Local Limit” means a specific discharge limit developed and enforced by the city upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in [40 CFR 403.5\(a\)\(1\)](#) and [\(b\)](#).

58. “Manufactured home park” means and includes all trailer courts and other similar installations offering accommodations for two or more manufactured homes, whether or not such manufactures homes are on wheels, skids, or permanent or semi-permanent foundations.

59. “Medical waste” means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

60. “Mobile waste hauler” means a person whom, by contract or otherwise, collects wastewater, including residential wastewater and septage, for transportation to and discharged at city designated sites.

61. “Mobile waste hauler permit” means a permit issued pursuant to Chapters [13.04](#) through [13.12](#) MMC.

62. “Month” as used in Chapters [13.04](#) through [13.12](#) MMC refers to billing cycle or month as determined by McMinnville Water and Light.

63. “Monthly average” means the sum of all daily values measured during a calendar month divided by the number of daily value discharges measured during that month.

64. “Monthly average limit” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

-
65. “Motel” or “hotel” means a building or group of buildings designed, intended, or used for the accommodation of tourists, transient and seasonally permanent guests for compensation.
66. “Multifamily dwelling” means a building or group of buildings or dwelling units or portion thereof designed for occupancy by two or more families, living independently of each other.
67. “Multiple-family resident” means and includes all buildings and structures used primarily for housing more than a single family, and will include duplexes, triplexes, four-plexes, apartments, condominiums, and manufactures home parks.
68. “National Pollutant Discharge Elimination System (NPDES) permit” means a permit issued pursuant to ORS [468B.050](#) and the Act.
69. “National pretreatment standards or Standard” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to [40 CFR 403.5](#).
70. “National prohibitive discharge standards or prohibitive discharge standard” means prohibited discharges under the authority of [40 CFR 403.5](#).
71. “Natural outlet” means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.
72. “New source” means:
- a. Any building, structure, facility, or installation from which there is or may be discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - i. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - iii. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as existing source shall be considered.
 - b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation
-

meeting the criteria of subsection [\(A\)\(71\)\(a\)\(ii\)](#) or [\(A\)\(71\)\(a\)\(iii\)](#) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

c. Construction of a new source as defined herein has commenced if the owner or operator has:

i. Begun, or caused to begin as part of a continuous on-site construction program:

A Any placement, assembly, or installation of facilities or equipment; or

B Significant site preparation work including clearing excavation, or removal of existing buildings, structures, or facilities which is necessary for placement, assembly, or installation of new source facilities or equipment; or

ii. Entered into a building contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without such substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

73. “North American Industry Classification System (NAICS)” means the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy, which was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

74. “Operation and maintenance” means activities required to assure the dependable and economical function of treatment works.

a. “Maintenance” means preservation of functional integrity and efficiency of equipment and structures. This includes preventative maintenance, corrective maintenance and replacement of equipment.

b. “Operation” means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management records, laboratory control, safety, and emergency operation planning.

75. ”OPSC” means the current edition of the Oregon Plumbing Specialty Code, as adopted by the Oregon Department of Consumer and Business Services, Building Codes Division.

76. “Pass through” means the occurrence of an indirect discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

77. “Parameter” means a characteristic of wastewater that may be measured or calculated and is used in Chapters [13.04](#) through [13.12](#) MMC as a discharge limitation.

78. “Permittee” means any person or business that holds a control mechanism (permit or BMP) issued by the city for the purpose of discharging wastewater into the municipal sewer system.
79. “Person(s)” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company entity or their legal representatives, agents or assignees. This definition includes all federal, state, or local government entities.
80. “pH” means a measure of the acidity or alkalinity of a solution, expressed in standard units (SU).
81. “Plant manager” means the person designated by the city to supervise the operation of the POTW, or a duly authorized representative thereof.
82. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt; municipal, agricultural and industrial wastes; and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
83. “Pollution” means the degradation of the chemical, physical, biological, or radiological quality of the ground, surface, subsurface, or storm drainage waters by man, or the activities thereof.
84. “Pollution prevention” means source reduction and other practices that reduce or eliminate the creation of pollutants through:
- a. Increased efficiency in the use of raw materials, energy, water, or other resources;
 - b. Protection of natural resources by conservation;
 - c. Education outreach.
85. “Preliminary treatment facilities” means any device, structure or method which will remove specified pollutants and/or chemicals from the wastewater prior to its discharge into the public sewer.
86. “Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
87. “Pretreatment requirement” means any substantive or procedural requirement related to pretreatment imposed on an Industrial User, other than a pretreatment standard.
88. “Private collection system” means a privately owned and maintained sewer system installed to serve multiunit structures on single ownership properties, which cannot legally be further divided, such as

apartments, manufactured home parks, and schools. A single-family residence with an unattached garage or shop with sanitary facilities is exempt from this definition.

89. “Properly shredded garbage” means the wastes from the preparation, cooking, and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

90. “Public sewer” means a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

91. “Publicly Owned Treatment Works (POTW)” means a treatment works, as defined by Section 212 of the Act ([33 U.S.C. section 1292](#)), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

92. “Recreational vehicle park” means a facility intended for the short term transitory use of a recreational vehicle trailer or motor home. The use is primarily for vacation or travel. The length of stay is generally one week or less, but occasionally could be up to one month. This use does not include a trailer or motor home being used as a permanent residence.

93. “Replacement” means obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

94. “Residential sewage or waste” means wastewater of the type commonly introduced into a treatment works by residential users and includes the contents of chemical toilets, septic tanks, and waste holding tanks provided they contain wastewater of the type commonly introduced by residential users.

95. “Residential user” means the occupant or lessee of a dwelling unit as defined in Chapters [13.04](#) through [13.12](#) MMC. The dwelling unit may be single-family dwelling, or a portion of a multifamily dwelling.

96. “Sanitary sewer” means a conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions.

97. “Septage” means the liquid and solid material pumped from a septic tank, cesspool, or similar residential wastewater treatment system, or a holding tank when the system is cleaned or maintained.

98. “Settleable solids” means those solids that are capable of being settled in a standard Imhoff cone as outlined in “Standard Methods.”

99. “Sewerage system (system)” means the entire wastewater collection and treatment system, exclusive of building sewers. This includes all conduits, pumps, treatment equipment and any other components

involved in the collection, transportation, treatment, and disposal of sanitary and industrial wastewater and biosolids.

100. “Sewer main” means any public sewer except for laterals.

101. “Sewer user” means any person using a city sewer; or who has a residence, multifamily or commercial building, institutional building, industrial facility, or other structure containing plumbing, requiring connection to a sanitary sewer as outlined by Chapters [13.04](#) through [13.12](#) MMC.

102. “Sewer user charge” means a charge levied on sewer users of a treatment works for the sewer user’s proportionate share of the cost of operation and maintenance (including replacement) of such works.

103. “Shall” is mandatory; “May” is permissive.

104. “Significant Industrial User” except as provided in subsection [\(A\)\(103\)\(b\)\(iii\)](#) of this section a Significant Industrial User is:

- a. An Industrial User subject to Categorical Pretreatment Standards; or
- b. An Industrial User that:
 - i. Discharges an average of 25,000 gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
 - ii. Contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - iii. Is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.
- c. Upon a finding that an Industrial User meeting the criteria in subsections [\(A\)\(103\)\(a\)](#) and [\(A\)\(103\)\(b\)](#) of this section has no reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in [40 CFR 403.8\(f\)\(6\)](#), determine that such Industrial User should not be considered a Significant Industrial User.

105. “Single-family dwelling” or “single-family residence” means any residential building designed for occupancy by only one family.

106. “Slugload or slug discharge” means any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in MMC [13.05.010](#). A slug discharge is any discharge of a not routine, episodic nature, including but not limited to an accidental spill or a

non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, Local Limits or permit conditions.

107. "Standard Industrial Classification (SIC)" means a classification pursuant to the "Standard Industrial Classification Manual" issued by the Executive Office of the President, Office of Management and Budget, 1972; as amended from time to time.

108. "Standard Methods" means the examination and analytical procedures set forth in the most recent edition of "Standard Methods for the Examination of Water and Wastewater," published jointly by the American Public Works Health Association, the American Water Works Association and the Water Environment Federation.

109. "Storm drain" means that portion of the storm drainage system that is within the public right-of-way or easement operated and maintained by the city. This may include, but is not limited to, pipes, culverts, ditches, waterways, or any other appurtenances used for the removal or transportation of rainwater or other unpolluted water.

110. "Storm sewer" means a sewer which carries storm and surface waters and drainage, but excludes wastewater.

111. "Stormwater" means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

112. "System Development Charge" (SDC) or "Connection fee" means and includes the fees to be paid for the privilege of connecting any premises to any city sewer within or without the corporate limits of the city.

113. "Total Phosphorus" (TP) means the concentration of total phosphorus as determined in accordance with [40 CFR Part 136](#), or as EPA otherwise determines.

114. "Total Suspended Solids" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

115. "Toxic pollutants" means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA.

116. "Treatment plant" means that portion of the POTW which is designed to provide treatment of residential sewage and industrial waste.

117. "Unit" means the division of measurements used which, in regard to residential, is one unit equals one family, be it in single-family, multiple-family, manufactured home, apartment, or other.

118. "Unpolluted water" means water to which no wastewater or industrial wastewater has been added; or water which has been used in such a manner that no pollutants have been introduced to the flow.

119. “Upset” means an exceptional incident in which an Industrial User unintentionally and temporarily is in a state of noncompliance with the discharge requirements set forth in Chapters [13.04](#) through [13.12](#) MMC due to factors beyond the reasonable control of the Industrial User; and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation thereof.

120. “Wastewater” or “sewage” means liquid or water-carried pollutants including any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

121. “Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently.

122. “Water user” means any person using water through the facilities of the municipal water system. (Ord. 4987, 2015).

13.04.050 Abbreviations.

For the purpose of Chapters [13.04](#) through [13.12](#) MMC, the following abbreviations mean:

- A. ABS – Acrylonitrile Butadiene Styrene pipe
- B. BOD5 – Biochemical oxygen demand (five day);
- C. BMP – Best Management Practice
- D. CFR – Code of Federal Regulations;
- E. CIPP – Cured In Place Pipe
- F. CIU – Categorical Industrial User;
- G. COD – Chemical oxygen demand;
- H. DEQ – Oregon department of Environmental Quality;
- I. EDU – Equivalent Dwelling unit
- J. EPA – U.S. Environmental Protection Agency;
- K. GPD – Gallons per day
- L. HDPE – High-Density Polyethylene pipe
- M. l – Liter;

- N. mg – Milligram;
- O. mg/l – Milligram per liter;
- P. NAICS – North American Industry Classification System or SIC – Standard Industrial Classification;
- Q. NH₃ – Ammonia Nitrogen;
- R. NPDES – National Pollutant Discharge Elimination System;
- S. OPSC – Oregon Plumbing Specialty Code;
- T. ORS – Oregon Revised Statutes;
- U. POTW – Publicly Owned Treatment Works;
- V. PVC – Polyvinyl Chloride pipe
- W. RCRA – Resource Conservation and Recovery Act;
- X. SNC – Significant Noncompliance;
- Y. SWDA – Solid Waste Disposal Act, [42](#) USC, [6901](#), et seq;
- Z. TP – Total Phosphorus;
- AA. TSS – Total Suspended Solids;
- AB. USC – United States Code. (Ord. 4987, 2015).

13.04.060 General Organization and Operation.

A. *Management of the Wastewater Disposal System.* The city of McMinnville wastewater disposal system shall be and remain under the management, supervision, and control of the city manager who may employ or designate such person or persons in such capacity or capacities as he deems advisable to carry out the efficient management and operation of the system. The city manager or his or her designee may make such rules, orders or regulations as deemed advisable and necessary to assure the efficient management and operation of the system; subject, however, to the rights, powers, and duties with respect thereto which are reserved by law to the city council.

B. *Standards, Rules and Regulations.* The standard, rules and regulations established in or pursuant to Chapters [13.04](#) through [13.12](#) MMC are deemed to be consistent with the preservation of the public health, safety and welfare, to prevent pollution of the environment, and to fulfill the obligations of the city with respect to state and federal law and all rules and regulations adopted in conformance thereto. The discharge

into the system of any substance which exceeds the limitations contained herein, or which, in any manner, fails to conform hereto, is declared to be a public nuisance and a violation of Chapters [13.04](#) through [13.12](#) MMC.

C. *Use of Wastewater Disposal System.* Any person who conforms to the standards, rules, and regulations established in or pursuant to Chapters [13.04](#) through [13.12](#) MMC shall be permitted to discharge effluent into the system provided there exists adequate sewer service available to which they can connect. (Ord. 4987, 2015).

13.04.070 Use of Public Sewers Required.

A. It is unlawful of any person to place, deposit, or permit to be deposited in an unsanitary manner upon public or private property within the city of McMinnville, or in any area under the jurisdiction of the city, any human or animal excretion, garbage, or other objectionable waste material which creates an offensive odor or health hazard and/or attracts vermin.

B. It is unlawful to discharge to any natural outlet within the city of McMinnville or in any area under the jurisdiction of the city, any wastewater, commercial or industrial wastewater, or other polluted water, except where suitable treatment has been provided in accordance with provisions of Chapters [13.04](#) through [13.12](#) MMC.

C. Except as hereinafter provided, it is unlawful to construct or maintain any privy, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

D. The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purpose, situated within the city of McMinnville, and abutting on any street, alley, easement, or right-of-way in which there is now located or may in the future be located a sanitary sewer of the city, is required at his or her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper sewer in accordance with the provisions of Chapters [13.04](#) through [13.12](#) MMC, within 90 days after date of official notice to do so, provided that the sewer is within 300 feet of the property line or as specified in [OAR 340-071-0160 \(4\)\(A\)](#). (Ord. 4987, 2015).

13.04.080 Private Wastewater Disposal.

A. Where a public sanitary sewer is not available under the provisions of MMC [13.04.070\(D\)](#), the building sewer shall be connected to a private sewage system complying with the provisions of this section.

B. Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit from the county sanitarian. The application for such permit shall be made in writing and supplemented by any plans, specifications, and other information as are deemed necessary by the county

sanitarian and Director. A permit and inspection fee as required shall be paid to the proper agency at the time the application is filed.

C. A permit for the private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the county sanitarian. The agent of the city shall be allowed to inspect the construction and no underground portions shall be permitted to discharge to any public sewer or natural outlet.

D. At such time, as a public sewer becomes available to a property served by a private wastewater disposal system, a connection shall be made to the public sewer in compliance with Chapters [13.04](#) through [13.12](#) MMC, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be abandoned and after pumping filled with suitable material at the time of said connection.

E. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city of McMinnville.

F. No statement contained in Chapters [13.04](#) through [13.12](#) MMC shall be construed to interfere with any additional requirements that may be imposed by the health officer. (Ord. 4987, 2015).

13.04.090 Building Sewers and Connections.

A. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a permit from the City Engineer.

B. The owner of the sewer or their agent shall make application for the permit to the City Engineer. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the City Engineer. A permit and inspection fee shall be paid to the city at the time the application is filed.

C. All costs and expenses incidental to the installation of the sewer connection shall be borne by the owner. The owner shall indemnify the city of McMinnville from any loss or damage that may directly or indirectly be occasioned by the installation.

D. A single separate sewer connection shall be provided for every parcel. Additional laterals could be granted by the City Engineer.

E. Existing building sewers may be used in connection with new buildings only when they are found, upon examination and test, to meet all requirements of Chapters [13.04](#) through [13.12](#) MMC. Replacement of unsatisfactory building sewers shall be the responsibility of the owner and all costs associated with replacement shall be borne by the owner.

F. The sewer connection pipe shall be of a material listed in the Oregon Plumbing Specialty Code. Joints shall be tight and waterproof. Special protection may be required by the City Engineer where the sewer is exposed to damage by tree roots, shallow cover, or footings.

G. The size and slope of the sewer connection shall be subject to the approval of the City Engineer, but in no event shall the diameter be less than that allowed by the Oregon Plumbing Specialty Code and the slope less than 1/8 inch per foot from the sewer line to the building line.

H. The sewer connection shall be laid at a uniform grade and in the straight alignment insofar as possible and not closer than five feet from any bearing wall, which might thereby be weakened. Closer alignment may be considered with changes in pipe material, backfill, and trench protection consideration. Changes in direction shall be made only with properly curved pipe and/or fittings as required in the plumbing codes of the state of Oregon.

I. All excavations for sewer connections shall be open trench unless approved by the City Engineer, and no backfill shall be placed until the work has been inspected and approved.

J. Sewer joints shall be made with the proper materials as specified by the particular manufacturer.

K. The building sewer connection shall be made at the end of the sewer lateral. If the designated sewer lateral does not exist, that owner shall, at his or her expense, have installed a new sewer lateral which shall not extend past the inner surface of the public sewer main. Said sewer lateral shall not be less than four inches in diameter nor any pipe run under the street right-of-way shall be less than four inches in diameter. A smooth, neat joint shall be made and the connection made secure and watertight.

L. The applicant for the sewer connection permit shall notify the City Engineer when the sewer is ready for inspection. The connection shall be made under the supervision of the City Engineer.

M. All excavations for sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City Engineer.

N. The applicant shall maintain in force at its own expense General Liability insurance and Automobile Liability insurance in an amount and form to be determined by the City Engineer. As evidence of insurance coverage required by this section, the applicant shall furnish acceptable insurance certificates to the City Engineer. The certificates shall provide that “the city, and its agents, officers, and employees” are additional insureds. The certificate will include a 30-day cancellation clause.

Insuring companies or entities are subject to city acceptance. If requested, complete copies of insurance policies shall be provided to the City Engineer. The applicant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance. (Ord. 4987, 2015).

13.04.100 Monitoring of building Sewers.

New and existing building sewers may be periodically monitored by the city for leaks or discharges of extraneous water.

This monitoring may take the form of, but is not limited to: direct visual observations; indirect measurements; television inspection; or air or water pressure tests, smoke tests, or exfiltration tests.

If, in the opinion of the City Engineer, such monitoring shows a building sewer to be defective, no further proof is needed for the City Engineer to require the building sewer be repaired to current standards at the owner's expense.

Existing building sewers that exceed a maximum allowable infiltration/inflow rate of more than 300 gallons per day per single detached living unit; 1,200 gallons per acre per day; or 3,000 gallons per day per inch-diameter miles of sewer are deemed unsafe and unsanitary and shall be repaired at the owner's expense.

Those sewer users who do not comply with the infiltration/inflow regulations shall have a period of time as determined by the City Engineer, to reach compliance with the regulations. (Ord. 4987, 2015).

Chapter 13.04

SANITARY SEWERS – GENERAL REGULATIONS*

Sections:

- 13.04.010 Sanitary Sewer System – City’s Declaration of Intent to Acquire.
- 13.04.020 Intent and Purpose.
- 13.04.030 Objectives.
- 13.04.040 Definitions.
- 13.04.050 Abbreviations.
- 13.04.060 General Organization and Operation.
- 13.04.070 Use of Public Sewers Required.
- 13.04.080 Private Wastewater Disposal.
- 13.04.090 Building Sewers and Connections.
- 13.04.100 Monitoring of building Sewers.

* For statutory provisions on city power to operate a sewer system, see ORS [224.140](#) and [454.215](#)

13.04.010 Sanitary Sewer System – City’s Declaration of Intent to Acquire.

Pursuant to the general laws of the state of Oregon and the charter of the city, the city council declares its intention to own, acquire, construct, equip, operate and maintain, either within or without the corporate limits in whole or in part, sewers, including maintenance, enlargement, or extension of the present sewer system of the city, wastewater treatment or disposal plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations or ejector stations, with all appurtenances necessary, useful or convenient for the treatment and disposal of wastewater. (Ord. 4987, 2015).

13.04.020 Intent and Purpose.

The intent and purpose of Chapters [13.04](#) through [13.12](#) MMC is to provide for the orderly functioning of the Publicly Owned Treatment Works (POTW) for the city; and to enable the city to comply with applicable state and federal laws, particularly the Clean Water Act of 1977 (and amendments thereto) and the general pretreatment regulations ([40 CFR Part 403](#)). Except as otherwise provided herein, the Director shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Director may be delegated by the Director to a duly authorized city employee. (Ord. 4987, 2015).

* For statutory provisions on city power to operate a sewer system, see ORS [224.140](#) and [454.215](#)

13.04.030 Objectives.

The objectives of Chapters [13.04](#) through [13.12](#) MMC are:

- A. To provide control of construction and use of the wastewater system;
- B. To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting biosolids;
- C. To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, into receiving waters or the atmosphere or otherwise be incompatible with the system;
- D. To improve the opportunity to recycle and reclaim wastewater and biosolids from the system;
- E. To provide for equitable distribution of the cost of the municipal wastewater system in compliance with the Environmental Protection Agency's requirements;
- F. To assure the financial self-sufficiency of the sewerage system;
- G. To enable the city to comply with its National Pollutant Discharge Elimination System permit conditions, biosolids use and disposal requirements, and any other federal or state laws to which the Publicly Owned Treatment Works is subject;
- H. To protect the health and safety of the wastewater treatment works personnel who may be affected by wastewater or biosolids in the course of their employment and to protect the health and safety of the general public.

In activating the objectives of Chapters [13.04](#) through [13.12](#) MMC, it shall be the policy of the city to actively promote the health of the industrial community through accommodation, assistance and cooperation; consistent with the city's responsibility to protect the waters of the state from pollution and to secure the health, safety, and welfare of the residents of the community. To that end, Chapters [13.04](#) through [13.12](#) MMC shall be implemented using good professional judgment with associated decisions taking all known facts into consideration.

Chapters [13.04](#) through [13.12](#) MMC provide for the regulation of the Industrial Users of the municipal wastewater system through the issuance of control mechanisms such as permits (both individual and general and best management practices (BMPs)), and through enforcement activities; assures that existing customers' capacity will not be preempted; and requires Industrial User reporting. (Ord. 4987, 2015).

13.04.040 Definitions.

A. Unless the context specifically indicates otherwise, the following terms and phrases, as used in Chapters [13.04](#) through [13.12](#) MMC, shall have the meanings hereinafter designated:

1. “Act” or “the Act” means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, [33 USC 1251](#), et seq.
2. “Ammonia Nitrogen (NH3)” means the total free ammonia nitrogen measured as nitrogen and expressed in milligrams per liter.
3. “Authorized Representative of the Industrial User” means
 - a. If the Industrial User is a corporation:
 - i. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - ii. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for industrial wastewater discharge permit or general permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. If the Industrial User is a partnership or sole proprietorship: a general partner or proprietor, respectively.
 - c. If the Industrial User is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - d. The individuals described in subsections [\(A\)\(3\)\(a\)](#) through [\(A\)\(3\)\(c\)](#) of this section may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

4. “Available sewer” means any sewer that can be used without the need to acquire easements and where sufficient grade and capacity exists to serve the property and where the public sewer is within ~~150~~300 feet of the property.
5. “Biochemical Oxygen Demand (BOD5)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).
6. “Best Management Practices or BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in MMC [13.05.010\(A\)](#) and [\(B\)](#) in accordance with [40 CFR 403.5\(a\)\(1\)](#) and [\(b\)](#). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
7. “Building drain” means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes within or adjoining the building or structure, and conveys the same to the building sanitary sewer.
8. “Building Official” means the building official for the city, or his or her duly authorized representative or agent.
9. “Building sewer” means the portion of a sanitary sewer system extending from the street right-of-way or public easement line, **including the connection to the lateral**, to the building cleanout, or if no cleanout exists, to a point five feet outside the building. The building sewer receives the discharge of the building drain and conveys it to a public sewer.
10. “Building storm sewer” means that part of the piping of a stormwater drainage system which begins at the connection to the building storm drain at a point five feet outside the established line of the building or structures, and conveys stormwater, surface water, and other unpolluted water to the public storm sewer, street, and other point of disposal.
11. “Business building” means and includes buildings used wholly or in part for the conducting of any commercial, retail, or wholesale business or service agency, but this enumeration shall not be deemed exclusive, and all other buildings or premises used for any commercial purpose other than a residence or for manufacturing and industrial purposes shall be deemed a business building.
12. “Categorical Industrial User” means an Industrial User subject to a Categorical Pretreatment Standard or categorical standard.
13. “Categorical Pretreatment Standards” or “Categorical Standard” means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act ([33 U.S.C. Section 1317](#)) that apply to a specific category of users and that appear in [40 CFR Chapter I, Subchapter N, Parts 405-471](#).

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14. “Chemical Oxygen Demand (COD)” means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.
15. “City” means the municipality of McMinnville, Oregon, a municipal corporation of the state of Oregon, acting through the city council or any board, committee, body, official or person to whom the city council shall have lawfully delegated the power to act for or on behalf of the city.
16. “Collection system” means facilities maintained by the city for collection, pumping, conveying and controlling wastewater.
17. “Combined sewer” means a sewer that is designated as both a sanitary sewer and a storm sewer.
18. “Composite sample” means a sample made up of a number of combined individual grab samples collected at uniform intervals based on an increment of either time or flow.
19. “Control manhole” means a manhole installed as required by the Director under the provisions of Chapters [13.04](#) through [13.12](#) MMC; or if no manhole has so been installed, the term “controlled manhole” means such a point, as shall be determined by the Director to which industrial wastewater is produced on the premises and discharged into a sanitary sewer are accessible for testing.
20. “Cooling water” means the water discharged from any use to which the only pollutant added is heat.
21. “Daily maximum” means the maximum value of a particular parameter recorded from effluent samples collected during a calendar day.
22. “Daily Maximum Limit” means the maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.
23. “Defects” mean cracks, broken pipe, crushed pipe, open or offset joints, root intrusion, or other imperfection in a sanitary sewer pipe which can potentially allow entry of ground water into the sanitary sewer system. Defects shall also include direct connections as defined below.
24. “Direct connections” mean the connections of roof drains, foundation drains, or similar conduits to the sewer lateral or main which may allow entry of rain, surface drainage, or ground water into the sanitary sewer system.
25. “Direct discharge” means the discharge of treated or untreated wastewater directly into the waters of the state of Oregon.
26. “Director” means the ~~community development~~ **Public Works** Director or ~~his or her~~ **their** duly authorized representative or agent.

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- 27. “Discharge” means the deposit of pollutants into the city sewerage system.
- 28. “Dormitory,” “fraternity,” or “sorority” means a building designed, intended, or used for accommodation for students or living groups of unrelated persons which may or may not furnish meals with said accommodation.
- 29. “Drainage water” means stormwater, ground water, surface drainage, subsurface drainage, spring water, well overflow, roof drainage or other like drainage other than wastewater or industrial wastewater.
- 30. “Dwelling unit” means a facility designed for permanent or semi-permanent occupancy and provided with minimum kitchen, sleeping, and sanitary facilities for one family.
- 31. “Engineer” means ~~an~~ Professional Engineer licensed by the state of Oregon as defined by ORS 672.002.
- 32. “Environment” means any naturally occurring river, stream, creek, or other waterway, and land mass, the atmosphere, or any subsurface water, aquifer, or groundwater or any manmade edifice directly or indirectly connected to the waterways, land masses, atmosphere, or groundwater as herein listed.
- 33. “Environmental Protection Agency or EPA” means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.
- 34. “Equivalent Dwelling Unit” (EDU) means a nonresidential unit which is deemed equivalent to a residential dwelling unit as provided herein or as provided in the Oregon ~~State~~ Plumbing Specialty Code.
- 35. “Existing source” means any source of discharge that is not a “New Source.”
- 36. “Fixture Unit” (FU) means fixture load values for drainage piping and shall be as specified in MMC 13.08.050(A)(2), and as specified in the Oregon ~~State~~ Plumbing Specialty Code and Administrative Rules.
- 37. “Flow” means the daily total of wastewater flow from an industrial or residential source.
- 38. “Frontage” shall be measured along the adjacent street or along the sewer itself where it traverses a parcel. Frontage measurements will be only for those portions of a parcel being developed including parking lots, lesser structures, and general improvement. The balance of the parcel shall be subject to future charges at rates then in force.
- 39. “Garbage” means solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage, and sale of produce.
- 40. “Governmental building” means and includes buildings used wholly or in part by the city service districts, Yamhill County, the State, and the United States Government or any agency of the before-mentioned governmental divisions.

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41. “Grab sample” means a sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed 15 minutes.

42. “Grace period” means the 90,180 calendar day period beginning on the date of the notice of a defect. The city may make incentives available during the grace period to encourage property owners to replace defective building sewers. Penalty assessments shall begin at the end of the grace period.

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43. “Holding tanks or septic tank waste” means waste from chemical toilets, campers, trailers, coffee stands, or septic tanks.

44. “Indirect discharge” means the introduction of pollutants into a POTW from any nonresidential source regulated under Section 307(b), (c), or (d) of the Act.

45. “Industrial or manufacturing building” means and includes buildings used wholly or in part for the manufacturing and fabrication of any article or thing.

46. “Industrial User” means any person, including a mobile waste hauler, who discharges wastewater from a source other than a residential dwelling unit(s) directly connected into the city wastewater system. An Industrial User is a source of indirect discharge.

47. “Industrial wastewater discharge permit” means a permit to discharge industrial wastewater into the city sewer system issued under the authority of Chapters 13.04 through 13.12 MMC and which prescribes certain discharge requirements and limitations. This may be an individual or general permit, which may incorporate best management practices (BMPs).

48. “Industrial wastewater” means any nonresidential liquid, gaseous substance, or semisolid from any producing, manufacturing business or trade, or processing operation of whatever nature (as distinct from residential wastewater).

~~49. “Inflow/Infiltration” (I/I) Infiltration is groundwater that enters the sanitary sewer system through leaks in the sewer pipe and lateral. Inflow is storm-water that enters the sanitary sewer system through downspouts that are connected to sewer lines direct connections.~~

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~~49-50.~~ “Instantaneous limit” means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

~~50-51.~~ “Institution” means any building or group of buildings used as a correction facility, schools, care facilities, hospitals and similar; publicly or privately owned.

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~~51-52.~~ “Institutional building” means and includes a building used wholly or in part by an institution.

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~~52-53.~~ “Interference” means a discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its biosolids processes, use or disposal; and therefore, is a cause of a violation of the city’s NPDES permit or of the

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prevention of biosolid use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations including: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state biosolids management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

~~53-54.~~ “Lateral” means any side lateral pipeline off a sewer main which is in the public right-of-way or easement, operated and maintained by the city and to which a building sewer connects or may connect.

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~~54-55.~~ “Lateral or building sewer preventive and corrective maintenance” means those activities required to preserve or restore functional operation and the free-flowing condition of the sewer. These activities include, but are not limited to, inspection, root and blockage removal, and cleaning.

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~~55-56.~~ “Lateral or building sewer structural maintenance” means those construction, pipe repair, and pipe replacement activities required to correct defects and preserve the structural integrity and watertight condition of the sewer.

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~~56-57.~~ “Local Limit” means a specific discharge limit developed and enforced by the city upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in [40 CFR 403.5\(a\)\(1\)](#) and [\(b\)](#).

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~~57-58.~~ “Manufactured home park” means and includes all trailer courts and other similar installations offering accommodations for two or more manufactured homes, whether or not such manufactures homes are on wheels, skids, or permanent or semi-permanent foundations.

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~~58-59.~~ “Medical waste” means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

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~~59-60.~~ “Mobile waste hauler” means a person whom, by contract or otherwise, collects wastewater, including residential wastewater and septage, for transportation to and discharged at city designated sites.

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~~60-61.~~ “Mobile waste hauler permit” means a permit issued pursuant to Chapters [13.04](#) through [13.12](#) MMC.

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~~61-62.~~ “Month” as used in Chapters [13.04](#) through [13.12](#) MMC refers to billing cycle or month as determined by McMinnville [W](#)ater and [L](#)ight.

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~~62-63.~~ “Monthly average” means the sum of all daily values measured during a calendar month divided by the number of daily value discharges measured during that month.

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~~63.64.~~ “Monthly average limit” means the highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

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~~64.65.~~ “Motel” or “hotel” means a building or group of buildings designed, intended, or used for the accommodation of tourists, transient and seasonally permanent guests for compensation.

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~~65.66.~~ “Multifamily dwelling” means a building or group of buildings or dwelling units or portion thereof designed for occupancy by two or more families, living independently of each other.

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~~66.67.~~ “Multiple-family resident” means and includes all buildings and structures used primarily for housing more than a single family, and will include duplexes, triplexes, four-plexes, apartments, condominiums, and manufactures home parks.

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~~67.68.~~ “National Pollutant Discharge Elimination System (NPDES) permit” means a permit issued pursuant to ORS [468B.050](#) and the Act.

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~~68.69.~~ “National pretreatment standards or Standard” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to [40 CFR 403.5](#).

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~~69.70.~~ “National prohibitive discharge standards or prohibitive discharge standard” means prohibited discharges under the authority of [40 CFR 403.5](#).

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~~70.71.~~ “Natural outlet” means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

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~~71.72.~~ “New source” means:

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a. Any building, structure, facility, or installation from which there is or may be discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

- i. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
- ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- iii. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility

is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as existing source shall be considered.

b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (A)(71)(a)(ii) or (A)(71)(a)(iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

c. Construction of a new source as defined herein has commenced if the owner or operator has:

i. Begun, or caused to begin as part of a continuous on-site construction program:

A Any placement, assembly, or installation of facilities or equipment; or

B Significant site preparation work including clearing excavation, or removal of existing buildings, structures, or facilities which is necessary for placement, assembly, or installation of new source facilities or equipment; or

ii. Entered into a building contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without such substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

~~72-73.~~ “North American Industry Classification System (NAICS)” means the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy, which was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

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~~73-74.~~ “Operation and maintenance” means activities required to assure the dependable and economical function of treatment works.

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a. “Maintenance” means preservation of functional integrity and efficiency of equipment and structures. This includes preventative maintenance, corrective maintenance and replacement of equipment.

b. “Operation” means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management records, laboratory control, safety, and emergency operation planning.

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~~74-75.~~ ~~“OSPSC”~~“OPSC” means the current edition of the Oregon ~~State~~ Plumbing Specialty Code, as adopted by the Oregon Department of Consumer and Business Services, Building Codes Division.

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~~75-76.~~ “Pass through” means the occurrence of an indirect discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or

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discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

~~76-77.~~ “Parameter” means a characteristic of wastewater that may be measured or calculated and is used in Chapters 13.04 through 13.12 MMC as a discharge limitation.

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~~77-78.~~ “Permittee” means any person or business that holds a control mechanism (permit or BMP) issued by the city for the purpose of discharging wastewater into the municipal sewer system.

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~~78-79.~~ “Person(s)” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company entity or their legal representatives, agents or assignees. This definition includes all federal, state, or local government entities.

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~~79-80.~~ “pH” means a measure of the acidity or alkalinity of a solution, expressed in standard units (SU).

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~~80-81.~~ “Plant manager” means the person designated by the city to supervise the operation of the POTW, or a duly authorized representative thereof.

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~~81-82.~~ “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt; municipal, agricultural and industrial wastes; and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

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~~82-83.~~ “Pollution” means the degradation of the chemical, physical, biological, or radiological quality of the ground, surface, subsurface, or storm drainage waters by man, or the activities thereof.

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~~83-84.~~ “Pollution prevention” means source reduction and other practices that reduce or eliminate the creation of pollutants through:

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- a. Increased efficiency in the use of raw materials, energy, water, or other resources;
- b. Protection of natural resources by conservation;
- c. Education outreach.

~~84-85.~~ “Preliminary treatment facilities” means any device, structure or method which will remove specified pollutants and/or chemicals from the wastewater prior to its discharge into the public sewer.

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~~85-86.~~ “Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

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~~86,87.~~ “Pretreatment requirement” means any substantive or procedural requirement related to pretreatment imposed on an Industrial User, other than a pretreatment standard.

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~~87,88.~~ “Private collection system” means a privately owned and maintained sewer system installed to serve multiunit structures on single ownership properties, which cannot legally be further divided, such as apartments, manufactured home parks, and schools. A single-family residence with an unattached garage or shop with sanitary facilities is exempt from this definition.

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~~88,89.~~ “Properly shredded garbage” means the wastes from the preparation, cooking, and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

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~~89,90.~~ “Public sewer” means a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

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~~90,91.~~ “Publicly Owned Treatment Works (POTW)” means a treatment works, as defined by Section 212 of the Act (33 U.S.C. section 1292), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

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~~91,92.~~ “Recreational vehicle park” means a facility intended for the short term transitory use of a recreational vehicle trailer or motor home. The use is primarily for vacation or travel. The length of stay is generally one week or less, but occasionally could be up to one month. This use does not include a trailer or motor home being used as a permanent residence.

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~~92,93.~~ “Replacement” means obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

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~~93,94.~~ “Residential sewage or waste” means wastewater of the type commonly introduced into a treatment works by residential users and includes the contents of chemical toilets, septic tanks, and waste holding tanks provided they contain wastewater of the type commonly introduced by residential users.

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~~94,95.~~ “Residential user” means the occupant or lessee of a dwelling unit as defined in Chapters 13.04 through 13.12 MMC. The dwelling unit may be single-family dwelling, or a portion of a multifamily dwelling.

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~~95,96.~~ “Sanitary sewer” means a conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, ~~together with minor quantities of ground, storm and surface waters that are not admitted intentionally.~~

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~~96,97.~~ “Septage” means the liquid and solid material pumped from a septic tank, cesspool, or similar residential wastewater treatment system, or a holding tank when the system is cleaned or maintained.

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~~97,98.~~ “Settleable solids” means those solids that are capable of being settled in a standard Imhoff cone as outlined in “Standard Methods.”

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~~98,99.~~ “Sewerage system (system)” means the entire wastewater collection and treatment system, exclusive of building sewers. This includes all conduits, pumps, treatment equipment and any other components involved in the collection, transportation, treatment, and disposal of sanitary and industrial wastewater and biosolids.

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~~99,100.~~ “Sewer main” means any public sewer except for laterals.

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~~100,101.~~ “Sewer user” means any person using a city sewer; or who has a residence, multifamily or commercial building, institutional building, industrial facility, or other structure containing plumbing, requiring connection to a sanitary sewer as outlined by Chapters 13.04 through 13.12 MMC.

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~~101,102.~~ “Sewer user charge” means a charge levied on sewer users of a treatment works for the sewer user’s proportionate share of the cost of operation and maintenance (including replacement) of such works.

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~~102,103.~~ “Shall” is mandatory; “May” is permissive.

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~~103,104.~~ “Significant Industrial User” except as provided in subsection (A)(103)(b)(iii) of this section a Significant Industrial User is:

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- a. An Industrial User subject to Categorical Pretreatment Standards; or
- b. An Industrial User that:
 - i. Discharges an average of 25,000 gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
 - ii. Contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - iii. Is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.
- c. Upon a finding that an Industrial User meeting the criteria in subsections (A)(103)(a) and (A)(103)(b) of this section has no reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such Industrial User should not be considered a Significant Industrial User.

~~104,105.~~ “Single-family dwelling” or “single-family residence” means any residential building designed for occupancy by only one family.

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~~105,106.~~ “Slugload or slug discharge” means any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in MMC [13.05.010](#). A slug discharge is any discharge of a not routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW’s regulations, Local Limits or permit conditions.

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~~106,107.~~ “Standard Industrial Classification (SIC)” means a classification pursuant to the “Standard Industrial Classification Manual” issued by the Executive Office of the President, Office of Management and Budget, 1972; as amended from time to time.

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~~107,108.~~ “Standard Methods” means the examination and analytical procedures set forth in the most recent edition of “Standard Methods for the Examination of Water and Wastewater,” published jointly by the American Public Works Health Association, the American Water Works Association and the Water Environment Federation.

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~~108,109.~~ “Storm drain” means that portion of the storm drainage system that is within the public right-of-way or easement operated and maintained by the city. This may include, but is not limited to, pipes, culverts, ditches, waterways, or any other appurtenances used for the removal or transportation of rainwater or other unpolluted water.

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~~109,110.~~ “Storm sewer” means a sewer which carries storm and surface waters and drainage, but excludes wastewater.

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~~110,111.~~ “Stormwater” means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

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~~111,112.~~ “System Development Charge” (SDC) or “Connection fee” means and includes the fees to be paid for the privilege of connecting any premises to any city sewer within or without the corporate limits of the city.

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~~112,113.~~ “Total Phosphorus” (TP) means the concentration of total phosphorus as determined in accordance with [40 CFR Part 136](#), or as EPA otherwise determines.

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~~113,114.~~ “Total Suspended Solids” means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

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~~114,115.~~ “Toxic pollutants” means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA.

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~~115,116.~~ “Treatment plant” means that portion of the POTW which is designed to provide treatment of residential sewage and industrial waste.

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~~116,117.~~ “Unit” means the division of measurements used which, in regard to residential, is one unit equals one family, be it in single-family, multiple-family, manufactured home, apartment, or other.

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~~117,118.~~ “Unpolluted water” means water to which no wastewater or industrial wastewater has been added; or water which has been used in such a manner that no pollutants have been introduced to the flow.

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~~118,119.~~ “Upset” means an exceptional incident in which an Industrial User unintentionally and temporarily is in a state of noncompliance with the discharge requirements set forth in Chapters 13.04 through 13.12 MMC due to factors beyond the reasonable control of the Industrial User; and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation thereof.

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~~119,120.~~ “Wastewater” or “sewage” means liquid or water-carried pollutants including any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

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~~120,121.~~ “Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently.

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~~121,122.~~ “Water user” means any person using water through the facilities of the municipal water system. (Ord. 4987, 2015).

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13.04.050 Abbreviations.

For the purpose of Chapters 13.04 through 13.12 MMC, the following abbreviations mean:

- A. ~~ABS~~ – Acrylonitrile Butadiene Styrene pipe
- B. ~~BOD5~~ – Biochemical oxygen demand (five day);
- ~~BC~~. BMP – Best Management Practice
- ~~CD~~. CFR – Code of Federal Regulations;
- E. ~~CIPP~~ – Cured In Place Pipe
- ~~DF~~. CIU – Categorical Industrial User;
- ~~EG~~. COD – Chemical oxygen demand;
- ~~FH~~. DEQ – Oregon department of Environmental Quality;
- ~~GI~~. EDU – Equivalent Dwelling unit
- ~~HJ~~. EPA – U.S. Environmental Protection Agency;

The McMinnville Municipal Code is current through Ordinance 5111, passed March 8, 2022.

~~HK~~. GPD – Gallons per day

~~L~~. HDPE – High-Density Polyethylene pipe

~~FM~~. 1 – Liter;

~~KN~~. mg – Milligram;

~~LO~~. mg/l – Milligram per liter;

~~MP~~. NAICS – North American Industry Classification System or SIC – Standard Industrial Classification;

~~NQ~~. NH3 – Ammonia Nitrogen;

~~OR~~. NPDES – National Pollutant Discharge Elimination System;

~~PS~~, ~~ORS – Oregon Revised Statutes~~, ~~OPSC – Oregon Plumbing Specialty Code~~;

~~QT~~, ~~OSPSC – Oregon State Plumbing Specialty Code~~, ~~ORS – Oregon Revised Statutes~~;

~~RU~~. POTW – Publicly Owned Treatment Works;

~~V~~. PVC – Polyvinyl Chloride pipe

~~SW~~. RCRA – Resource Conservation and Recovery Act;

~~TX~~. SNC – Significant Noncompliance;

~~UY~~. SWDA – Solid Waste Disposal Act, [42 USC, 6901](#), et seq;

~~VZ~~. TP – Total Phosphorus;

~~WAA~~. TSS – Total Suspended Solids;

~~XAB~~. USC – United States Code. (Ord. 4987, 2015).

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13.04.060 General Organization and Operation.

A. *Management of the Wastewater Disposal System.* The city of McMinnville wastewater disposal system shall be and remain under the management, supervision, and control of the city manager who may employ or designate such person or persons in such capacity or capacities as he deems advisable to carry out the efficient management and operation of the system. The city manager or his or her designee may make such rules, orders or regulations as deemed advisable and necessary to assure the efficient management and operation of the system; subject, however, to the rights, powers, and duties with respect thereto which are reserved by law to the city council.

The McMinnville Municipal Code is current through Ordinance 5111, passed March 8, 2022.

B. *Standards, Rules and Regulations.* The standard, rules and regulations established in or pursuant to Chapters [13.04](#) through [13.12](#) MMC are deemed to be consistent with the preservation of the public health, safety and welfare, to prevent pollution of the environment, and to fulfill the obligations of the city with respect to state and federal law and all rules and regulations adopted in conformance thereto. The discharge into the system of any substance which exceeds the limitations contained herein, or which, in any manner, fails to conform hereto, is declared to be a public nuisance and a violation of Chapters [13.04](#) through [13.12](#) MMC.

C. *Use of Wastewater Disposal System.* Any person who conforms to the standards, rules, and regulations established in or pursuant to Chapters [13.04](#) through [13.12](#) MMC shall be permitted to discharge effluent into the system provided there exists adequate sewer service available to which ~~he or she~~ they can connect. (Ord. 4987, 2015).

13.04.070 Use of Public Sewers Required.

A. It is unlawful of any person to place, deposit, or permit to be deposited in an unsanitary manner upon public or private property within the city of McMinnville, or in any area under the jurisdiction of the city, ~~and~~ any human or animal excretion, garbage, or other objectionable waste material which creates an offensive odor or health hazard and/or attracts vermin.

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B. It is unlawful to discharge to any natural outlet within the city of McMinnville or in any area under the jurisdiction of the city, any wastewater, commercial or industrial wastewater, or other polluted water, except where suitable treatment has been provided in accordance with provisions of Chapters [13.04](#) through [13.12](#) MMC.

C. Except as hereinafter provided, it is unlawful to construct or maintain any privy, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

D. The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purpose, situated within the city of McMinnville, and abutting on any street, alley, easement, or right-of-way in which there is now located or may in the future be located a sanitary sewer of the city, is required at his or her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper sewer in accordance with the provisions of Chapters [13.04](#) through [13.12](#) MMC, within 90 days after date of official notice to do so, provided that the sewer is within ~~150~~ 300 feet of the property line ~~or~~ as specified in OAR 340-071-0160 (4)(A). (Ord. 4987, 2015).

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13.04.080 Private Wastewater Disposal.

A. Where a public sanitary sewer is not available under the provisions of MMC [13.04.070\(D\)](#), the building sewer shall be connected to a private sewage system complying with the provisions of this section.

B. Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit from the county sanitarian. The application for such permit shall be made in writing and supplemented by any plans, specifications, and other information as are deemed necessary by the county sanitarian and Director. A permit and inspection fee as required shall be paid to the proper agency at the time the application is filed.

C. A permit for the private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the county sanitarian. The agent of the city shall be allowed to inspect the construction and no underground portions shall be permitted to discharge to any public sewer or natural outlet.

D. At such time, as a public sewer becomes available to a property served by a private wastewater disposal system, a connection shall be made to the public sewer in compliance with Chapters 13.04 through 13.12 MMC, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be abandoned and after pumping filled with suitable material at the time of said connection.

E. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city of McMinnville.

F. No statement contained in Chapters 13.04 through 13.12 MMC shall be construed to interfere with any additional requirements that may be imposed by the health officer. (Ord. 4987, 2015).

13.04.090 Building Sewers and Connections.

A. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a permit from the ~~Director~~City Engineer.

B. The owner of the sewer or ~~his or her~~ **their** agent shall make application for the permit to the ~~Director~~City Engineer. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the ~~Director~~City Engineer. A permit and inspection fee shall be paid to the city at the time the application is filed.

C. All costs and expenses incidental to the installation of the sewer connection shall be borne by the owner. The owner shall indemnify the city of McMinnville from any loss or damage that may directly or indirectly ~~by~~ **be** occasioned by the installation.

D. A single separate sewer connection shall be provided for every ~~building (or portion of the building in separate ownership) and/or ownership parcel. Each parcel will be provided one lateral connection unless approved otherwise by the City Engineer. Additional laterals could be granted by the City Engineer,~~

E. Existing building sewers may be used in connection with new buildings only when they are found, upon examination and test, to meet all requirements of Chapters 13.04 through 13.12 MMC. Replacement of

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unsatisfactory building sewers shall be the responsibility of the owner and all costs associated with replacement shall be borne by the owner.

F. The sewer connection pipe shall be of a material listed in the Oregon ~~State~~ Plumbing Specialty Code. Joints shall be tight and waterproof. Special protection may be required by the ~~Director-City Engineer~~ where the sewer is exposed to damage by tree roots, shallow cover, or footings.

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G. The size and slope of the sewer connection shall be subject to the approval of the ~~Director-City Engineer~~, but in no event shall the diameter be less than that allowed by the Oregon ~~State~~ Plumbing Specialty Code and the slope less than 1/8 inch per foot from the sewer line to the building line.

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H. The sewer connection shall be laid at a uniform grade and in the straight alignment insofar as possible and not closer than five feet from any bearing wall, which might thereby be weakened. Closer alignment may be considered with changes in pipe material, backfill, and trench protection consideration. Changes in direction shall be made only with properly curved pipe and/or fittings as required in the plumbing codes of the state of Oregon.

I. All excavations for sewer connections shall be open trench unless approved by the ~~Director-City Engineer~~, and no backfill shall be placed until the work has been inspected and approved.

J. Sewer joints shall be made with the proper materials as specified by the particular manufacturer.

K. The building sewer connection shall be made at the end of the sewer lateral. If the designated sewer lateral does not exist, that owner shall, at his or her expense, have installed a new sewer lateral which shall not extend past the inner surface of the public sewer main. Said sewer lateral shall not be less than four inches in diameter nor any pipe run under the street right-of-way shall be less than four inches in diameter. A smooth, neat joint shall be made and the connection made secure and watertight.

L. The applicant for the sewer connection permit shall notify the ~~Director-City Engineer~~ when the sewer is ready for inspection. The connection shall be made under the supervision of the ~~Director-City Engineer~~.

M. All excavations for sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the ~~Director-City Engineer~~.

~~N. The applicant shall maintain in force at its own expense each insurance located below:~~

~~1. General Liability insurance, on an occurrence basis, with a combined single limit of not less than \$500,000. It shall include coverage for premises operations, explosion, and collapse hazard, underground hazard, products, completed operations, and independent contractors.~~

~~2. Automobile Liability insurance with a combined single limit, or equivalent, of not less than \$500,000 for each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles.~~

~~N. The applicant shall maintain in force at its own expense General Liability insurance and Automobile Liability insurance in an amount and form to be determined by the City Engineer. The Director may, depending on the specific work to be performed, require more or less insurance coverage than outlined above.~~

As evidence of insurance coverage required by this section, the applicant shall furnish acceptable insurance certificates to the ~~Director~~City Engineer. The certificates shall provide that “the city, and its agents, officers, and employees” are additional insureds. The certificate will include a 30-day cancellation clause.

Insuring companies or entities are subject to city acceptance. If requested, complete copies of insurance policies shall be provided to the ~~Director~~City Engineer. The applicant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance. (Ord. 4987, 2015).

13.04.100 Monitoring of building Sewers.

New and existing building sewers may be periodically monitored by the city for leaks or discharges of extraneous water.

This monitoring may take the form of, but is not limited to: direct visual observations; indirect measurements; television inspection; or air or water pressure tests, smoke tests, or exfiltration tests.

If, in the opinion of the ~~Director~~City Engineer, such monitoring shows a building sewer to be defective, no further proof is needed for the ~~Director~~City Engineer to require the building sewer be repaired to current standards at the owner’s expense.

Existing building sewers that exceed a maximum allowable infiltration/inflow rate of more than 300 gallons per day per single detached living unit; 1,200 gallons per acre per day; or 3,000 gallons per day per inch-diameter miles of sewer are deemed unsafe and unsanitary and shall be repaired at the owner’s expense.

Those sewer users who do not comply with the infiltration/inflow regulations shall have a period of time as determined by the ~~Director~~City Engineer, to reach compliance with the regulations. (Ord. 4987, 2015).

Chapter 13.05

SANITARY SEWERS – INDUSTRIAL PRETREATMENT REGULATIONS

Sections:

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- 13.05.010 General Discharge Prohibitions.**
- 13.05.020 National Categorical Pretreatment Standards.**
- 13.05.030 State Pretreatment Requirements.**
- 13.05.040 Local Limits.**
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Prohibitions

13.05.010 General Discharge Prohibitions.

A. *General Prohibitions.* No sewer user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all sewer users of the POTW whether or not they are subject to Categorical Pretreatment Standards or any other national, state, or local pretreatment standards or requirements.

B. *Specific Prohibitions.* No sewer user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

1. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in [40 CFR 261.21](#);
2. Wastewater having a pH less than 6.0 or more than 11.0 SU, or otherwise causing corrosive structural damage to the POTW or equipment;
3. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than 1/2 inch in any dimension;
4. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
5. Wastewater having a temperature greater than 140 degrees F (60 degrees C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C);
6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

8. Trucked or hauled pollutants, except at discharge points designated by the Director in accordance with MMC [13.05.130](#);
9. Noxious or malodorous liquids, aldehydes, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
10. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the city's NPDES permit;
11. Wastewater containing any radioactive wastes or isotopes except in compliance with the current "Oregon Regulations for the Control of Radiation" (OAR [333-120-0520](#));
12. Stormwater, surface water, ground water, artesian well water, roof runoff, subsurface drainage, condensate, deionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized by the Director;
13. Sludges, screenings, or other residues from the pretreatment of industrial wastes;
14. Medical wastes, except as specifically authorized by the Director in a city control mechanism;
15. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test;
16. Detergents, surface-active agents, or other substances which might cause excessive foaming in the POTW;
17. Fats, oils, or greases of animal or vegetable origin in amounts that will cause interference or pass through;
18. Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than 10 percent of the Lower Explosive Limit or any single reading over 20 percent of the Lower Explosive Limit of the meter.

C. The Director may develop Best Management Practices (BMPs), by ordinance or in industrial wastewater discharge permits or general permits to implement the requirements of MMC [13.05.010](#).

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. (Ord. 4987, 2015).

13.05.020 National Categorical Pretreatment Standards.

Categorical Industrial Users (CIU) must comply with the Categorical Pretreatment Standards found at [40](#) CFR Chapter I, Subchapter N, Parts 405-471.

A. Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Director may impose equivalent concentration or mass limits in accordance with subsection [E](#) and [E](#) of this section.

B. When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Director may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

C. When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the Director shall impose an alternate limit in accordance with [40](#) CFR [403.6\(e\)](#).

D. When a Categorical Pretreatment Standard is expressed only in terms of pollutant concentrations, an Industrial User may request that the city convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Director. The city may establish equivalent mass limits only if the Industrial User meets all the conditions set forth in subsections [\(D\)\(1\)\(a\)](#) through [\(D\)\(1\)\(e\)](#) of this section.

1. To be eligible for equivalent mass limits, the Industrial User must:
 - a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its industrial wastewater discharge permit;

-
- b. Currently use control and treatment technologies adequate to achieve compliance with the applicable Categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
 - c. Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
 - d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and
 - e. Have consistently complied with all applicable Categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.
2. An Industrial User subject to equivalent mass limits must:
- a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
 - b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
 - c. Continue to record the facility's production rates and notify the Director whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in subsection [\(D\)\(1\)\(c\)](#) of this section. Upon notification of a revised production rate, the Director will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
 - d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subsection [\(D\)\(1\)\(a\)](#) of this section so long as it discharges under an equivalent mass limit.
3. When developing equivalent mass limits, the Director:
- a. Will calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based

daily maximum and monthly average standard for the applicable Categorical Pretreatment Standard and the appropriate unit conversion factor;

b. Upon notification of a revised production rate, will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

c. May retain the same equivalent mass limit in subsequent industrial wastewater discharger permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to MMC [13.05.060](#). The Industrial User must also be in compliance with MMC [13.05.2020](#) regarding the prohibition of bypass.

E. The Director may convert the mass limits of the Categorical Pretreatment Standards of [40](#) CFR Parts [414](#), [419](#), and [455](#) to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Director.

F. Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this section in lieu of the promulgated Categorical Standards from which the equivalent limitations were derived.

G. Many Categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

H. Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the Director within two business days after the Industrial User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any Industrial User not notifying the Director of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long-term average production rate. (Ord. 4987, 2015).

13.05.030 State Pretreatment Requirements.

Industrial Users must comply with applicable state pretreatment standards and requirements set out in Oregon Administrative Rules (OAR) Chapter 340, Division 45, Section 0063 and incorporated herein. (Ord. 4987, 2015).

13.05.040 Local Limits.

A. The Director is authorized to establish Local Limits pursuant to [40 CFR 403.5\(c\)](#), and may modify and publish revisions from time to time appropriately. No Significant Industrial User (SIU) shall discharge wastewater containing pollutants in excess of the established Local Limits.

B. The Local Limits apply at the point where the wastewater is discharged to the POTW or where industrial process water enters a separate sampling vault and is the designated sample point for the SIU and the city. (Ord. 4987, 2015).

13.05.050 City's Right of Revision.

The city reserves the right to establish, by ordinance or in industrial wastewater discharge permits or in general permits, more stringent standards or requirements on discharges to the POTW consistent with the purpose of this ordinance. (Ord. 4987, 2015).

13.05.060 Dilution.

No Industrial User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on Industrial Users who are using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate. (Ord. 4987, 2015).

13.05.070 Disposal of Oil and Grease.

A. All new restaurants and Industrial Users employing a fats, oils and/or grease process shall install an approved oil/grease trap or interceptor before discharging to the POTW. In the case of other uses including preexisting restaurants and Industrial Users, grease, oil, and sand interceptors shall be provided when, in the opinion of the Director, they are necessary for:

1. The proper handling of liquid wastes containing oil or grease in excessive amounts as to cause plugging or maintenance problems within the collection system;
2. Any flammable wastes; and
3. Other harmful pollutants.

B. Such interceptors shall be so located as to be readily and easily accessible for cleaning, inspection and sampling, and shall be approved by the Director prior to installation.

C. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperatures. They shall be of substantial construction, watertight, and equipped with easily removable cover which, when bolted in place, shall be gastight and watertight.

D. Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his or her expense to provide continuously efficient operation through periodic removal of accumulated grease, scum, oil or other floating substances and solids deposited in the interceptor. All cleaning residues shall be satisfactorily disposed of in an approved, environmentally acceptable manner. Authorized city employees shall be allowed access to grease traps and interceptors for the purpose of inspection and/or to verify compliance with this section. Fat waste, oil or grease removed from such a facility shall not be disposed of in the sanitary or storm sewer. A record of disposal shall be submitted to the city of McMinnville for review within 15 business days.

E. The use of hot water, enzymes, bacteria, chemicals or other agents or devices for the purpose of causing the contents of a pretreatment device to be discharged into the sanitary system, or to avoid the installation of a pretreatment device is prohibited. (Ord. 4987, 2015).

Pretreatment of Wastewater

13.05.100 Pretreatment Facilities.

Industrial Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all Categorical Pretreatment Standards, Local Limits, and the prohibitions set out in MMC [13.05.010](#) within the time limitations specified by EPA, the state, or the Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the Industrial User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Director for review, and shall be acceptable to the Director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the Industrial User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city under the provisions of this ordinance. (Ord. 4987, 2015).

13.05.110 Additional Pretreatment Measures.

A. Whenever deemed necessary, the Director may require Industrial Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the Industrial User's compliance with the requirements of this ordinance.

B. The Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An industrial wastewater discharge permit may be issued solely for flow equalization.

C. The Director may require any person discharging into the POTW to install and maintain, on their property and at their expense grease, oil, and sand interceptors when, in the opinion of the Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Director,

and shall be so located to be easily accessible for cleaning, sampling and inspection. Such interceptors shall be inspected, cleaned, and repaired by the user at their expense.

D. In the event the city, during maintenance of public sewer lines, record situations of grease accumulation in lines sufficient to restrict the normal flow of waste, upstream users shall be inspected. If the Director determines that an upstream user is responsible for the grease or oil discharge, the user will be required to cease discharge of the prohibited waste. Additionally, the user may be required to install an interceptor, maintain the interceptor, and may be charged for the cost

of cleaning the line. When an obstruction of the public line occurs, a violation of [40 CFR 403.5\(b\)\(3\)](#) or [\(6\)](#) and MMC [13.05.010\(B\)](#), Specific Prohibitions, has occurred.

E. Industrial Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter. (Ord. 4987, 2015).

13.05.120 Accidental Discharge / Slug Discharge Control plans.

The Director shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control slug discharges.

The Director may require any Industrial User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control slug discharges. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- A. Description of discharge practices, including not routine batch discharges;
- B. Description of stored chemicals;
- C. Procedures for immediately notifying the Director of any accidental or slug discharge, as required by MMC [13.05.450](#); and
- D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for

containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response. (Ord. 4987, 2015).

13.05.130 Mobile Waste Hauler Permits.

Mobile waste haulers may discharge loads only at locations designated by the Director. The Director may collect samples of each hauled load to ensure compliance with applicable standards. The Director may require the mobile waste hauler to provide a waste analysis of any load prior to discharge.

A. *Permit Required.* Any person proposing to be a mobile waste hauler and any person the Director has determined is likely to be a mobile waste hauler shall secure a mobile waste hauler discharge permit from the city. Any discharge by a mobile waste hauler without a permit is a violation of this chapter. Such waste shall not violate MMC [13.05.010](#) or any other requirements established by the city.

B. *Application.* Any new mobile waste hauler shall apply for a mobile waste hauler permit at least 30 days prior to its initial discharge. Applications shall be made to the Director in writing on forms provided by the city and shall include the following information.

1. Name, address, telephone number and authorized representative of the applicant;
2. NAICS or SIC number and other state or federal license numbers;
3. A list of environmental control permits held by or for the applicant;
4. A description of spill prevention measures or plans which are currently in place for use during storage or discharge of wastewater;
5. A description of activities and methods of collection, transportation, storage and discharge of wastewater, a description of transportation and storage facilities, and a general description of types and quantities of all materials which are or could be discharged; and
6. Proof of adequate general liability and property damage insurance.

C. The Director shall evaluate the data furnished by the applicant and may determine that additional information or sampling of wastewater characteristics is necessary. If such a determination is made, the applicant, unless the time period is extended, will be given 30 days to provide the required information or sampling. If it is not provided within the designated time period, the application shall be denied. After determining that the submitted application contains all the information required by this subsection, the Director shall consider the submission, any additional evidence that may have been requested, and any other available information relevant to the application. If the Director determines that the proposed discharge meets the requirements of this chapter and the additional septage does not otherwise overload or cause damage to any portion of the POTW; or will not create an imminent or potential hazard to personnel, the Director shall, within 30 days after determining that the application is complete, issue a mobile waste hauler discharge permit subject to appropriate conditions.

D. *Modification of Permit.* Conditions included in a mobile waste hauler discharge permit shall remain in effect for that permit until it expires, except that they may be revised by the Director whenever the Director deems a revision is necessary in order to effectively implement the pretreatment program, as required by city, state or federal standards, to effectuate the objectives of Chapters [13.04](#) through [13.12](#) MMC and the policy of the city to cooperate with the state and federal government, or to meet any emergency. The permit holder shall be informed of any proposed change in its permit at least 30 days prior to the effective date of the change except in the event of an emergency.

E. *Duration.* Permits shall be issued for a specified time period, not to exceed three years. The permit holder shall apply for permit reissuance a minimum of 90 days prior to the expiration of its existing permit if it desires to continue to discharge. An expired permit will continue to be in effect until the city takes final action on the renewal application to issue or deny the permit if:

1. The permit holder has submitted a complete permit application at least 90 days prior to the expiration of its permit; and
2. The failure to take final action is not due to any act or failure to act on the part of the permit holder.

F. *Conditions.* Mobile waste hauler discharge permits shall be expressly subject to all provisions of Chapters [13.04](#) through [13.12](#) MMC. Mobile waste hauler permits shall contain the following conditions:

1. Payment of applicable fees;
2. Limits on the average and maximum discharge of restricted substances;
3. Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;
4. Compliance schedules;
5. Requirements for submission of technical reports or discharge reports;
6. Requirements for notification of the city of any new introduction of restricted substances or any substantial change in the volume or character of the wastewater or any restricted substances being discharged;
7. Requirements for insurance coverage for all activities subject to the provisions of this chapter;
8. Requirements that the permit holder retain a copy of a valid mobile waste hauler discharge permit in each vehicle used for transportation of wastewater, and present that permit to any employee of the city authorized to inspect the mobile waste hauler discharge permit;
9. Requirements that the permit holder present a manifest of origin of all wastewater proposed for discharge;
10. Requirements that the permit holder discharge only at the designated discharge point and at designated times;
11. Requirements that the permit holder remove or otherwise clean up all spilled material or waste after discharge and that the permit holder agree to pay any public agency which provides assistance in such clean up or which performs such clean up after a failure by the permit holder to comply, an amount representing twice the amount of the actual expenditures of the public agency for labor and materials necessary to clean any spilled waste;
12. Requirements that the permit holder apply in writing on approved forms for permission to discharge any wastewater containing any restricted substances or wastewater containing any substances other than residential or septage waste; and

13. Other conditions as deemed appropriate by the Director to achieve compliance with Chapters [13.04](#) through [13.12](#) MMC.

G. *Transfer.* A mobile waste hauler discharge permit shall be issued to a specific mobile waste hauler for a specific operation. A mobile waste hauler discharge permit shall not be assigned, transferred or sold without the approval of the Director. Any successor mobile waste hauler shall agree to comply with the terms and conditions of the existing permit as a condition precedent to the approval by the Director of a transfer, sale or assignment of the permit.

H. *Analysis and Reporting Requirements.* Permit holders shall be required to submit information, certifications, compliance schedules and samples of discharges or perform such tests and report such test results to the Director as follow:

1. When requested by state or local public agencies; or
2. When deemed necessary by the Director for the proper treatment, analysis or control of discharges.

All such tests and reports shall be at the cost of the permit holder. To the degree practicable, the Director shall provide each permit holder or applicant with information on applicable local, state and federal wastewater analysis and reporting requirements, provided, however, that any failure to do so shall not excuse the permit holder from compliance with said requirements. (Ord. 4987, 2015).

Industrial Wastewater Discharge Permits

13.05.200 Industrial User Survey.

When requested by the Director, all Industrial Users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Director is authorized to prepare a form for this purpose and may periodically require Industrial Users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating service to the Industrial User and shall be considered a violation of this chapter. (Ord. 4987, 2015).

13.05.205 Wastewater Analysis.

When requested by the Director, an Industrial User must submit information on the nature and characteristics of its wastewater within 90 days of the request. The Director is authorized to prepare a form for this purpose and may periodically require Industrial Users to update this information. (Ord. 4987, 2015).

13.05.210 Individual and General Wastewater Discharge Permit Requirement.

- A. No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an industrial wastewater discharge permit from the Director, except that a Significant Industrial User that has filed a timely application pursuant to MMC [13.05.220](#) may continue to discharge for the time period specified therein.
- B. Significant Industrial Users classified as a Categorical Industrial User that does not discharge wastewater into the sanitary sewer are required to obtain a nondischarge Categorical Industrial User control mechanism.
- C. The Director may require other Industrial Users to obtain industrial wastewater discharge permits as necessary to carry out the purposes of this ordinance.
- D. Any violation of the terms and conditions of an industrial wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections [13.05.800](#) through [13.05.2020](#). Obtaining an industrial wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law. (Ord. 4987, 2015).

13.05.220 Individual and General Wastewater Discharge Permitting: Existing Connections.

Any Industrial User required to obtain an industrial wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within 60 days after said date, apply to the Director for an industrial wastewater discharge permit in accordance with MMC [13.05.240](#), and shall not cause or allow discharges to the POTW to continue after 90 days of the effective date of this ordinance except in accordance with an industrial wastewater discharge permit issued by the Director. (Ord. 4987, 2015).

13.05.230 Individual and General Wastewater Discharge Permitting: New Connections.

Any Industrial User required to obtain an industrial wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this industrial wastewater discharge permit in accordance with MMC [13.05.240](#) must be filed at least 90 days prior to the date upon which any discharge will begin or recommence. (Ord. 4987, 2015).

13.05.240 Individual and General Wastewater Discharge Permit Application Contents.

A. All Industrial Users required to obtain an industrial wastewater discharge permit must submit a permit application. Users that are eligible may request a general permit under MMC [13.05.250](#). The Director may require Industrial Users to submit all or some of the following information as part of a permit application:

1. Identifying information.
 - a. The name and address of the facility, including the name of the operator and owner.

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- b. Contact information, description of activities, facilities, and plant production processes on the premises;
 2. *Environmental permits.* A list of any environmental control permits held by or for the facility.
 3. Description of operations.
 - a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and NAICS or SIC codes of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
 - b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
 - c. Number and type of employees, hours of operation, and proposed or actual hours of operation;
 - d. Type and amount of raw materials processed (average and maximum per day);
 - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
 4. Time and duration of discharges.
 5. The location for monitoring all wastes covered by the permit.
 6. *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in MMC [13.05.020\(C\)](#) in accordance with [40 CFR 403.6\(e\)](#).
 7. Measurement of pollutants.
 - a. The Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for existing sources.
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- b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the Director, of regulated pollutants in the discharge from each regulated process.
 - c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
 - d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in MMC [13.05.490](#). Where the Standard requires compliance with a BMP or pollution prevention alternative, the Industrial User shall submit documentation as required by the Director or the applicable standards to determine compliance with the Standard.
 - e. Sampling must be performed in accordance with procedures set out in MMC [13.05.491](#).
8. Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on MMC [13.05.430\(B\)](#) in accordance with [40](#) CFR [403.12\(e\)\(2\)](#).
 9. Any request to be covered by a general permit based on MMC [13.05.250](#).
 10. Any other information as may be deemed necessary by the Director to evaluate the permit application.
- B. Incomplete or inaccurate applications will not be processed and will be returned to the Industrial User for revision. (Ord. 4987, 2015).

13.05.250 Wastewater Discharge Permitting – General Permit.

- A. At the discretion of the Director, the Director may use general permits to control Industrial User discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:
1. Involve the same or substantially similar types of operations;
 2. Discharge the same types of wastes;

3. Require the same effluent limitations;
4. Require the same or similar monitoring; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under industrial wastewater discharge permits.

B. To be covered by the general permit, the Industrial User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general permit, any requests in accordance with MMC [13.05.430\(B\)](#) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general permit until after the Director has provided written notice to the Industrial User that such a waiver request has been granted in accordance with MMC [13.05.430\(B\)](#).

C. The Director will retain a copy of the general permit, documentation to support the POTW's determination that a specific Industrial User meets the criteria in MMC [13.05.250\(A\)\(1\)](#) to [\(A\)\(5\)](#) and applicable state regulations, and a copy of the Industrial User's written request for coverage for three years after the expiration of the general permit.

D. The Director may not control an Industrial User through a general permit where the facility is subject to production-based Categorical Pretreatment Standards or Categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for Industrial Users whose limits are based on the combined wastestream formula (see MMC [13.05.020\(C\)](#)). (Ord. 4987, 2015).

13.05.260 Application Signatories and Certifications.

- A. All wastewater discharge permit applications, Industrial User reports and certification statements must be signed by an authorized representative of the Industrial User and contain the certification statement in MMC [13.05.494\(A\)](#).
- B. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall

responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this section must be submitted to the Director prior to or together with any reports to be signed by an authorized representative. (Ord. 4987, 2015).

13.05.270 Individual and General Wastewater Discharge Permit Decisions.

The Director will evaluate the data furnished by the Industrial User and may require additional information. Within 90 days of receipt of a complete permit application, the Director will determine whether to issue an industrial wastewater discharge permit. The Director may deny any application for an industrial wastewater discharge permit. (Ord. 4987, 2015).

Individual and General Wastewater Discharge Permit Issuance

13.05.300 Individual and General Wastewater Discharge Permit Duration.

An industrial wastewater discharge permit shall be issued for a specified time period, not to exceed five years from the effective date of the permit. An industrial wastewater discharge permit may be issued for a period less than five years, at the discretion of the Director. Each industrial wastewater discharge permit will indicate a specific date upon which it will expire. (Ord. 4987, 2015).

13.05.310 Individual and General Wastewater Discharge Permit Contents.

An industrial wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Director to prevent pass through or interference, protect the

quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate biosolids management and disposal, and protect against damage to the POTW.

A. Industrial wastewater discharge permits and general permits must contain:

1. A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;
2. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with MMC [13.05.340](#), and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
3. Effluent limits, including Best Management Practices, based on applicable pretreatment standards;
4. *Self monitoring, sampling, reporting, notification, and record-keeping requirements.* These requirements shall include an identification of pollutants (or Best Management Practice) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;
5. The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the discharge in accordance with MMC [13.05.430\(B\)](#);
6. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law;
7. Requirements to control slug discharge, if determined by the Director to be necessary; and
8. Any grant of the monitoring waiver by the Director (see MMC [13.05.430\(B\)](#)) must be included as a condition in the Industrial User's permit or other control mechanism.

B. Industrial wastewater discharge permits may contain, but need not be limited to, the following conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or not routine discharges;
4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
5. The unit charge or schedule of Industrial User charges and fees for the management of the wastewater discharged to the POTW;
6. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;
7. A statement that compliance with the industrial wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the industrial wastewater discharge permit; and
8. Other conditions as deemed appropriate by the Director to ensure compliance with this ordinance, and state and federal laws, rules, and regulations. (Ord. 4987, 2015).

13.05.320 Permit Issuance Process.

A. *Permit Appeals.* The Industrial User, may petition the Director to reconsider the terms of an industrial wastewater discharge permit within 10 days of its issuance.

1. Failure to submit a timely petition for reconsideration shall be deemed to be a waiver of the administrative appeal.
2. In its petition, the Industrial user must indicate the industrial wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the industrial wastewater discharge permit.

3. Reconsideration of the industrial wastewater discharge permit shall not be stayed pending the appeal.
4. If the Director fails to act within 10 days, a petition for reconsideration shall be deemed to be denied. Decisions not to reconsider an industrial wastewater discharge permit, not to issue an industrial wastewater discharge permit, or not to modify an industrial wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.
5. Industrial Users seeking judicial review of the final administrative industrial wastewater discharge permit decision must do so by filing a complaint within 180 days in the Yamhill County Court for Yamhill County in accordance to Oregon Revised Statute (ORS) §12.070 (Judgments). (Ord. 4987, 2015).

13.05.330 Permit Modification.

A. The Director may modify an industrial wastewater discharge permit for good cause, including, but not limited to, the following reasons:

1. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
2. To address significant alterations or additions to the Industrial User's operation, processes, or wastewater volume or character since the time of the industrial wastewater discharge permit issuance;
3. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
4. Information indicating that the permitted discharge poses a threat to the city's POTW, city personnel, or the receiving waters;
5. Violation of any terms or conditions of the industrial wastewater discharge permit;
6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

7. Revision of or a grant of variance from Categorical Pretreatment Standards pursuant to [40 CFR 403.13](#);
8. To correct typographical or other errors in the industrial wastewater discharge permit;
or
9. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with MMC [13.05.340](#). (Ord. 4987, 2015).

13.05.340 Individual and General Wastewater Discharge Permit Transfer.

Industrial wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least 60 days advance notice to the Director and the Director approves the industrial wastewater discharge permit transfer. The notice to the Director must include a written certification by the new owner or operator which:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing industrial wastewater discharge permit.

Failure to provide advance notice of a transfer renders the industrial wastewater discharge permit void as of the date of facility transfer. (Ord. 4987, 2015).

13.05.350 Individual and General Wastewater Discharge Permit Revocation.

The Director may revoke an industrial wastewater discharge permit for good cause, including, but not limited to, the following reasons:

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- A. Failure to notify the Director of significant changes to the wastewater prior to the changed discharge;
 - B. Failure to provide prior notification to the Director of changed conditions pursuant to MMC [13.05.440](#);
 - C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
 - D. Falsifying self-monitoring reports and certification statements;
 - E. Tampering with monitoring equipment;
 - F. Refusing to allow the Director timely access to the facility premises and records;
 - G. Failure to meet effluent limitations;
 - H. Failure to pay fines;
 - I. Failure to pay sewer charges;
 - J. Failure to meet compliance schedules;
 - K. Failure to complete a wastewater survey or the wastewater discharge permit application;
 - L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
 - M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

Industrial wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All industrial wastewater discharge permits issued to an Industrial User are void upon the issuance of a new industrial wastewater discharge permit to that Industrial User. (Ord. 4987, 2015).

13.05.360 Individual and General Wastewater Discharge Permit Reissuance.

An Industrial User with an expiring industrial wastewater discharge permit shall apply for industrial wastewater discharge permit reissuance by submitting a complete permit application, in accordance with MMC [13.05.240](#), a minimum of 60 days prior to the expiration of the Industrial User's existing industrial or general wastewater discharge permit. (Ord. 4987, 2015).

13.05.370 Regulation of Waste Received from Other Jurisdictions.

A. If another municipality, or sewer user located within another municipality, contributes wastewater to the POTW, the Director shall enter into an intergovernmental agreement (IGA) with the contributing municipality.

B. Prior to entering into an agreement required by Paragraph A, above, the Director shall request the following information from the contributing municipality:

1. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
2. An inventory of all sewer users located within the contributing municipality that are discharging to the POTW; and
3. Such other information as the Director may deem necessary.

C. An intergovernmental agreement, as required by Paragraph A, above, shall contain the following conditions:

1. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in MMC [13.05.040](#). The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the city's ordinance or Local Limits;
2. A requirement for the contributing municipality to submit a revised sewer user inventory on at least an annual basis;

3. A provision specifying which pretreatment implementation activities, including industrial wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Director; and which of these activities will be conducted jointly by the contributing municipality and the Director;
4. A requirement for the contributing municipality to provide the Director with access to all information that the contributing municipality obtains as part of its pretreatment activities;
5. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
6. Requirements for monitoring the contributing municipality's discharge;
7. A provision ensuring the Director access to the facilities of sewer users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Director; and
8. A provision specifying remedies available for breach of the terms of the intergovernmental agreement. (Ord. 4987, 2015).

Reporting Requirements

13.05.400 Baseline Monitoring Reports.

A. Within either 180 days after the effective date of a Categorical Pretreatment Standard, or the final administrative decision on a category determination under [40 CFR 403.6\(a\)\(4\)](#), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to the Director a report which contains the information listed in Paragraph B, below. At least 90 days prior to commencement of their discharge, new sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical standard, shall submit to the Director a report which contains the information listed in Paragraph B, below. A new source shall report the method of

pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Categorical Industrial Users (CIU) described above shall submit the information set forth below.

1. All information required in MMC [13.05.240\(A\)\(1\)](#) through [\(A\)\(6\)](#).
2. Measurement of pollutants.
 - a. The CIU shall provide the information required in MMC [13.05.240\(A\)\(7\)\(a\)](#) through [\(A\)\(7\)\(d\)](#).
 - b. The CIU shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this Paragraph.
 - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the CIU should measure the flows and concentrations necessary to allow use of the combined wastestream formula in [40 CFR 403.6\(e\)](#) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with [40 CFR 403.6\(e\)](#), this adjusted limit along with supporting data shall be submitted to the Control Authority;
 - d. Sampling and analysis shall be performed in accordance with MMC [13.05.490](#);
 - e. The Director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
 - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
3. *Compliance certification.* A statement, reviewed by the CIU's authorized representative as defined in MMC [13.04.040\(A\)\(3\)](#) and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional

operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

4. *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the CIU will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in MMC [13.05.410](#).

5. *Signature and report certification.* All baseline monitoring reports must be certified in accordance with MMC [13.05.494\(A\)](#) and signed by an authorized representative as defined in MMC [13.04.040\(A\)\(3\)](#). (Ord. 4987, 2015).

13.05.410 Compliance Schedule Progress Reports.

The following conditions shall apply to the compliance schedule required by MMC [13.05.400\(B\)\(4\)](#):

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

B. No increment referred to above shall exceed nine months;

C. The Industrial User shall submit a progress report to the Director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the Industrial User to return to the established schedule; and

D. In no event shall more than nine months elapse between such progress reports to the Director. (Ord. 4987, 2015).

13.05.420 Reports on Compliance with Categorical Pretreatment Standard Deadline.

Within 90 days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any Categorical Industrial User subject to such pretreatment standards and requirements shall submit to the Director a report containing the information described in MMC [13.05.240\(A\)\(6\)](#) and [\(A\)\(7\)](#) and [13.05.400\(B\)\(2\)](#). For Categorical Industrial Users subject to equivalent mass or concentration limits established in accordance with the procedures in MMC [13.05.020](#), this report shall contain a reasonable measure of the Categorical Industrial User's long-term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the Industrial User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with MMC [13.05.494\(A\)](#). All sampling will be done in conformance with MMC [13.05.491](#). (Ord. 4987, 2015).

13.05.430 Periodic Compliance Reports.

A. Except as specified in MMC [13.05.430\(C\)](#), all Significant Industrial Users must, at a frequency determined by the Director, submit no less than twice per year (June and December [or on dates specified]) reports indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the Significant Industrial User must submit documentation required by the Director or the pretreatment standard necessary to determine the compliance status of the Significant Industrial User.

B. The city may authorize an Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a pollutant regulated by a Categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities

of the Industrial User. [See [40 CFR 403.12\(e\)\(2\)](#)] This authorization is subject to the following conditions:

1. The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.
2. The monitoring waiver is valid only for the duration of the effective period of the industrial wastewater discharge permit, but in no case longer than five years. The Industrial User must submit a new request for the waiver before the waiver can be granted for each subsequent industrial wastewater discharge permit. See MMC [13.05.240\(A\)\(8\)](#).
3. In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
4. The request for a monitoring waiver must be signed in accordance with MMC [13.05.040\(A\)\(3\)](#), and include the certification statement in MMC [13.05.494\(A\)](#) in accordance with [40 CFR 403.6\(a\)\(2\)\(ii\)](#).
5. Nondetectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from [40 CFR Part 136](#) with the lowest minimum detection level for that pollutant was used in the analysis.
6. Any grant of the monitoring waiver by the Director must be included as a condition in the Industrial User's permit. The reasons supporting the waiver and any information submitted by the Industrial User in its request for the waiver must be maintained by the Director for three years after expiration of the waiver.
7. Upon approval of the monitoring waiver and revision of the Industrial User's permit by the Director, the Industrial User must certify on each report with the statement in MMC [13.05.494\(B\)](#) below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User.
8. In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the Industrial User's operations, the Industrial User must immediately: comply with the monitoring requirements of subsection [A](#) of this section, or

other more frequent monitoring requirements imposed by the Director, and notify the Director.

9. This provision does not supersede certification processes and requirements established in Categorical Pretreatment Standards, except as otherwise specified in the Categorical Pretreatment Standard.

C. The city may reduce the requirement for periodic compliance reports MMC [13.05.340\(A\)](#) to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the state, where the Industrial User's total categorical wastewater flow does not exceed any of the following:

1. POTW's value for 0.01 percent of the POTW's design dry-weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches.
2. POTW's value for 0.01 percent of the design dry-weather organic treatment capacity of the POTW; and
3. POTW's value for 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved Local Limits were developed in accordance with MMC [13.05.040](#).

Reduced reporting is not available to Industrial Users that have in the last two years been in Significant Noncompliance, as defined in MMC [13.05.700](#). In addition, reduced reporting is not available to an Industrial User with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the Director, decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period.

D. All periodic compliance reports must be signed and certified in accordance with MMC [13.05.494\(A\)](#).

E. All wastewater samples must be representative of the Industrial User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an Industrial User to keep its monitoring facility in good working order shall not be grounds for the Industrial User to claim that sample results are unrepresentative of its discharge.

F. If an Industrial User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Director, using the procedures prescribed in MMC [13.05.491](#), the results of this monitoring shall be included in the report. (Ord. 4987, 2015).

13.05.440 Reports of Changed Conditions.

Each Industrial User must notify the Director of any significant changes to the Industrial User's operations or system which might alter the nature, quality, or volume of its wastewater including facility closure at least 30 days before the change.

A. The Director may require the Industrial User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under MMC [13.05.240](#).

B. The Director may issue an industrial wastewater discharge permit under MMC [13.05.360](#) or modify an existing wastewater discharge permit under MMC [13.05.330](#) in response to changed conditions or anticipated changed conditions. (Ord. 4987, 2015).

13.05.450 Reports of Potential Problems.

A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a not routine, episodic nature, a non-customary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the Industrial User shall immediately telephone and notify the Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the Industrial User.

B. Within five days following such discharge, the Industrial User shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other

damage to person or property; nor shall such notification relieve the Industrial User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

C. A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in subsection A of this section. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

D. Significant Industrial Users are required to notify the Director immediately of any changes at its facility affecting the potential for a slug discharge. (Ord. 4987, 2015).

13.05.460 Reports from Unpermitted Industrial Users.

All Industrial Users not required to obtain an industrial wastewater discharge permit shall provide appropriate reports to the Director as the Director may require. (Ord. 4987, 2015).

13.05.470 Notice of Violation / Repeat Sampling and Reporting.

If sampling performed by an Industrial User indicates a violation, the Industrial User must notify the Director within 24 hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within 30 days after becoming aware of the violation. Resampling by the Industrial User is not required if the city performs sampling at the Industrial User's facility at least once a month, or if the city performs sampling at the Industrial User between the time when the initial sampling was conducted and the time when the Industrial User or the city receives the results of this sampling, or if the city has performed the sampling and analysis in lieu of the Industrial User. (Ord. 4987, 2015).

13.05.480 Notification of the Discharge of Hazardous Waste.

A. Any Industrial User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste

authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under [40 CFR Part 261](#). Such notification must include the name of the hazardous waste as set forth in [40 CFR Part 261](#), the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the Industrial User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this Paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under MMC [13.05.440](#). The notification requirement in this section does not apply to pollutants already reported by Industrial Users subject to Categorical Pretreatment Standards under the self monitoring requirements of MMC [13.05.400](#), [13.05.420](#), and [13.05.430](#).

B. Dischargers are exempt from the requirements of Paragraph A, above, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in [40 CFR 261.30\(d\)](#) and [261.33\(e\)](#). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in [40 CFR 261.30\(d\)](#) and [261.33\(e\)](#), requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

C. In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

D. In the case of any notification made under this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable federal or state law. (Ord. 4987, 2015).

13.05.490 Analytical Requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in [40 CFR Part 136](#) and amendments thereto, unless otherwise specified in an applicable Categorical Pretreatment Standard. If [40 CFR Part 136](#) does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Director or other parties approved by EPA. (Ord. 4987, 2015).

13.05.491 Sample Collection.

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

A. Except as indicated in subsections [B](#) and [C](#) of this section, the Industrial User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in [40 CFR Part 136](#) and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as

documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

C. For sampling required in support of baseline monitoring and 90-day compliance reports required in MMC [13.05.400](#) and [13.05.420](#) in accordance with [40 CFR 403.12\(b\)](#) and [\(d\)](#), a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For the reports required by paragraphs in MMC [13.05.430](#) in accordance with [40 CFR 403.12\(e\)](#) and [403.12\(h\)](#), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable pretreatment standards and requirements. (Ord. 4987, 2015).

13.05.492 Date of Receipt of Reports.

Written reports will be deemed to have been submitted on the date postmarked. For reports, which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern. (Ord. 4987, 2015).

13.05.493 Recordkeeping.

Industrial Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the Industrial User independent of such requirements, and documentation associated with Best Management Practices established under MMC [13.05.010\(C\)](#). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three

years. This period shall be automatically extended for the duration of any litigation concerning the Industrial User or the city, or where the Industrial User has been specifically notified of a longer retention period by the Director. (Ord. 4987, 2015).

13.05.494 Certification Statements.

A. *Certification of Permit Applications, Industrial User Reports and Initial Monitoring Waiver.* The following certification statement is required to be signed and submitted by Industrial Users submitting permit applications in accordance with MMC [13.05.260](#); Industrial Users submitting baseline monitoring reports under MMC [13.05.400\(B\)\(5\)](#). [Note: See [40 CFR 403.12\(b\)](#)]; Industrial Users submitting reports on compliance with the Categorical Pretreatment Standard deadlines under MMC [13.05.420](#) [Note: See [40 CFR 403.12\(d\)](#)]; Industrial Users submitting periodic compliance reports required by MMC [13.05.430\(A\)](#) through [\(D\)](#). [Note: See [40 CFR 403.12\(e\)](#) and [\(h\)](#)]; and Industrial Users submitting an initial request to forego sampling of a pollutant on the basis of MMC [13.05.430\(B\)\(4\)](#). [Note: See [40 CFR 403.12\(e\)\(2\)\(iii\)](#)]. The following certification statement must be signed by an authorized representative as defined in MMC [13.04.040\(A\)\(3\)](#).

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

B. *Certification of Pollutants Not Present.* Industrial Users that have an approved monitoring waiver based on MMC [13.05.430\(B\)](#) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User. [Note: See [40 CFR 403.12\(e\)\(2\)\(v\)](#)]

Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for [40 CFR _____](#) [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____

[list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under MMC [13.05.430\(A\)](#).

(Ord. 4987, 2015).

Compliance Monitoring

13.05.500 Right of Entry: Inspection and Sampling.

The Director shall have the right to enter the premises of any Industrial User to determine whether the Industrial User is complying with all requirements of this ordinance and any industrial wastewater discharge permit or order issued hereunder. Industrial Users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, photographing, records examination and copying, and the performance of any additional duties.

- A. Where an Industrial User has security measures in force which require proper identification and clearance before entry onto its premises, the Industrial User shall make necessary arrangements with security so that, upon presentation of proper identification, the Director shall be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The Director shall have the right to set up on the Industrial User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the Industrial User's operations.
- C. The Director may require the Industrial User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the Industrial User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at manufactures required frequency to ensure their accuracy.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the Industrial User at the written or

verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the Industrial User.

E. Unreasonable delays in allowing the Director access to the Industrial User's premises shall be a violation of this ordinance. (Ord. 4987, 2015).

13.05.510 Search Warrants.

If the Director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Director may seek issuance of a search warrant through the city Attorney. (Ord. 4987, 2015).

Confidential Information

13.05.600 Confidential Information.

Information and data on a Industrial User obtained from reports, surveys, wastewater discharge permit applications, industrial wastewater discharge permits, general permits, and monitoring programs, and from the Director's inspection and sampling activities, shall be available to the public without restriction, unless the Industrial User specifically requests in writing, and is able to demonstrate to the satisfaction of the Director, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the Industrial User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to

governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at [40 CFR 2.302](#) shall not be recognized as confidential information and shall be available to the public without restriction. (Ord. 4987, 2015).

Publication of Industrial Users in Significant Noncompliance

13.05.700 Significant Noncompliance.

The Director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Industrial Users which, at any time during the previous 12 months, were in Significant Noncompliance with applicable pretreatment standards and requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates subsection [C](#), [D](#), or [H](#) of this section) and shall mean:

- A. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined in MMC [13.04.040\(A\)\(49\)](#);
- B. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by MMC [13.04.040\(A\)\(49\)](#), multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- C. Any other violation of a pretreatment standard or requirement that the Director determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

- D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation(s), which may include a violation of Best Management Practices, which the Director determines will adversely affect the operation or implementation of the pretreatment program. (Ord. 4987, 2015).

Administrative Enforcement Remedies

13.05.800 Notification of Violation.

When the Director finds that an Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that Industrial User a written Notice of Violation. Within five days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the Industrial User to the Director. Submission of such a plan in no way relieves the Industrial User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, even if a Notice of Violation has not been issued. (Ord. 4987, 2015).

13.05.810 Consent Orders.

The Director may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any Industrial User responsible for noncompliance. Such documents shall include specific action to be taken by the Industrial User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to MMC [13.05.830](#) and [13.05.840](#) and shall be judicially enforceable. (Ord. 4987, 2015).

13.05.820 Show Cause Hearing.

The Director may order an Industrial User which has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the Industrial User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the Industrial User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally, by registered or certified mail (return receipt requested), or by traceable carrier at least 10 days prior to the hearing. Such notice may be served on any authorized representative of the Industrial User as defined in MMC [13.04.040\(A\)\(3\)](#) and required by MMC [13.05.260\(A\)](#). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

13.05.830 Compliance Orders.

When the Director finds that an Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial or general wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may issue an order to the Industrial User responsible for the discharge directing that the Industrial User come into compliance within a specified time. If the Industrial User does not come into compliance within the time provided, sewer service may be discontinued unless adequate

treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the Industrial User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

13.05.840 Cease and Desist Orders.

When the Director finds that an Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, or that the Industrial User's past violations are likely to recur, the Director may issue an order to the Industrial User directing it to cease and desist all such violations and directing the Industrial User to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

13.05.850 Administrative Fines.

A. When the Director finds that an Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may fine such Industrial User in an amount up to and including \$1,000.00. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

B. Unpaid charges, fines, and penalties shall, after 60 calendar days, be assessed an additional interest at 9 percent APR of the unpaid balance per month. A lien against the Industrial User's property may be sought for unpaid charges, fines, and penalties.

C. Industrial Users desiring to dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within 30 days of receiving the fine. Where a request has merit, the Director may convene a hearing on the matter. In the event the Industrial User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the Industrial User. The Director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

13.05.860 Emergency Suspensions.

The Director may immediately suspend a Industrial User's discharge, after informal notice to the Industrial User, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend an Industrial User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

A. Any Industrial User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of an Industrial User's failure to immediately comply voluntarily with the suspension order, the Director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director may allow the Industrial User to recommence its discharge when the Industrial User has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless the termination proceedings in MMC [13.05.870](#) are initiated against the Industrial User.

B. An Industrial User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the

harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under MMC [13.05.820](#) or [13.05.870](#)

Nothing in this section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this section. (Ord. 4987, 2015).

13.05.870 Termination of Discharge.

In addition to the provisions in MMC [13.05.350](#), any Industrial User who violates the following conditions is subject to discharge termination:

- A. Violation of industrial wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the Industrial User's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the pretreatment standards in MMC [13.05.010](#).

Such Industrial User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under MMC [13.05.820](#) why the proposed action should not be taken. Exercise of this option by the Director shall not be a bar to, or a prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

Judicial Enforcement Remedies

13.05.900 Injunctive Relief.

When the Director finds that a Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued

hereunder, or any other pretreatment standard or requirement, the Director may petition the Circuit Court for Yamhill County through the city Attorney for the issuance of a temporary or permanent injunction or restraining order, as appropriate, which restrains or compels the specific performance of the industrial wastewater discharge permit, the general permit, order, or other requirement imposed by this ordinance on activities of the Industrial User. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the Industrial User to conduct environmental remediation. A petition for injunctive relief or for a restraining order shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User. (Ord. 4987, 2015).

13.05.910 Civil Penalties.

- A. An Industrial User who has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty allowed under state law but not less than \$1,000.00 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- B. The Director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by [the city].
- C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the Industrial User's violation, corrective actions by the Industrial User, the compliance history of the Industrial User, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User. (Ord. 4987, 2015).

13.05.920 Criminal Prosecution.

- A. An Industrial User who willfully or negligently violates any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of an unclassified misdemeanor, punishable by a fine of not more than \$1,000.00 per violation, per day, or imprisonment for not more than one year, or both.
- B. An Industrial User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of an unclassified misdemeanor and be subject to a penalty of at least \$1,000.00, or be subject to imprisonment for not more than one year, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.
- C. An Industrial User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, industrial wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than \$1,000.00 per violation, per day, or imprisonment for not more than one year, or both.
- D. In the event of a second conviction, an Industrial User shall be punished by a fine of not more than \$3,000.00 per violation, per day, or imprisonment for not more than three years, or both. (Ord. 4987, 2015).

13.05.930 Remedies Nonexclusive.

The remedies provided for in this ordinance are not exclusive. The Director may take any, all, or any combination of these actions against a noncompliant Industrial User. Enforcement of pretreatment violations will generally be in accordance with [the city's] enforcement response plan. However, the Director may take other action against any Industrial User when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant Industrial User. (Ord. 4987, 2015).

Supplemental Enforcement Action

13.05.1030 Payment of Outstanding Fees and Penalties.

The Director may decline to issue or reissue an industrial wastewater discharge permit to any Industrial User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous industrial wastewater discharge permit, or a previous general permit, or order issued hereunder. (Ord. 4987, 2015).

Affirmative Defenses to Discharge Violations

13.05.2000 Upset.

A. For the purposes of this section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of Paragraph C., below, are met.

C. An Industrial User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the Industrial User can identify the cause(s) of the upset;
2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

3. The Industrial User has submitted the following information to the Director within 24 hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five days]:

- a. A description of the indirect discharge and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
- c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

D. In any enforcement proceeding, the Industrial User seeking to establish the occurrence of an upset shall have the burden of proof.

E. Industrial Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

F. Industrial Users shall control production of all discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails. (Ord. 4987, 2015).

13.05.2010 Prohibited Discharge Standards.

An Industrial User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in MMC [13.05.010\(A\)](#) or the specific prohibitions in MMC [13.05.010\(B\)\(3\)](#) through [\(B\)\(18\)](#) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

A. A Local Limit exists for each pollutant discharged and the Industrial User was in compliance with each limit directly prior to, and during, the pass through or interference; or

B. No Local Limit exists, but the discharge did not change substantially in nature or constituents from the Industrial User's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable biosolids use or disposal requirements. (Ord. 4987, 2015).

13.05.2020 Bypass.

A. For the purposes of this section,

1. Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.
2. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. An Industrial User may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections [C](#) and [D](#) of this section.

C. *Bypass Notifications.*

1. If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Director, at least 10 days before the date of the bypass, if possible.
2. An Industrial User shall submit oral notice to the Director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent

reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

D. *Bypass.*

1. Bypass is prohibited, and the Director may take an enforcement action against an Industrial User for a bypass, unless
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The Industrial User submitted notices as required under subsection [C](#) of this section.
2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in subsection [\(D\)\(1\)](#) of this section.

Miscellaneous Provisions

13.05.3010 Severability.

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect. (Ord. 4987, 2015).

13.05.3020 Water Supply Severance.

Whenever a user has violated or continues to violate any provision of this title, an individual wastewater discharge permit, general permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will recommence, at the user's expense, only after the user has satisfactorily demonstrated its ability to comply. (Ord. 4987, 2015).

This is a nonfinal proof copy of the McMinnville Municipal Code for customer review only. It should not be relied upon for any purpose.

The McMinnville Municipal Code is current through Ordinance 5111, passed March 8, 2022.

Disclaimer: The city recorder's office has the official version of the McMinnville Municipal Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

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

[City Telephone: \(503\) 434-2342](tel:(503)434-2342)

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Chapter 13.05

SANITARY SEWERS – INDUSTRIAL PRETREATMENT REGULATIONS

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Prohibitions

13.05.010 General Discharge Prohibitions.

A. *General Prohibitions.* No sewer user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all sewer users of the POTW whether or not they are subject to Categorical Pretreatment Standards or any other national, state, or local pretreatment standards or requirements.

B. *Specific Prohibitions.* No sewer user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

1. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in [40 CFR 261.21](#);
2. Wastewater having a pH less than 6.0 or more than 11.0 SU, or otherwise causing corrosive structural damage to the POTW or equipment;
3. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than 1/2 inch in any dimension;
4. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
5. Wastewater having a temperature greater than 140 degrees F (60 degrees C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C);
6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

8. Trucked or hauled pollutants, except at discharge points designated by the Director in accordance with MMC [13.05.130](#);
9. Noxious or malodorous liquids, aldehydes, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
10. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the city's NPDES permit;
11. Wastewater containing any radioactive wastes or isotopes except in compliance with the current "Oregon Regulations for the Control of Radiation" (OAR [333-120-0520](#));
12. Stormwater, surface water, ground water, artesian well water, roof runoff, subsurface drainage, condensate, deionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized by the Director;
13. Sludges, screenings, or other residues from the pretreatment of industrial wastes;
14. Medical wastes, except as specifically authorized by the Director in a city control mechanism;
15. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test;
16. Detergents, surface-active agents, or other substances which might cause excessive foaming in the POTW;
17. Fats, oils, or greases of animal or vegetable origin in amounts that will cause interference or pass through;
18. Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than 10 percent of the Lower Explosive Limit or any single reading over 20 percent of the Lower Explosive Limit of the meter.

C. The Director may develop Best Management Practices (BMPs), by ordinance or in industrial wastewater discharge permits or general permits to implement the requirements of MMC [13.05.010](#).

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. (Ord. 4987, 2015).

13.05.020 National Categorical Pretreatment Standards.

Categorical Industrial Users (CIU) must comply with the Categorical Pretreatment Standards found at [40](#) CFR Chapter I, Subchapter N, Parts 405-471.

A. Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Director may impose equivalent concentration or mass limits in accordance with subsection [E](#) and [E](#) of this section.

B. When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Director may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

C. When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the Director shall impose an alternate limit in accordance with [40](#) CFR [403.6\(e\)](#).

D. When a Categorical Pretreatment Standard is expressed only in terms of pollutant concentrations, an Industrial User may request that the city convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Director. The city may establish equivalent mass limits only if the Industrial User meets all the conditions set forth in subsections [\(D\)\(1\)\(a\)](#) through [\(D\)\(1\)\(e\)](#) of this section.

1. To be eligible for equivalent mass limits, the Industrial User must:
 - a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its industrial wastewater discharge permit;

-
- b. Currently use control and treatment technologies adequate to achieve compliance with the applicable Categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
 - c. Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
 - d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and
 - e. Have consistently complied with all applicable Categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.
2. An Industrial User subject to equivalent mass limits must:
- a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
 - b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
 - c. Continue to record the facility's production rates and notify the Director whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in subsection [\(D\)\(1\)\(c\)](#) of this section. Upon notification of a revised production rate, the Director will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
 - d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subsection [\(D\)\(1\)\(a\)](#) of this section so long as it discharges under an equivalent mass limit.
3. When developing equivalent mass limits, the Director:
- a. Will calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based

daily maximum and monthly average standard for the applicable Categorical Pretreatment Standard and the appropriate unit conversion factor;

b. Upon notification of a revised production rate, will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

c. May retain the same equivalent mass limit in subsequent industrial wastewater discharger permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to MMC [13.05.060](#). The Industrial User must also be in compliance with MMC [13.05.2020](#) regarding the prohibition of bypass.

E. The Director may convert the mass limits of the Categorical Pretreatment Standards of [40](#) CFR Parts [414](#), [419](#), and [455](#) to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Director.

F. Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this section in lieu of the promulgated Categorical Standards from which the equivalent limitations were derived.

G. Many Categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

H. Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the Director within two business days after the Industrial User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any Industrial User not notifying the Director of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long-term average production rate. (Ord. 4987, 2015).

13.05.030 State Pretreatment Requirements.

Industrial Users must comply with applicable state pretreatment standards and requirements set out in Oregon Administrative Rules (OAR) Chapter 340, Division 45, Section 0063 and incorporated herein. (Ord. 4987, 2015).

13.05.040 Local Limits.

A. The Director is authorized to establish Local Limits pursuant to [40 CFR 403.5\(c\)](#), and may modify and publish revisions from time to time appropriately. No Significant Industrial User (SIU) shall discharge wastewater containing pollutants in excess of the established Local Limits.

~~B. The following pollutant limits are established to protect against pass through and interference. No Significant Industrial User (SIU) shall discharge wastewater containing in excess of the following limitations listed in Table 1:~~

~~Table Table 1. Local Limits~~

Pollutant	Units	Local Limit
Arsenic	mg/l	0.3
Cadmium	mg/l	0.2
Chromium	mg/l	5.7
Copper	mg/l	2.1
Cyanide	mg/l	0.5
Fats, oil, grease	mg/l	100
Lead	mg/l	0.8
Mercury	mg/l	0.04

Pollutant	Units	Local Limit
Molybdenum	mg/l	0.6
Nickel	mg/l	1.8
Selenium	mg/l	0.7
Silver	mg/l	0.2
Zinc	mg/l	2.8

~~CB.~~ The Local Limits apply at the point where the wastewater is discharged to the POTW or where industrial process water enters a separate sampling vault and is the designated sample point for the SIU and the city. ~~All concentrations for metallic substances are for total metal unless indicated otherwise. The Director may impose mass limitations in addition to the concentration-based limitations above.~~ (Ord. 4987, 2015).

13.05.050 City's Right of Revision.

The city reserves the right to establish, by ordinance or in industrial wastewater discharge permits or in general permits, more stringent standards or requirements on discharges to the POTW consistent with the purpose of this ordinance. (Ord. 4987, 2015).

13.05.060 Dilution.

No Industrial User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on Industrial Users who are using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate. (Ord. 4987, 2015).

13.05.070 Disposal of Oil and Grease.

A. All new restaurants and Industrial Users employing a fats, oils and/or grease process shall install an approved oil/grease trap or interceptor before discharging to the POTW. In the case of other uses including preexisting restaurants and Industrial Users, grease, oil, and sand interceptors shall be provided when, in the opinion of the Director, they are necessary for:

1. The proper handling of liquid wastes containing oil or grease in excessive amounts as to cause plugging or maintenance problems within the collection system;
2. Any flammable wastes; and
3. Other harmful pollutants.

B. Such interceptors shall be so located as to be readily and easily accessible for cleaning, inspection and sampling, and shall be approved by the Director prior to installation.

C. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperatures. They shall be of substantial construction, watertight, and equipped with easily removable cover which, when bolted in place, shall be gastight and watertight.

D. Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his or her expense to provide continuously efficient operation through periodic removal of accumulated grease, scum, oil or other floating substances and solids deposited in the interceptor. All cleaning residues shall be satisfactorily disposed of in an approved, environmentally acceptable manner. Authorized city employees shall be allowed access to grease traps and interceptors for the purpose of inspection and/or to verify compliance with this section. Fat waste, oil or grease removed from such a facility shall not be disposed of in the sanitary or storm sewer. A record of disposal shall be submitted to the city of McMinnville for review within 15 business days.

E. The use of hot water, enzymes, bacteria, chemicals or other agents or devices for the purpose of causing the contents of a pretreatment device to be discharged into the sanitary system, or to avoid the installation of a pretreatment device is prohibited. (Ord. 4987, 2015).

Pretreatment of Wastewater

13.05.100 Pretreatment Facilities.

Industrial Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all Categorical Pretreatment Standards, Local Limits, and the prohibitions set out in MMC [13.05.010](#) within the time limitations specified by EPA, the state, or the Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the Industrial User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Director for review, and shall be acceptable to the Director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the Industrial User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city under the provisions of this ordinance. (Ord. 4987, 2015).

13.05.110 Additional Pretreatment Measures.

A. Whenever deemed necessary, the Director may require Industrial Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the Industrial User's compliance with the requirements of this ordinance.

B. The Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An industrial wastewater discharge permit may be issued solely for flow equalization.

C. The Director may require any person discharging into the POTW to install and maintain, on their property and at their expense grease, oil, and sand interceptors when, in the opinion of the Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Director,

and shall be so located to be easily accessible for cleaning, sampling and inspection. Such interceptors shall be inspected, cleaned, and repaired by the user at their expense.

D. In the event the city, during maintenance of public sewer lines, record situations of grease accumulation in lines sufficient to restrict the normal flow of waste, upstream users shall be inspected. If the Director determines that an upstream user is responsible for the grease or oil discharge, the user will be required to cease discharge of the prohibited waste. Additionally, the user may be required to install an interceptor, maintain the interceptor, and may be charged for the cost

of cleaning the line. When an obstruction of the public line occurs, a violation of [40 CFR 403.5\(b\)\(3\)](#) or [\(6\)](#) and MMC [13.05.010\(B\)](#), Specific Prohibitions, has occurred.

E. Industrial Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter. (Ord. 4987, 2015).

13.05.120 Accidental Discharge / Slug Discharge Control plans.

The Director shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control slug discharges.

The Director may require any Industrial User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control slug discharges. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

- A. Description of discharge practices, including not routine batch discharges;
- B. Description of stored chemicals;
- C. Procedures for immediately notifying the Director of any accidental or slug discharge, as required by MMC [13.05.450](#); and
- D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for

containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response. (Ord. 4987, 2015).

13.05.130 Mobile Waste Hauler Permits.

Mobile waste haulers may discharge loads only at locations designated by the Director. The Director may collect samples of each hauled load to ensure compliance with applicable standards. The Director may require the mobile waste hauler to provide a waste analysis of any load prior to discharge.

A. *Permit Required.* Any person proposing to be a mobile waste hauler and any person the Director has determined is likely to be a mobile waste hauler shall secure a mobile waste hauler discharge permit from the city. Any discharge by a mobile waste hauler without a permit is a violation of this chapter. Such waste shall not violate MMC [13.05.010](#) or any other requirements established by the city.

B. *Application.* Any new mobile waste hauler shall apply for a mobile waste hauler permit at least 30 days prior to its initial discharge. Applications shall be made to the Director in writing on forms provided by the city and shall include the following information.

1. Name, address, telephone number and authorized representative of the applicant;
2. NAICS or SIC number and other state or federal license numbers;
3. A list of environmental control permits held by or for the applicant;
4. A description of spill prevention measures or plans which are currently in place for use during storage or discharge of wastewater;
5. A description of activities and methods of collection, transportation, storage and discharge of wastewater, a description of transportation and storage facilities, and a general description of types and quantities of all materials which are or could be discharged; and
6. Proof of adequate general liability and property damage insurance.

C. The Director shall evaluate the data furnished by the applicant and may determine that additional information or sampling of wastewater characteristics is necessary. If such a determination is made, the applicant, unless the time period is extended, will be given 30 days to provide the required information or sampling. If it is not provided within the designated time period, the application shall be denied. After determining that the submitted application contains all the information required by this subsection, the Director shall consider the submission, any additional evidence that may have been requested, and any other available information relevant to the application. If the Director determines that the proposed discharge meets the requirements of this chapter and the additional septage does not otherwise overload or cause damage to any portion of the POTW; or will not create an imminent or potential hazard to personnel, the Director shall, within 30 days after determining that the application is complete, issue a mobile waste hauler discharge permit subject to appropriate conditions.

D. *Modification of Permit.* Conditions included in a mobile waste hauler discharge permit shall remain in effect for that permit until it expires, except that they may be revised by the Director whenever the Director deems a revision is necessary in order to effectively implement the pretreatment program, as required by city, state or federal standards, to effectuate the objectives of Chapters [13.04](#) through [13.12](#) MMC and the policy of the city to cooperate with the state and federal government, or to meet any emergency. The permit holder shall be informed of any proposed change in its permit at least 30 days prior to the effective date of the change except in the event of an emergency.

E. *Duration.* Permits shall be issued for a specified time period, not to exceed three years. The permit holder shall apply for permit reissuance a minimum of 90 days prior to the expiration of its existing permit if it desires to continue to discharge. An expired permit will continue to be in effect until the city takes final action on the renewal application to issue or deny the permit if:

1. The permit holder has submitted a complete permit application at least 90 days prior to the expiration of its permit; and
2. The failure to take final action is not due to any act or failure to act on the part of the permit holder.

F. *Conditions.* Mobile waste hauler discharge permits shall be expressly subject to all provisions of Chapters [13.04](#) through [13.12](#) MMC. Mobile waste hauler permits shall contain the following conditions:

1. Payment of applicable fees;
2. Limits on the average and maximum discharge of restricted substances;
3. Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;
4. Compliance schedules;
5. Requirements for submission of technical reports or discharge reports;
6. Requirements for notification of the city of any new introduction of restricted substances or any substantial change in the volume or character of the wastewater or any restricted substances being discharged;
7. Requirements for insurance coverage for all activities subject to the provisions of this chapter;
8. Requirements that the permit holder retain a copy of a valid mobile waste hauler discharge permit in each vehicle used for transportation of wastewater, and present that permit to any employee of the city authorized to inspect the mobile waste hauler discharge permit;
9. Requirements that the permit holder present a manifest of origin of all wastewater proposed for discharge;
10. Requirements that the permit holder discharge only at the designated discharge point and at designated times;
11. Requirements that the permit holder remove or otherwise clean up all spilled material or waste after discharge and that the permit holder agree to pay any public agency which provides assistance in such clean up or which performs such clean up after a failure by the permit holder to comply, an amount representing twice the amount of the actual expenditures of the public agency for labor and materials necessary to clean any spilled waste;
12. Requirements that the permit holder apply in writing on approved forms for permission to discharge any wastewater containing any restricted substances or wastewater containing any substances other than residential or septage waste; and

13. Other conditions as deemed appropriate by the Director to achieve compliance with Chapters [13.04](#) through [13.12](#) MMC.

G. *Transfer.* A mobile waste hauler discharge permit shall be issued to a specific mobile waste hauler for a specific operation. A mobile waste hauler discharge permit shall not be assigned, transferred or sold without the approval of the Director. Any successor mobile waste hauler shall agree to comply with the terms and conditions of the existing permit as a condition precedent to the approval by the Director of a transfer, sale or assignment of the permit.

H. *Analysis and Reporting Requirements.* Permit holders shall be required to submit information, certifications, compliance schedules and samples of discharges or perform such tests and report such test results to the Director as follow:

1. When requested by state or local public agencies; or
2. When deemed necessary by the Director for the proper treatment, analysis or control of discharges.

All such tests and reports shall be at the cost of the permit holder. To the degree practicable, the Director shall provide each permit holder or applicant with information on applicable local, state and federal wastewater analysis and reporting requirements, provided, however, that any failure to do so shall not excuse the permit holder from compliance with said requirements. (Ord. 4987, 2015).

Industrial Wastewater Discharge Permits

13.05.200 Industrial User Survey.

When requested by the Director, all Industrial Users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Director is authorized to prepare a form for this purpose and may periodically require Industrial Users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating service to the Industrial User and shall be considered a violation of this chapter. (Ord. 4987, 2015).

13.05.205 Wastewater Analysis.

When requested by the Director, an Industrial User must submit information on the nature and characteristics of its wastewater within 90 days of the request. The Director is authorized to prepare a form for this purpose and may periodically require Industrial Users to update this information. (Ord. 4987, 2015).

13.05.210 Individual and General Wastewater Discharge Permit Requirement.

- A. No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an industrial wastewater discharge permit from the Director, except that a Significant Industrial User that has filed a timely application pursuant to MMC [13.05.220](#) may continue to discharge for the time period specified therein.
- B. Significant Industrial Users classified as a Categorical Industrial User that does not discharge wastewater into the sanitary sewer are required to obtain a nondischarge Categorical Industrial User control mechanism.
- C. The Director may require other Industrial Users to obtain industrial wastewater discharge permits as necessary to carry out the purposes of this ordinance.
- D. Any violation of the terms and conditions of an industrial wastewater discharge permit shall be deemed a violation of this ordinance and subjects the wastewater discharge permittee to the sanctions set out in Sections [13.05.800](#) through [13.05.2020](#). Obtaining an industrial wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law. (Ord. 4987, 2015).

13.05.220 Individual and General Wastewater Discharge Permitting: Existing Connections.

Any Industrial User required to obtain an industrial wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within 60 days after said date, apply to the Director for an industrial wastewater discharge permit in accordance with MMC [13.05.240](#), and shall not cause or allow discharges to the POTW to continue after 90 days of the effective date of this ordinance except in accordance with an industrial wastewater discharge permit issued by the Director. (Ord. 4987, 2015).

13.05.230 Individual and General Wastewater Discharge Permitting: New Connections.

Any Industrial User required to obtain an industrial wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this industrial wastewater discharge permit in accordance with MMC [13.05.240](#) must be filed at least 90 days prior to the date upon which any discharge will begin or recommence. (Ord. 4987, 2015).

13.05.240 Individual and General Wastewater Discharge Permit Application Contents.

A. All Industrial Users required to obtain an industrial wastewater discharge permit must submit a permit application. Users that are eligible may request a general permit under MMC [13.05.250](#). The Director may require Industrial Users to submit all or some of the following information as part of a permit application:

1. Identifying information.
 - a. The name and address of the facility, including the name of the operator and owner.

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- b. Contact information, description of activities, facilities, and plant production processes on the premises;
 2. *Environmental permits.* A list of any environmental control permits held by or for the facility.
 3. Description of operations.
 - a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and NAICS or SIC codes of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
 - b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
 - c. Number and type of employees, hours of operation, and proposed or actual hours of operation;
 - d. Type and amount of raw materials processed (average and maximum per day);
 - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
 4. Time and duration of discharges.
 5. The location for monitoring all wastes covered by the permit.
 6. *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in MMC [13.05.020\(C\)](#) in accordance with [40 CFR 403.6\(e\)](#).
 7. Measurement of pollutants.
 - a. The Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for existing sources.
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- b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the Director, of regulated pollutants in the discharge from each regulated process.
 - c. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
 - d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in MMC [13.05.490](#). Where the Standard requires compliance with a BMP or pollution prevention alternative, the Industrial User shall submit documentation as required by the Director or the applicable standards to determine compliance with the Standard.
 - e. Sampling must be performed in accordance with procedures set out in MMC [13.05.491](#).
8. Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on MMC [13.05.430\(B\)](#) in accordance with [40 CFR 403.12\(e\)\(2\)](#).
 9. Any request to be covered by a general permit based on MMC [13.05.250](#).
 10. Any other information as may be deemed necessary by the Director to evaluate the permit application.
- B. Incomplete or inaccurate applications will not be processed and will be returned to the Industrial User for revision. (Ord. 4987, 2015).

13.05.250 Wastewater Discharge Permitting – General Permit.

- A. At the discretion of the Director, the Director may use general permits to control Industrial User discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:
1. Involve the same or substantially similar types of operations;
 2. Discharge the same types of wastes;

3. Require the same effluent limitations;
4. Require the same or similar monitoring; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under industrial wastewater discharge permits.

B. To be covered by the general permit, the Industrial User must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general permit, any requests in accordance with MMC [13.05.430\(B\)](#) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general permit until after the Director has provided written notice to the Industrial User that such a waiver request has been granted in accordance with MMC [13.05.430\(B\)](#).

C. The Director will retain a copy of the general permit, documentation to support the POTW's determination that a specific Industrial User meets the criteria in MMC [13.05.250\(A\)\(1\)](#) to [\(A\)\(5\)](#) and applicable state regulations, and a copy of the Industrial User's written request for coverage for three years after the expiration of the general permit.

D. The Director may not control an Industrial User through a general permit where the facility is subject to production-based Categorical Pretreatment Standards or Categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for Industrial Users whose limits are based on the combined wastestream formula (see MMC [13.05.020\(C\)](#)). (Ord. 4987, 2015).

13.05.260 Application Signatories and Certifications.

- A. All wastewater discharge permit applications, Industrial User reports and certification statements must be signed by an authorized representative of the Industrial User and contain the certification statement in MMC [13.05.494\(A\)](#).
- B. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall

responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this section must be submitted to the Director prior to or together with any reports to be signed by an authorized representative. (Ord. 4987, 2015).

13.05.270 Individual and General Wastewater Discharge Permit Decisions.

The Director will evaluate the data furnished by the Industrial User and may require additional information. Within 90 days of receipt of a complete permit application, the Director will determine whether to issue an industrial wastewater discharge permit. The Director may deny any application for an industrial wastewater discharge permit. (Ord. 4987, 2015).

Individual and General Wastewater Discharge Permit Issuance

13.05.300 Individual and General Wastewater Discharge Permit Duration.

An industrial wastewater discharge permit shall be issued for a specified time period, not to exceed five years from the effective date of the permit. An industrial wastewater discharge permit may be issued for a period less than five years, at the discretion of the Director. Each industrial wastewater discharge permit will indicate a specific date upon which it will expire. (Ord. 4987, 2015).

13.05.310 Individual and General Wastewater Discharge Permit Contents.

An industrial wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Director to prevent pass through or interference, protect the

quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate biosolids management and disposal, and protect against damage to the POTW.

A. Industrial wastewater discharge permits and general permits must contain:

1. A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;
2. A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with MMC [13.05.340](#), and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
3. Effluent limits, including Best Management Practices, based on applicable pretreatment standards;
4. *Self monitoring, sampling, reporting, notification, and record-keeping requirements.* These requirements shall include an identification of pollutants (or Best Management Practice) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;
5. The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the discharge in accordance with MMC [13.05.430\(B\)](#);
6. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law;
7. Requirements to control slug discharge, if determined by the Director to be necessary; and
8. Any grant of the monitoring waiver by the Director (see MMC [13.05.430\(B\)](#)) must be included as a condition in the Industrial User's permit or other control mechanism.

B. Industrial wastewater discharge permits may contain, but need not be limited to, the following conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or not routine discharges;
4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
5. The unit charge or schedule of Industrial User charges and fees for the management of the wastewater discharged to the POTW;
6. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;
7. A statement that compliance with the industrial wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the industrial wastewater discharge permit; and
8. Other conditions as deemed appropriate by the Director to ensure compliance with this ordinance, and state and federal laws, rules, and regulations. (Ord. 4987, 2015).

13.05.320 Permit Issuance Process.

A. *Permit Appeals.* The Industrial User, may petition the Director to reconsider the terms of an industrial wastewater discharge permit within 10 days of its issuance.

1. Failure to submit a timely petition for reconsideration shall be deemed to be a waiver of the administrative appeal.
2. In its petition, the Industrial user must indicate the industrial wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the industrial wastewater discharge permit.

3. Reconsideration of the industrial wastewater discharge permit shall not be stayed pending the appeal.
4. If the Director fails to act within 10 days, a petition for reconsideration shall be deemed to be denied. Decisions not to reconsider an industrial wastewater discharge permit, not to issue an industrial wastewater discharge permit, or not to modify an industrial wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.
5. Industrial Users seeking judicial review of the final administrative industrial wastewater discharge permit decision must do so by filing a complaint within 180 days in the Yamhill County Court for Yamhill County in accordance to Oregon Revised Statute (ORS) §12.070 (Judgments). (Ord. 4987, 2015).

13.05.330 Permit Modification.

A. The Director may modify an industrial wastewater discharge permit for good cause, including, but not limited to, the following reasons:

1. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
2. To address significant alterations or additions to the Industrial User's operation, processes, or wastewater volume or character since the time of the industrial wastewater discharge permit issuance;
3. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
4. Information indicating that the permitted discharge poses a threat to the city's POTW, city personnel, or the receiving waters;
5. Violation of any terms or conditions of the industrial wastewater discharge permit;
6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

7. Revision of or a grant of variance from Categorical Pretreatment Standards pursuant to [40 CFR 403.13](#);
8. To correct typographical or other errors in the industrial wastewater discharge permit;
or
9. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with MMC [13.05.340](#). (Ord. 4987, 2015).

13.05.340 Individual and General Wastewater Discharge Permit Transfer.

Industrial wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least 60 days advance notice to the Director and the Director approves the industrial wastewater discharge permit transfer. The notice to the Director must include a written certification by the new owner or operator which:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing industrial wastewater discharge permit.

Failure to provide advance notice of a transfer renders the industrial wastewater discharge permit void as of the date of facility transfer. (Ord. 4987, 2015).

13.05.350 Individual and General Wastewater Discharge Permit Revocation.

The Director may revoke an industrial wastewater discharge permit for good cause, including, but not limited to, the following reasons:

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- A. Failure to notify the Director of significant changes to the wastewater prior to the changed discharge;
 - B. Failure to provide prior notification to the Director of changed conditions pursuant to MMC [13.05.440](#);
 - C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
 - D. Falsifying self-monitoring reports and certification statements;
 - E. Tampering with monitoring equipment;
 - F. Refusing to allow the Director timely access to the facility premises and records;
 - G. Failure to meet effluent limitations;
 - H. Failure to pay fines;
 - I. Failure to pay sewer charges;
 - J. Failure to meet compliance schedules;
 - K. Failure to complete a wastewater survey or the wastewater discharge permit application;
 - L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
 - M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this ordinance.

Industrial wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All industrial wastewater discharge permits issued to an Industrial User are void upon the issuance of a new industrial wastewater discharge permit to that Industrial User. (Ord. 4987, 2015).

13.05.360 Individual and General Wastewater Discharge Permit Reissuance.

An Industrial User with an expiring industrial wastewater discharge permit shall apply for industrial wastewater discharge permit reissuance by submitting a complete permit application, in accordance with MMC [13.05.240](#), a minimum of 60 days prior to the expiration of the Industrial User's existing industrial or general wastewater discharge permit. (Ord. 4987, 2015).

13.05.370 Regulation of Waste Received from Other Jurisdictions.

A. If another municipality, or sewer user located within another municipality, contributes wastewater to the POTW, the Director shall enter into an intergovernmental agreement (IGA) with the contributing municipality.

B. Prior to entering into an agreement required by Paragraph A, above, the Director shall request the following information from the contributing municipality:

1. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
2. An inventory of all sewer users located within the contributing municipality that are discharging to the POTW; and
3. Such other information as the Director may deem necessary.

C. An intergovernmental agreement, as required by Paragraph A, above, shall contain the following conditions:

1. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in MMC [13.05.040](#). The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the city's ordinance or Local Limits;
2. A requirement for the contributing municipality to submit a revised sewer user inventory on at least an annual basis;

3. A provision specifying which pretreatment implementation activities, including industrial wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Director; and which of these activities will be conducted jointly by the contributing municipality and the Director;
4. A requirement for the contributing municipality to provide the Director with access to all information that the contributing municipality obtains as part of its pretreatment activities;
5. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
6. Requirements for monitoring the contributing municipality's discharge;
7. A provision ensuring the Director access to the facilities of sewer users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Director; and
8. A provision specifying remedies available for breach of the terms of the intergovernmental agreement. (Ord. 4987, 2015).

Reporting Requirements

13.05.400 Baseline Monitoring Reports.

A. Within either 180 days after the effective date of a Categorical Pretreatment Standard, or the final administrative decision on a category determination under [40 CFR 403.6\(a\)\(4\)](#), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to the Director a report which contains the information listed in Paragraph B, below. At least 90 days prior to commencement of their discharge, new sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical standard, shall submit to the Director a report which contains the information listed in Paragraph B, below. A new source shall report the method of

pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Categorical Industrial Users (CIU) described above shall submit the information set forth below.

1. All information required in MMC [13.05.240\(A\)\(1\)](#) through [\(A\)\(6\)](#).
2. Measurement of pollutants.
 - a. The CIU shall provide the information required in MMC [13.05.240\(A\)\(7\)\(a\)](#) through [\(A\)\(7\)\(d\)](#).
 - b. The CIU shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this Paragraph.
 - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the CIU should measure the flows and concentrations necessary to allow use of the combined wastestream formula in [40 CFR 403.6\(e\)](#) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with [40 CFR 403.6\(e\)](#), this adjusted limit along with supporting data shall be submitted to the Control Authority;
 - d. Sampling and analysis shall be performed in accordance with MMC [13.05.490](#);
 - e. The Director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
 - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
3. *Compliance certification.* A statement, reviewed by the CIU's authorized representative as defined in MMC [13.04.040\(A\)\(3\)](#) and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional

operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

4. *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the CIU will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in MMC [13.05.410](#).

5. *Signature and report certification.* All baseline monitoring reports must be certified in accordance with MMC [13.05.494\(A\)](#) and signed by an authorized representative as defined in MMC [13.04.040\(A\)\(3\)](#). (Ord. 4987, 2015).

13.05.410 Compliance Schedule Progress Reports.

The following conditions shall apply to the compliance schedule required by MMC [13.05.400\(B\)\(4\)](#):

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

B. No increment referred to above shall exceed nine months;

C. The Industrial User shall submit a progress report to the Director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the Industrial User to return to the established schedule; and

D. In no event shall more than nine months elapse between such progress reports to the Director. (Ord. 4987, 2015).

13.05.420 Reports on Compliance with Categorical Pretreatment Standard Deadline.

Within 90 days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any Categorical Industrial User subject to such pretreatment standards and requirements shall submit to the Director a report containing the information described in MMC [13.05.240\(A\)\(6\)](#) and [\(A\)\(7\)](#) and [13.05.400\(B\)\(2\)](#). For Categorical Industrial Users subject to equivalent mass or concentration limits established in accordance with the procedures in MMC [13.05.020](#), this report shall contain a reasonable measure of the Categorical Industrial User's long-term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the Industrial User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with MMC [13.05.494\(A\)](#). All sampling will be done in conformance with MMC [13.05.491](#). (Ord. 4987, 2015).

13.05.430 Periodic Compliance Reports.

A. Except as specified in MMC [13.05.430\(C\)](#), all Significant Industrial Users must, at a frequency determined by the Director, submit no less than twice per year (June and December [or on dates specified]) reports indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the Significant Industrial User must submit documentation required by the Director or the pretreatment standard necessary to determine the compliance status of the Significant Industrial User.

B. The city may authorize an Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a pollutant regulated by a Categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities

of the Industrial User. [See [40 CFR 403.12\(e\)\(2\)](#)] This authorization is subject to the following conditions:

1. The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.
2. The monitoring waiver is valid only for the duration of the effective period of the industrial wastewater discharge permit, but in no case longer than five years. The Industrial User must submit a new request for the waiver before the waiver can be granted for each subsequent industrial wastewater discharge permit. See MMC [13.05.240\(A\)\(8\)](#).
3. In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
4. The request for a monitoring waiver must be signed in accordance with MMC [13.05.040\(A\)\(3\)](#), and include the certification statement in MMC [13.05.494\(A\)](#) in accordance with [40 CFR 403.6\(a\)\(2\)\(ii\)](#).
5. Nondetectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from [40 CFR Part 136](#) with the lowest minimum detection level for that pollutant was used in the analysis.
6. Any grant of the monitoring waiver by the Director must be included as a condition in the Industrial User's permit. The reasons supporting the waiver and any information submitted by the Industrial User in its request for the waiver must be maintained by the Director for three years after expiration of the waiver.
7. Upon approval of the monitoring waiver and revision of the Industrial User's permit by the Director, the Industrial User must certify on each report with the statement in MMC [13.05.494\(B\)](#) below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User.
8. In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the Industrial User's operations, the Industrial User must immediately: comply with the monitoring requirements of subsection [A](#) of this section, or

other more frequent monitoring requirements imposed by the Director, and notify the Director.

9. This provision does not supersede certification processes and requirements established in Categorical Pretreatment Standards, except as otherwise specified in the Categorical Pretreatment Standard.

C. The city may reduce the requirement for periodic compliance reports MMC [13.05.340\(A\)](#) to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the state, where the Industrial User's total categorical wastewater flow does not exceed any of the following:

1. POTW's value for 0.01 percent of the POTW's design dry-weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches.
2. POTW's value for 0.01 percent of the design dry-weather organic treatment capacity of the POTW; and
3. POTW's value for 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved Local Limits were developed in accordance with MMC [13.05.040](#).

Reduced reporting is not available to Industrial Users that have in the last two years been in Significant Noncompliance, as defined in MMC [13.05.700](#). In addition, reduced reporting is not available to an Industrial User with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the Director, decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period.

D. All periodic compliance reports must be signed and certified in accordance with MMC [13.05.494\(A\)](#).

E. All wastewater samples must be representative of the Industrial User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an Industrial User to keep its monitoring facility in good working order shall not be grounds for the Industrial User to claim that sample results are unrepresentative of its discharge.

F. If an Industrial User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Director, using the procedures prescribed in MMC [13.05.491](#), the results of this monitoring shall be included in the report. (Ord. 4987, 2015).

13.05.440 Reports of Changed Conditions.

Each Industrial User must notify the Director of any significant changes to the Industrial User's operations or system which might alter the nature, quality, or volume of its wastewater including facility closure at least 30 days before the change.

A. The Director may require the Industrial User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under MMC [13.05.240](#).

B. The Director may issue an industrial wastewater discharge permit under MMC [13.05.360](#) or modify an existing wastewater discharge permit under MMC [13.05.330](#) in response to changed conditions or anticipated changed conditions. (Ord. 4987, 2015).

13.05.450 Reports of Potential Problems.

A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a not routine, episodic nature, a non-customary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the Industrial User shall immediately telephone and notify the Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the Industrial User.

B. Within five days following such discharge, the Industrial User shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other

damage to person or property; nor shall such notification relieve the Industrial User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

C. A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in subsection A of this section. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

D. Significant Industrial Users are required to notify the Director immediately of any changes at its facility affecting the potential for a slug discharge. (Ord. 4987, 2015).

13.05.460 Reports from Unpermitted Industrial Users.

All Industrial Users not required to obtain an industrial wastewater discharge permit shall provide appropriate reports to the Director as the Director may require. (Ord. 4987, 2015).

13.05.470 Notice of Violation / Repeat Sampling and Reporting.

If sampling performed by an Industrial User indicates a violation, the Industrial User must notify the Director within 24 hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within 30 days after becoming aware of the violation. Resampling by the Industrial User is not required if the city performs sampling at the Industrial User's facility at least once a month, or if the city performs sampling at the Industrial User between the time when the initial sampling was conducted and the time when the Industrial User or the city receives the results of this sampling, or if the city has performed the sampling and analysis in lieu of the Industrial User. (Ord. 4987, 2015).

13.05.480 Notification of the Discharge of Hazardous Waste.

A. Any Industrial User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste

authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under [40 CFR Part 261](#). Such notification must include the name of the hazardous waste as set forth in [40 CFR Part 261](#), the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the Industrial User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this Paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under MMC [13.05.440](#). The notification requirement in this section does not apply to pollutants already reported by Industrial Users subject to Categorical Pretreatment Standards under the self monitoring requirements of MMC [13.05.400](#), [13.05.420](#), and [13.05.430](#).

B. Dischargers are exempt from the requirements of Paragraph A, above, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in [40 CFR 261.30\(d\)](#) and [261.33\(e\)](#). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in [40 CFR 261.30\(d\)](#) and [261.33\(e\)](#), requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

C. In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

D. In the case of any notification made under this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable federal or state law. (Ord. 4987, 2015).

13.05.490 Analytical Requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in [40 CFR Part 136](#) and amendments thereto, unless otherwise specified in an applicable Categorical Pretreatment Standard. If [40 CFR Part 136](#) does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Director or other parties approved by EPA. (Ord. 4987, 2015).

13.05.491 Sample Collection.

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

A. Except as indicated in subsections [B](#) and [C](#) of this section, the Industrial User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in [40 CFR Part 136](#) and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as

documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

C. For sampling required in support of baseline monitoring and 90-day compliance reports required in MMC [13.05.400](#) and [13.05.420](#) in accordance with [40 CFR 403.12\(b\)](#) and [\(d\)](#), a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For the reports required by paragraphs in MMC [13.05.430](#) in accordance with [40 CFR 403.12\(e\)](#) and [403.12\(h\)](#), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable pretreatment standards and requirements. (Ord. 4987, 2015).

13.05.492 Date of Receipt of Reports.

Written reports will be deemed to have been submitted on the date postmarked. For reports, which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern. (Ord. 4987, 2015).

13.05.493 Recordkeeping.

Industrial Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the Industrial User independent of such requirements, and documentation associated with Best Management Practices established under MMC [13.05.010\(C\)](#). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three

years. This period shall be automatically extended for the duration of any litigation concerning the Industrial User or the city, or where the Industrial User has been specifically notified of a longer retention period by the Director. (Ord. 4987, 2015).

13.05.494 Certification Statements.

A. *Certification of Permit Applications, Industrial User Reports and Initial Monitoring Waiver.* The following certification statement is required to be signed and submitted by Industrial Users submitting permit applications in accordance with MMC [13.05.260](#); Industrial Users submitting baseline monitoring reports under MMC [13.05.400\(B\)\(5\)](#). [Note: See [40 CFR 403.12\(b\)](#)]; Industrial Users submitting reports on compliance with the Categorical Pretreatment Standard deadlines under MMC [13.05.420](#) [Note: See [40 CFR 403.12\(d\)](#)]; Industrial Users submitting periodic compliance reports required by MMC [13.05.430\(A\)](#) through [\(D\)](#). [Note: See [40 CFR 403.12\(e\)](#) and [\(h\)](#)]; and Industrial Users submitting an initial request to forego sampling of a pollutant on the basis of MMC [13.05.430\(B\)\(4\)](#). [Note: See [40 CFR 403.12\(e\)\(2\)\(iii\)](#)]. The following certification statement must be signed by an authorized representative as defined in MMC [13.04.040\(A\)\(3\)](#).

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

B. *Certification of Pollutants Not Present.* Industrial Users that have an approved monitoring waiver based on MMC [13.05.430\(B\)](#) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User. [Note: See [40 CFR 403.12\(e\)\(2\)\(v\)](#)]

Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for [40 CFR _____](#) [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____

[list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under MMC [13.05.430\(A\)](#).

(Ord. 4987, 2015).

Compliance Monitoring

13.05.500 Right of Entry: Inspection and Sampling.

The Director shall have the right to enter the premises of any Industrial User to determine whether the Industrial User is complying with all requirements of this ordinance and any industrial wastewater discharge permit or order issued hereunder. Industrial Users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, photographing, records examination and copying, and the performance of any additional duties.

- A. Where an Industrial User has security measures in force which require proper identification and clearance before entry onto its premises, the Industrial User shall make necessary arrangements with security so that, upon presentation of proper identification, the Director shall be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The Director shall have the right to set up on the Industrial User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the Industrial User's operations.
- C. The Director may require the Industrial User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the Industrial User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at manufactures required frequency to ensure their accuracy.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the Industrial User at the written or

verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the Industrial User.

E. Unreasonable delays in allowing the Director access to the Industrial User's premises shall be a violation of this ordinance. (Ord. 4987, 2015).

13.05.510 Search Warrants.

If the Director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Director may seek issuance of a search warrant through the city Attorney. (Ord. 4987, 2015).

Confidential Information

13.05.600 Confidential Information.

Information and data on a Industrial User obtained from reports, surveys, wastewater discharge permit applications, industrial wastewater discharge permits, general permits, and monitoring programs, and from the Director's inspection and sampling activities, shall be available to the public without restriction, unless the Industrial User specifically requests in writing, and is able to demonstrate to the satisfaction of the Director, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the Industrial User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to

governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at [40 CFR 2.302](#) shall not be recognized as confidential information and shall be available to the public without restriction. (Ord. 4987, 2015).

Publication of Industrial Users in Significant Noncompliance

13.05.700 Significant Noncompliance.

The Director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Industrial Users which, at any time during the previous 12 months, were in Significant Noncompliance with applicable pretreatment standards and requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates subsection [C](#), [D](#), or [H](#) of this section) and shall mean:

- A. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined in MMC [13.04.040\(A\)\(49\)](#);
- B. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by MMC [13.04.040\(A\)\(49\)](#), multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- C. Any other violation of a pretreatment standard or requirement that the Director determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

- D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation(s), which may include a violation of Best Management Practices, which the Director determines will adversely affect the operation or implementation of the pretreatment program. (Ord. 4987, 2015).

Administrative Enforcement Remedies

13.05.800 Notification of Violation.

When the Director finds that an Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that Industrial User a written Notice of Violation. Within five days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the Industrial User to the Director. Submission of such a plan in no way relieves the Industrial User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, even if a Notice of Violation has not been issued. (Ord. 4987, 2015).

13.05.810 Consent Orders.

The Director may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any Industrial User responsible for noncompliance. Such documents shall include specific action to be taken by the Industrial User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to MMC [13.05.830](#) and [13.05.840](#) and shall be judicially enforceable. (Ord. 4987, 2015).

13.05.820 Show Cause Hearing.

The Director may order an Industrial User which has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the Industrial User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the Industrial User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally, by registered or certified mail (return receipt requested), or by traceable carrier at least 10 days prior to the hearing. Such notice may be served on any authorized representative of the Industrial User as defined in MMC [13.04.040\(A\)\(3\)](#) and required by MMC [13.05.260\(A\)](#). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

13.05.830 Compliance Orders.

When the Director finds that an Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial or general wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may issue an order to the Industrial User responsible for the discharge directing that the Industrial User come into compliance within a specified time. If the Industrial User does not come into compliance within the time provided, sewer service may be discontinued unless adequate

treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the Industrial User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

13.05.840 Cease and Desist Orders.

When the Director finds that an Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, or that the Industrial User's past violations are likely to recur, the Director may issue an order to the Industrial User directing it to cease and desist all such violations and directing the Industrial User to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

13.05.850 Administrative Fines.

A. When the Director finds that an Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may fine such Industrial User in an amount up to and including \$1,000.00. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

B. Unpaid charges, fines, and penalties shall, after 60 calendar days, be assessed an additional interest at 9 percent APR of the unpaid balance per month. A lien against the Industrial User's property may be sought for unpaid charges, fines, and penalties.

C. Industrial Users desiring to dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within 30 days of receiving the fine. Where a request has merit, the Director may convene a hearing on the matter. In the event the Industrial User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the Industrial User. The Director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

13.05.860 Emergency Suspensions.

The Director may immediately suspend a Industrial User's discharge, after informal notice to the Industrial User, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend an Industrial User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

A. Any Industrial User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of an Industrial User's failure to immediately comply voluntarily with the suspension order, the Director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director may allow the Industrial User to recommence its discharge when the Industrial User has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless the termination proceedings in MMC [13.05.870](#) are initiated against the Industrial User.

B. An Industrial User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the

harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under MMC [13.05.820](#) or [13.05.870](#)

Nothing in this section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this section. (Ord. 4987, 2015).

13.05.870 Termination of Discharge.

In addition to the provisions in MMC [13.05.350](#), any Industrial User who violates the following conditions is subject to discharge termination:

- A. Violation of industrial wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the Industrial User's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the pretreatment standards in MMC [13.05.010](#).

Such Industrial User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under MMC [13.05.820](#) why the proposed action should not be taken. Exercise of this option by the Director shall not be a bar to, or a prerequisite for, taking any other action against the Industrial User. (Ord. 4987, 2015).

Judicial Enforcement Remedies

13.05.900 Injunctive Relief.

When the Director finds that a Industrial User has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued

hereunder, or any other pretreatment standard or requirement, the Director may petition the Circuit Court for Yamhill County through the city Attorney for the issuance of a temporary or permanent injunction or restraining order, as appropriate, which restrains or compels the specific performance of the industrial wastewater discharge permit, the general permit, order, or other requirement imposed by this ordinance on activities of the Industrial User. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the Industrial User to conduct environmental remediation. A petition for injunctive relief or for a restraining order shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User. (Ord. 4987, 2015).

13.05.910 Civil Penalties.

A. An Industrial User who has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty allowed under state law but not less than \$1,000.00 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

B. The Director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by [the city].

C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the Industrial User's violation, corrective actions by the Industrial User, the compliance history of the Industrial User, and any other factor as justice requires.

D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User. (Ord. 4987, 2015).

13.05.920 Criminal Prosecution.

- A. An Industrial User who willfully or negligently violates any provision of this ordinance, an industrial wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of an unclassified misdemeanor, punishable by a fine of not more than \$1,000.00 per violation, per day, or imprisonment for not more than one year, or both.
- B. An Industrial User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of an unclassified misdemeanor and be subject to a penalty of at least \$1,000.00, or be subject to imprisonment for not more than one year, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.
- C. An Industrial User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, industrial wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than \$1,000.00 per violation, per day, or imprisonment for not more than one year, or both.
- D. In the event of a second conviction, an Industrial User shall be punished by a fine of not more than \$3,000.00 per violation, per day, or imprisonment for not more than three years, or both. (Ord. 4987, 2015).

13.05.930 Remedies Nonexclusive.

The remedies provided for in this ordinance are not exclusive. The Director may take any, all, or any combination of these actions against a noncompliant Industrial User. Enforcement of pretreatment violations will generally be in accordance with [the city's] enforcement response plan. However, the Director may take other action against any Industrial User when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant Industrial User. (Ord. 4987, 2015).

Supplemental Enforcement Action

13.05.1030 Payment of Outstanding Fees and Penalties.

The Director may decline to issue or reissue an industrial wastewater discharge permit to any Industrial User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous industrial wastewater discharge permit, or a previous general permit, or order issued hereunder. (Ord. 4987, 2015).

Affirmative Defenses to Discharge Violations

13.05.2000 Upset.

A. For the purposes of this section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of Paragraph C., below, are met.

C. An Industrial User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the Industrial User can identify the cause(s) of the upset;
2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

3. The Industrial User has submitted the following information to the Director within 24 hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five days]:

- a. A description of the indirect discharge and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
- c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

D. In any enforcement proceeding, the Industrial User seeking to establish the occurrence of an upset shall have the burden of proof.

E. Industrial Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

F. Industrial Users shall control production of all discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails. (Ord. 4987, 2015).

13.05.2010 Prohibited Discharge Standards.

An Industrial User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in MMC [13.05.010\(A\)](#) or the specific prohibitions in MMC [13.05.010\(B\)\(3\)](#) through [\(B\)\(18\)](#) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

A. A Local Limit exists for each pollutant discharged and the Industrial User was in compliance with each limit directly prior to, and during, the pass through or interference; or

B. No Local Limit exists, but the discharge did not change substantially in nature or constituents from the Industrial User's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable biosolids use or disposal requirements. (Ord. 4987, 2015).

13.05.2020 Bypass.

A. For the purposes of this section,

1. Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.
2. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. An Industrial User may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections [C](#) and [D](#) of this section.

C. *Bypass Notifications.*

1. If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Director, at least 10 days before the date of the bypass, if possible.
2. An Industrial User shall submit oral notice to the Director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent

reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

D. *Bypass.*

1. Bypass is prohibited, and the Director may take an enforcement action against an Industrial User for a bypass, unless
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The Industrial User submitted notices as required under subsection [C](#) of this section.
2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in subsection [\(D\)\(1\)](#) of this section.

Miscellaneous Provisions

13.05.3010 Severability.

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect. (Ord. 4987, 2015).

13.05.3020 Water Supply Severance.

Whenever a user has violated or continues to violate any provision of this title, an individual wastewater discharge permit, general permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will recommence, at the user's expense, only after the user has satisfactorily demonstrated its ability to comply. (Ord. 4987, 2015).

This is a nonfinal proof copy of the McMinnville Municipal Code for customer review only. It should not be relied upon for any purpose.

The McMinnville Municipal Code is current through Ordinance 5111, passed March 8, 2022.

Disclaimer: The city recorder's office has the official version of the McMinnville Municipal Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

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

[City Telephone: \(503\) 434-2342](tel:(503)434-2342)

[Hosted by General Code.](#)

Chapter 13.07

SANITARY SEWERS – BUILDING SEWER MAINTENANCE AND REPAIR

Sections:

- 13.07.010 Authority.
- 13.07.020 Standard of Maintenance.
- 13.07.030 Application within City.
- 13.07.040 Responsibility for building Sewer Preventive and Corrective Maintenance.
- 13.07.050 Responsibility for building Sewer Structural Maintenance.
- 13.07.060 Projects to Address High Inflow / Infiltration (I/I) Flows.
- 13.07.070 Inspection of building Sewers.
- 13.07.080 Notice of Defects and Required Corrections.
- 13.07.090 Repair of Defects.
- 13.07.100 Enforcement and Remedies.
- 13.07.110 Incentives for Timely Completion of Repairs.
- 13.07.120 Financial Assistance.

13.07.010 Authority.

The standards and criteria contained in this chapter for the identification, prevention, and removal of infiltration and inflow are based upon the authority of MMC [13.04.010](#) and [13.04.020](#). (Ord. 4987, 2015).

13.07.020 Standard of Maintenance.

All property owners shall be responsible to maintain the building sewer serving their property in a condition free from defects, as provided in this chapter. (Ord. 4987, 2015).

13.07.030 Application within City.

These rules shall apply throughout the city to all areas served by the public sanitary sewer collection system. (Ord. 4987, 2015).

13.07.040 Responsibility for building Sewer Preventive and Corrective Maintenance.

All building sewer preventive and corrective maintenance activities outside the publicly owned right-of-way or easement shall be the responsibility of the property owner. (Ord. 4987, 2015).

13.07.050 Responsibility for building Sewer Structural Maintenance.

Structural maintenance of the portion of the building sewer on private property outside the publicly owned right-of-way or easement shall be the responsibility of the owner of the property served by the building sewer. (Ord. 4987, 2015).

13.07.060 Projects to Address High Inflow / Infiltration (I/I) Flows.

Projects shall be defined by the Director and will include those located in basins of the sanitary sewer system as identified by the city's adopted Conveyance System Master Plan as high flow basins, and such other areas as the Director may designate or by inclusion within the city's Capital Improvement Plan for system repair and/or replacement projects to reduce inflow and infiltration. (Ord. 4987, 2015).

13.07.070 Inspection of building Sewers.

A. *Inspection and Investigation Methods.* The city may at any time inspect and investigate the condition of building sewers using:

1. Flow monitoring
2. Television inspection
3. Smoke testing
4. Dye testing
5. Air or water pressure tests
6. Exfiltration tests
7. Direct visual observation of material or function
8. Indirect measurement

9. Other appropriate methods

Investigation and inspection may additionally include public sewer mains and manholes. Investigation and inspection methods shall not be harmful to the operation of the system and may be used to identify, verify, and quantify locations and amounts of infiltration and inflow into the sanitary sewer system. The city shall determine the scope and methods to be used for the portion of the system to be inspected.

B. *Inspection and Investigation Notice.*

1. *Notice to property owners.* Where inspection or investigation methods such as building sewer television inspection or location require physical entry onto private property by city staff and equipment, the city shall obtain permission to perform the inspection from the owner. If the property owner refuses to allow the city to enter the property, the city may obtain an administrative search warrant. Notice shall also be given to any occupants as provided in MMC [13.07.070\(B\)\(2\)](#).

2. *Notice to occupants.* Where investigation methods such as smoke testing are used that may impact structures or their occupants, the city shall attempt to notify occupants prior to performing the investigation and inform them of any precautions they may wish to take to reduce potential inconvenience to themselves or the property. The city shall not be required to notify property owners of inspections or investigations which do not require staff or equipment to enter the property. In addition, notice shall be given by door hangers or personal contact, and may be given by general press release. (Ord. 4987, 2015).

13.07.080 Notice of Defects and Required Corrections.

Where inspection or investigation reveals defects in the building sewer on private property outside the city's right-of-way, no further proof is needed for the city to require the building sewer be replaced to current standards. The property owner shall be required to correct the defects or pay a penalty in accordance with this chapter. The city shall inform the property owner in writing of the type and location of the defect and of the time in which correction of the defect is required. If the owner and sewer user of the building sewer elects to dispute the opinion of the city, the owner may test the service at their own expense in the presence of the city. The test shall meet the requirements of the Oregon Plumbing Specialty Code (OPSC) and any other city standards that may apply. The results of the test will be the basis of the final replacement decision. If it is determined the building sewer is not defective, the city shall reimburse the property owner for the reasonable cost of the test.

A. *Permit Required.* Any person intending to perform structural maintenance work on a building sewer may do so only after obtaining all city and other required permits.

B. *Notice of Completion of Repairs.* The property owner shall notify the city that the permitted corrections have been completed and shall request an inspection from the city. The city retains the right to require additional information from the property owner and to inspect the correction or repair to assure that it has been

done in accordance with all applicable rules and codes. If the repair is found to be inadequate, the city shall notify the owner and the owner shall make the necessary corrections. The city shall notify the property owner of acceptance of the repair.

C. *Notice of Defects – Correction Not Required.* Where inspection or investigation reveals apparent flaws in a structure’s interior plumbing (building drain) which do not contribute infiltration or inflow to the sanitary sewer system, the city may, but is not required to, inform the property owner of the type and location of such flaws, if known. (Ord. 4987, 2015).

13.07.090 Repair of Defects.

A. The city shall determine the schedule for its sewer main and/or lateral structural maintenance work in designated rehabilitation areas and may perform work with its crews or by contract according to that schedule. Nothing in this chapter shall require the city to modify its structural maintenance schedule or compensate property owners for structural maintenance work performed ahead of the city’s schedule.

B. If, when performing structural maintenance on a lateral, the city discovers that the condition, location, or material of the existing building sewer pipe is such that a structurally sound connection at the right-of-way line can not be made without further repair or replacement on private property, the city shall make a temporary connection, document the nature of the defect, and secure the excavation area. The city shall provide written notice to the property owner of the existence of the building sewer defect and temporary connection. Unless the excavation area is a public safety hazard, the notice shall provide a time certain not less than five nor more than 10 days for the property owner to complete the required repair on private property. Upon expiration of such time, the city may backfill the excavation area. The city shall not be required to correct defects or perform building sewer repair work on private property, nor shall it be responsible for any additional cost to the property owner due to failure to perform repairs within the time specified in the notice.

C. *Spot Repairs.* If the investigation shows only a portion of the building sewer is defective, the owner may elect to perform a spot repair. Spot repairs are limited to cast iron, ABS, CIPP, HDPE and PVC pipe material only. Upon completion of the repair, the building sewer shall be tested and must pass the requirements of the OPSC and city standards. Tests for spot repairs are at the property owner’s expense and are not reimbursable. (Ord. 4987, 2015).

13.07.100 Enforcement and Remedies.

A. *Civil Penalty.* Failure to take action to correct identified defects as required in these rules shall be deemed to be a public nuisance and a violation of city ordinances for such nuisances. For any failure to correct defects

in a privately owned or maintained building sewer the schedule of civil penalties shall be as provided in this subsection, following mailing or posting a notice of defect to the property owner.

1. *Grace Period.* For 180 days following notice to the property owner, no civil penalties shall be assessed.

2. *Lien Period.* If, after 180 days following notice to the property owner, the identified defects have not been corrected to the satisfaction of the City Engineer, the City will file a “suspended” lien on the property, which lien shall have no value. Such lien will remain suspended for 12 months.

3. *Penalty Period.* If, after 12 months following the end of the grace period, the identified defects have not been corrected to the satisfaction of the City Engineer, the City will assess civil penalties. Assessed penalties will be calculated at \$100.00 per month, per EDU from the end of the grace period to the beginning of the penalty period, with an additional \$100.00 per month, per EDU, added every month thereafter. Upon assessment of civil penalties, the lien will be updated to remove the suspension and reflect the outstanding balance of unpaid civil penalties.

4. *Transfer of Ownership.* If the property changes ownership and the identified defects have not been corrected to the satisfaction of the City Engineer, the outstanding balance of assessed civil penalties must be satisfied by the seller at or before closing, as well as a notarized Stipulated Agreement from the purchaser, allowing the lien to be removed. The Stipulated Agreement shall inform the purchaser of the defect and that they have 180 days to correct the defect to the satisfaction of the City Engineer, or a lien will be issued and penalties may be assessed according to the schedule in this subsection.

B. *Other Remedies.* Any civil penalty imposed under these rules shall be in addition to the collection of the regular sewer service fee or charge and any other fines, penalties, damages, or legal remedies available to the city. (Ord. 4987, 2015).

13.07.110 Incentives for Timely Completion of Repairs.

A. Subject to budgetary limitations established by the city council, the city may offer a monetary incentive as provided in this section to encourage property owners to make the required repairs quickly and to help offset the cost of the repairs. The city shall not be required to offer or continue the incentive program, except as authorized by the city council.

B. The incentive program, if offered, shall apply to the grace period following the date of the notice of defect. If the property owner has requested an inspection, but the inspection authority is unable to perform the inspection within the time limits, the date of the documented inspection request shall be used to determine the amount of the incentive.

C. The city may approve and make payments to the property owners completing repair of defects as provided in this section. If repairs are completed and accepted within the grace period, the property owner shall be eligible for a monetary incentive equal to 10 percent of the pipe repair costs up to a maximum limit of \$500.00 per EDU. Eligible repair costs are limited to those costs for pipe material, excavation and burying pipe in the soil between the building and the connection to the lateral. This specifically excludes landscape repairs, sidewalk repairs, driveway repairs and other repair costs incidental to replacing the pipe in the ground.

D. Any property owner requesting a monetary incentive payment as provided in this section shall submit a complete application to the city no later than 60 days following inspection and acceptance of the repair by the city. A complete application shall include: the name and address of the owner, and certification by the applicant that repairs were not paid for by a renter, lessor, or any other person. (Ord. 4987, 2015).

13.07.120 Financial Assistance.

Upon application by a property owner required to repair a building sewer as required by this chapter, the city finance director is granted authority to enter into a contract with the property owner for installment payments on the following basis:

A. The property owner shall select a licensed contractor to complete the required work and provide the city with a cost estimate of the work to be completed.

B. Prior to authorizing the contractor to proceed with the work, the property owner shall meet with the city finance director and sign an application and agreement to pay the repair costs based on the estimate plus 25 percent. The application for installment payments shall be on the prescribed form and shall constitute a lien upon the property.

C. The application shall provide for a monthly payment for a period not to exceed 24 months. Interest shall accrue on the balance due at the prime interest rate plus 3 and 1/2 percent.

D. At the time of completion and inspection of the repair work, the city shall make payment to the property owner and contractor based on the actual billing submitted to the owner by the contractor and adjust the monthly installment payment to reflect the actual cost. (Ord. 4987, 2015).

Chapter 13.07

SANITARY SEWERS – BUILDING SEWER MAINTENANCE AND REPAIR

Sections:

- 13.07.010 Authority.
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13.07.060 Projects to Address High Inflow / Infiltration (I/I) Flows.

Projects shall be defined by the Director and will include those located in basins of the sanitary sewer system as identified by the city’s adopted Conveyance System **Master Plan** as high flow basins, and such other areas as the Director may designate or by inclusion within the city’s Capital Improvement **Plan** for system repair and/or replacement projects to reduce inflow and infiltration. (Ord. 4987, 2015).

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13.07.070 Inspection of building Sewers.

A. *Inspection and Investigation Methods.* The city may at any time inspect and investigate the condition of building sewers using:

1. Flow monitoring
2. Television inspection
3. Smoke testing
4. Dye testing
5. Air or water pressure tests
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7. Direct visual observation of material or function
8. Indirect measurement

9. Other appropriate methods

Investigation and inspection may additionally include public sewer mains and manholes. Investigation and inspection methods shall not be harmful to the operation of the system and may be used to identify, verify, and quantify locations and amounts of infiltration and inflow into the sanitary sewer system. The city shall determine the scope and methods to be used for the portion of the system to be inspected.

B. *Inspection and Investigation Notice.*

1. *Notice to property owners.* Where inspection or investigation methods such as building sewer television inspection or location require physical entry onto private property by city staff and equipment, the city shall obtain permission to perform the inspection from the owner. If the property owner refuses to allow the city to enter the property, the city may obtain an administrative search warrant. Notice shall also be given to any occupants as provided in MMC [13.07.070\(B\)\(2\)](#).

2. *Notice to occupants.* Where investigation methods such as smoke testing are used that may impact structures or their occupants, the city shall attempt to notify occupants prior to performing the investigation and inform them of any precautions they may wish to take to reduce potential inconvenience to themselves or the property. The city shall not be required to notify property owners of inspections or investigations which do not require staff or equipment to enter the property. In addition, notice shall be given by door hangers or personal contact, and may be given by general press release. (Ord. 4987, 2015).

13.07.080 Notice of Defects and Required Corrections.

Where inspection or investigation reveals defects in the building sewer on private property outside the city's right-of-way, no further proof is needed for the city to require the building sewer be replaced to current standards. The property owner shall be required to correct the defects or pay a penalty in accordance with this chapter. The city shall inform the property owner in writing of the type and location of the defect and of the time in which correction of the defect is required. If the owner and sewer user of the building sewer elects to dispute the opinion of the city, the owner may test the service at their own expense in the presence of the city. The test shall meet the requirements of the Oregon ~~State~~ Plumbing Specialty Code (OSPSC) and any other city standards that may apply. The results of the test will be the basis of the final replacement decision. If it is determined the building sewer is not defective, the city shall reimburse the property owner for the reasonable cost of the test.

A. *Permit Required.* Any person intending to perform structural maintenance work on a building sewer may do so only after obtaining all city and other required permits.

B. *Notice of Completion of Repairs.* The property owner shall notify the city that the permitted corrections have been completed and shall request an inspection from the city. The city retains the right to require additional information from the property owner and to inspect the correction or repair to assure that it has been

done in accordance with all applicable rules and codes. If the repair is found to be inadequate, the city shall notify the owner and the owner shall make the necessary corrections. The city shall notify the property owner of acceptance of the repair.

C. *Notice of Defects – Correction Not Required.* Where inspection or investigation reveals apparent flaws in a structure’s interior plumbing (building drain) which do not contribute infiltration or inflow to the sanitary sewer system, the city may, but is not required to, inform the property owner of the type and location of such flaws, if known. (Ord. 4987, 2015).

13.07.090 Repair of Defects.

A. The city shall determine the schedule for its sewer main and/or lateral structural maintenance work in designated rehabilitation areas and may perform work with its crews or by contract according to that schedule. Nothing in this chapter shall require the city to modify its structural maintenance schedule or compensate property owners for structural maintenance work performed ahead of the city’s schedule.

B. If, when performing structural maintenance on a lateral, the city discovers that the condition, location, or material of the existing building sewer pipe is such that a structurally sound connection at the right-of-way line can not be made without further repair or replacement on private property, the city shall make a temporary connection, document the nature of the defect, and secure the excavation area. The city shall provide written notice to the property owner of the existence of the building sewer defect and temporary connection. Unless the excavation area is a public safety hazard, the notice shall provide a time certain not less than five nor more than 10 days for the property owner to complete the required repair on private property. Upon expiration of such time, the city may backfill the excavation area. The city shall not be required to correct defects or perform building sewer repair work on private property, nor shall it be responsible for any additional cost to the property owner due to failure to perform repairs within the time specified in the notice.

C. *Spot Repairs.* If the investigation shows only a portion of the building sewer is defective, the owner may elect to perform a spot repair. Spot repairs are limited to ~~concrete~~, cast iron, ABS, CIPP, HDPE and PVC pipe material only. Upon completion of the repair, the building sewer shall be tested and must pass the requirements of the OSPSC OPSC and city standards. Tests for spot repairs are at the property owner’s expense and are not reimbursable. (Ord. 4987, 2015).

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13.07.100 Enforcement and Remedies.

A. *Civil Penalty.* Failure to take action to correct identified defects as required in these rules shall be deemed to be a public nuisance and a violation of city ordinances for such nuisances. For any failure to correct defects in a privately owned or maintained building sewer the schedule of civil penalties shall be as provided in this

subsection, following mailing or posting a notice of defect to the property owner. Penalties shall be assessed beginning at the end of a 90 ~~180~~ calendar day grace period following mailing or posting a notice of defect to the property owner. The civil penalty schedule shall be \$50.00 ~~\$100.00 per month~~ per EDU, subject to any extensions or suspensions that the city may approve pursuant to these rules.

~~1. Suspension of penalty collection. If the property owner requests it, The city may will suspend collection of penalties for up to 10 12 months to allow the property owner additional time to make the required repair. Penalties will continue to accrue during the suspension period. If corrective action has not been taken within the 10 12 month suspension period, all accrued penalties shall become due and payable on the first day of the first month following the suspension period and monthly thereafter. The suspension of penalty period will not be available to property owners with direct connection defects only. During the suspended with no value The monthly penalty will be assessed for the lien will be updated to remove the suspension and add accrued during the suspension period for each subsequent month until the lateral has been replaced. ... allowing the lien to be~~

1. Grace Period. For 180 days following notice to the property owner, no civil penalties shall be assessed.

2. Lien Period. If, after 180 days following notice to the property owner, the identified defects have not been corrected to the satisfaction of the City Engineer, the City will file a “suspended” lien on the property, which lien shall have no value. Such lien will remain suspended for 12 months.

3. Penalty Period. If, after 12 months following the end of the grace period, the identified defects have not been corrected to the satisfaction of the City Engineer, the City will assess civil penalties. Assessed penalties will be calculated at \$100.00 per month, per EDU from the end of the grace period to the beginning of the penalty period, with an additional \$100.00 per month, per EDU, added every month thereafter. Upon assessment of civil penalties, the lien will be updated to remove the suspension and reflect the outstanding balance of unpaid civil penalties.

4. Transfer of Ownership. If the property changes ownership and the identified defects have not been corrected to the satisfaction of the City Engineer, the outstanding balance of assessed civil penalties must be satisfied by the seller at or before closing, as well as a notarized Stipulated Agreement from the purchaser, allowing the lien to be removed. The Stipulated Agreement shall inform the purchaser of the defect and that they have 180 days to correct the defect to the satisfaction of the City Engineer, or a lien will be issued and penalties may be assessed according to the schedule in this subsection.

B. Other Remedies. Any civil penalty imposed under these rules shall be in addition to the collection of the regular sewer service fee or charge and any other fines, penalties, damages, or legal remedies available to the city. (Ord. 4987, 2015).

Commented [DL1]: It seems as though the lien would have already been placed—just “suspended.” Is there a more appropriate term for withdrawing the suspension?

Commented [MB2R1]: Confirm what the lien is considered after pending. Active? Ex. - “If the lateral has not been replaced within the suspension period, the pending lien will become active on the property with the ...”?

Commented [JC3R1]: I’d say file a “suspended” lien with \$0 value. It would probably be helpful to have a graphic of what you want to have happen each month with penalty and lien for these situations: 1. grace period 2. suspension period, 3. people who do work after suspension period ends 4. people who don’t do the DPSL so we’re all clear what these words mean.

Commented [MB4R1]: Let’s discuss this process. I propose the following: 1. Grace Period - No lien 2. Suspension Period - Suspended lien with no value 3. At completion of Suspension Period - \$1,200.00 per EDU balance added to lien 4. Each month after Suspension Period until replaced - Additional \$100 per EDU added to balance of lien.

Commented [DL5]: By whom?

Commented [MB6R5]: I’m assuming the lien will be paid as part of the sale of the property and removed by the City?

Commented [JC7R5]: Can add “at or before closing” maybe?

Commented [MB8R5]: Comments added

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13.07.110 Incentives for Timely Completion of Repairs.

A. Subject to budgetary limitations established by the city council, the city may offer a monetary incentive as provided in this section to encourage property owners to make the required repairs quickly and to help offset the cost of the repairs. The city shall not be required to offer or continue the incentive program, except as authorized by the city council.

B. The incentive program, if offered, shall apply to the grace period following the date of the notice of defect. If the property owner has requested an inspection, but the inspection authority is unable to perform the inspection within the time limits, the date of the documented inspection request shall be used to determine the amount of the incentive.

C. The city may approve and make payments to the property owners completing repair of defects as provided in this section. If repairs are completed and accepted within the grace period, the property owner shall be eligible for a ~~maximum~~ monetary incentive equal to 10 percent of the pipe repair costs up to a maximum limit of ~~\$250.00~~ **\$500.00 per EDU**. Eligible repair costs are limited to those costs for pipe material, excavation and burying pipe in the soil between the building and the connection to the lateral. This specifically excludes landscape repairs, sidewalk repairs, driveway repairs and other repair costs incidental to replacing the pipe in the ground.

D. Any property owner requesting a monetary incentive payment as provided in this section shall submit a complete application to the city no later than 60 days following inspection and acceptance of the repair by the city. A complete application shall include: the name and address of the owner, and certification by the applicant that repairs were not paid for by a renter, lessor, or any other person. (Ord. 4987, 2015).

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13.07.120 Financial Assistance.

Upon application by a property owner required to repair a building sewer as required by this chapter, the city finance director is granted authority to enter into a contract with the property owner for installment payments on the following basis:

A. The property owner shall select a licensed contractor to complete the required work and provide the city with a cost estimate of the work to be completed.

B. Prior to authorizing the contractor to proceed with the work, the property owner shall meet with the city finance director and sign an application and agreement to pay the repair costs based on the estimate plus 25 percent. The application for installment payments shall be on the prescribed form and shall constitute a lien upon the property.

C. The application shall provide for a monthly payment for a period not to exceed 24 months. Interest shall accrue on the balance due at the prime interest rate plus 3 and 1/2 percent.

D. At the time of completion and inspection of the repair work, the city shall make payment to the property owner and contractor based on the actual billing submitted to the owner by the contractor and adjust the monthly installment payment to reflect the actual cost. (Ord. 4987, 2015).

Chapter 13.08

SANITARY SEWERS SYSTEM DEVELOPMENT CHARGES – CONNECTION FEES

Sections:

- 13.08.010 Permit – Required.
- 13.08.020 Permit – Application – Issuance Conditions and Enforcement.
- 13.08.030 Connection Permit Duration and Forfeiture Upon Expiration.
- 13.08.040 New Service – Payment Guarantee.
- 13.08.050 System Development Charges – Designated – Method of Computation.
- 13.08.055 System Development Charge (SDC) – Credits.
- 13.08.060 Facility Development Fees – Designated – Method of Computation.
- 13.08.070 Sewer Construction plan Approval Required.
- 13.08.080 Unpaid Charges – Liens.
- 13.08.090 Unpaid Charges – Collection.
- 13.08.100 Disposition of Moneys.
- 13.08.110 Violation – Penalty – City Right to Redress.

13.08.010 Permit – Required.

Prior to connection of any building sewer to any lateral sewer or any sewer main the person desiring to make such connection shall receive a permit therefore from the city building Official and shall comply with all of the requirements of Chapters [13.04](#) through [13.12](#) MMC. (Ord. 4987, 2015).

13.08.020 Permit – Application – Issuance Conditions and Enforcement.

A. All applications for sewer connections under this chapter will be made to the city Building Official. The applicant shall furnish satisfactory evidence to the Building Official supporting the proposed land use and a plot plan of the area to be served by the proposed sanitary sewer, and shall meet all the requirements of Chapters [13.04](#) through [13.12](#) MMC. The Building Official may issue the permit, or refer the application to the Director for approval or disapproval. Thereupon the Director shall make an investigation and report, with their recommendation of their approval or disapproval. In the event such an application is rejected by the Director, such application may be appealed to the city council at its next regular meeting. A building permit shall not be issued until all applicable Systems Development Charges (SDC), Frontage Development Fees (FDF), and associated charges have been paid or application for to pay in installments has been approved by the finance

department as specified in Ordinance No. [4495](#) and Ordinance No. [4585](#). It shall be the duty of the Building Official to enforce the provisions of this chapter.

B. Sewer connection charges are those charged for any and all of the following:

1. Sewer connections to the city sewer system;
2. Change in the use of an existing connection, including but not limited to, building additions or expansions which include sanitary facilities; and
3. Substantial increase(s) in the flow or alteration of the character of wastewater to an existing connection.

C. It is the responsibility of the Building Official to notify the Director in writing whenever a land parcel or a structure falls within the classifications listed in subsection [B](#) of this section. The Director shall compute and file with the Building Official their findings in regard to this matter. (Ord. 4987, 2015).

13.08.030 Connection Permit Duration and Forfeiture Upon Expiration.

A sewer connection permit expires 180 days following its date of issuance. Failure to complete the sewer connection and obtain inspection and approval of such connection by the city, or designated approval authority, within 180 day period, or within any extension of time or reinstatement period as provided below, shall result in forfeiture of all connection fees paid and the nullification of the permit.

A. *Extensions of Time.* Upon submittal of a written request and fee (to be set by resolution) to the city prior to the expiration of the 180-day period described above, the city may, in its discretion grant an extension of time up to 30 days from the expiration date for good cause. Such request shall state the building permit number and the reason for the extension request. The request shall be signed by the property owner. Only one extension of time shall be allowed; thereafter, the property owner must apply for permit reinstatement.

B. *Reinstatement of Permit.* An expired connection permit may be reinstated upon showing of good cause for an additional 90-day period, provided the request for reinstatement has been made within 90 days of the original expiration date of the permit. The 90-day reinstatement period shall begin from the expiration date of the original permit. The application for reinstatement shall state the building permit number, the reason for the need for reinstatement; shall be signed by the property owner; and shall be accompanied by the reinstatement fee (to be set by resolution). A permit may be reinstated only once.

C. Sanitary sewer permits issued prior to February 12, 1991 shall be honored. The burden of proof of prepaid sewer connection shall be on the property owner. Credit will be given for number of Equivalent Dwelling Unit (EDU) originally purchased. Any additional EDU being constructed at the site shall pay the current connection fees and rates.

D. Permit fees will be computed at the rate in force at the time a building permit has been applied for and the plan check fee paid. (Ord. 4987, 2015).

13.08.040 New Service – Payment Guarantee.

In all new subdivisions and all new areas not served by existing sewer lines where sanitary sewer service is required, the city council may require the payment or guarantee of payment of the SDC covering the construction and installation of sanitary sewers in such areas. Such payments shall be made immediately upon demand and shall be credited against SDC and charges, or the city council may create a sanitary sewer district, and after the costs have been determined and apportioned, cause the premises to be assessed and such assessments entered in the docket of city liens. (Ord. 4987, 2015).

13.08.050 System Development Charges – Designated – Method of Computation.

A. The System Development Charge (SDC) to connect to a city sanitary sewer shall be computed by unit or Equivalent Dwelling Unit (EDU). Unit charges will be computed based on classification of service at the rate and charges as follows:

1. *Residential Method.*

- a. Single family dwelling units, including manufactured homes:

CALCULATION: One EDU = One unit

- b. Duplexes, apartments, condominiums, dormitories, convalescent/residential care facilities, hotels and motels in which the units include individual kitchens:

CALCULATION: One EDU = One unit

- c. Dormitories, convalescent/residential care facilities, hotels, and motels in which the units do not include individual kitchens:

CALCULATION: One EDU = Two units (in the case of convalescent/residential care facilities, one unit=one bed)

- d. Bed and breakfast facilities and other similar commercial lodging facilities:

CALCULATION: One EDU for the first five bedrooms plus one EDU for every two bedrooms over five.

- e. Recreational vehicle park:

CALCULATION: One EDU = Two recreational vehicle spaces with sewer hookups.

The calculations for the residential method shall apply whether the dwelling unit is occupied or not. The calculated charge includes all facilities such as common laundries, kitchens and recreation areas, provided they are intended for the sole use of the residents and guests. If the structure also contains commercial operations available for use by the general public, the charges for those facilities used for commercial operations shall be calculated using the fixture count method.

An individual manufactured home located on a platted site will be charged for the SDC on the same basis as any other structure. A site for a manufactured home unit located within a manufactured home park will not be charged for each change of a manufactured home unit if the sanitary sewer connection has a trap and vent system independent of the structure.

2. *Fixture Count Method.*

a. This method shall apply to all nonresidential uses, when the Industrial Method is not required to be used. The Fixture Count Method shall apply to all commercial, nonmetered industrial uses, restaurants, laundries, Laundromats, schools, hospitals, public facilities, swimming pool filters, and all other similar nonresidential uses. The fixture unit values shall be as listed in subsection [\(A\)\(2\)\(b\)](#) of this section or to the fixture unit values in the most current version the Oregon Plumbing Specialty Code, whichever is most current.

CALCULATION: One EDU = 16 fixture units.

b. Fixture unit value shall be a shown below. Any fixture unit rating not addressed in this table shall be calculated pursuant to the current Oregon Plumbing Specialty Code.

Fixture	Fixture Unit Value
Baptistery/font	4
Bath	
Jacuzzi/whirlpool	3
Tub/shower combination	3
Car Wash	
Each Stall	6
Drive Through	16
Cuspidor/water aspirator	1
Dishwasher	
Commercial	4
Residential	2
Drinking Fountain	1

Fixture	Fixture Unit Value
Floor Drain, Mop Sink or Floor Sink	
2-inch	4
3-inch	6
4-inch	8
Garbage Disposal	
Residential 3/4 horsepower	0/16 ¹
Commercial 3/4-5 horsepower	32
Industrial more than 5	48
Ice Machine/Refrigerator Drains	1
Oil separator (gas stations)	6
Recreational Vehicle Dump Station	16
Shower	2 per head
Sink	
Bar or Lavatory	2
Commercial	3
Service	3
Wash fountain	3
Swimming Pool Filter	3
Washer, Clothes	6
Water Extractor	6
Water closet, toilet	6
Urinal	6

1 Fixture unit values for garbage disposals of 3/4 horsepower or less, installed in nonresidential applications, shall be based on the proposed use of the facility. Uses associated with commercial food processing, preparation, handling, or group food service (cafeterias) shall be charged 16 fixture units. Uses for individual employee support (e.g. employee lunchrooms) shall not be separately charged.

Note that a separate water meter is required for car washes, and that adjustments to the SDC for car washes may be made based on actual water use after six months of operation.

c. *Industrial Method.* Industrial connections are for those structures used primarily for manufacturing. Minor and major industrial connection and sewer service charges cover only the industrial waste/wastewater portion of the Industrial User's discharge. The minor and major Industrial User must also pay connection and sewer service charges, based upon fixture units, for its nonindustrial wastewater discharge. There are three industrial categories as follows:

i. *Category I.* Dry Industrial User does not generate or discharge any industrial waste or wastewater. Industrial Users that discharge less than 50 gallons of industrial wastewater on any one day may be included in this category with the approval of the Director.

CALCULATION: One EDU = 16 fixture units or fraction thereof.

ii. *Category II.* Minor metered water use or wastewater discharge is less than 25,000 gallons per day (gpd).

CALCULATION: One EDU = 300 gpd. If waste discharged is not known, then the fixture unit rates will be used. Any adjustment in connection charge will be made after six months of operation.

iii. *Category III.* Major metered water use or wastewater discharge is equal to or greater than 25,000 gpd or strength of waste discharged is more than:

- 700 mg/l Chemical Oxygen Demand (COD);
- 300 mg/l Biochemical Oxygen Demand (BOD);
- 350 mg/l Total Suspended Solids (TSS);
- 8 mg/l Total Phosphorus (TP);
- 25 mg/l Ammonia (NH₃)

CALCULATIONS: The Director shall select one or more of the following calculations for determining the connection charge:

- One EDU = 300 gpd average value;
- One EDU = 0.70 pounds BOD per day average value;
- One EDU = 1.4 pounds COD per day average value;
- One EDU = 0.70 pounds TSS per day average value;
- One EDU = .11 pounds NH₃ per day average value;
- One EDU = .028 pounds TP per day average value.

Such selection shall be made on the basis of the impact the Industrial User's discharge is anticipated to have upon the sewerage system and shall be aimed at ensuring that the Industrial User in question pays his/her fair share in light of the impact of its discharge, as determined by the city. The city may, in its discretion, require the user to separate its industrial wastewater discharge from its nonindustrial waste discharge.

- B. Large parcel depth over 120 feet or one-half block shall be subject to additional unit charges for any units lying therein and the cost of sewer line extensions required to service same.
- C. Where a sewer is financed and constructed by a developer for city ownership and operation, the facility development fee will be waived and only the SDC will be levied.
- D. All construction will conform to the applicable city and Oregon Plumbing Specialty Code standards. The city reserves the right to reject any sewer constructed for connection to the sewer main. (Ord. 4987, 2015).

13.08.055 System Development Charge (SDC) – Credits.

Whenever a SDC is computed on property for which the SDC has been previously paid, a credit may, in the discretion of the Director, be allowed. The amount of credit shall be determined by the Director by taking into consideration the SDC calculation method at the time of the payment of the earlier SDC along with the number of existing and proposed Equivalent Dwelling Unit or EDUs and then computing the extent and amount of the credit, if any. If records of such previous charges are not available, the burden of proof shall be on the property owner to establish the amount of the earlier charges. The exact manner of calculation of any credit allowed shall be in the discretion of the Director. SDC credits resulting from change of use are issued to the parcel associated with the permit for use with future SDC fees. (Ord. 4987, 2015).

13.08.060 Facility Development Fees – Designated – Method of Computation.

- A. Owners of property applying to connect facilities directly to the city sanitary sewer system who will receive special and peculiar benefit from such connection, but who have not directly contributed to the cost of the line to which they will make connection shall, in addition to the regular sewer connection charge, be charged and assessed for the special and peculiar benefit the property received, as determined by the city. This charge shall be called the Facilities Development Fee (FDF) and shall be set by resolution.
- B. The FDF is derived from a frontage rate multiplied by the number of front feet. The minimum frontage assessment will be for 75 lineal feet.
- C. Frontage of large tracts (unplatted residential, commercial, and industrial) shall be measured as the amount of developed portion along the actual sewer line in cases where the sewer line crosses through the tract and measured as street frontage of the developed portion where the sewer service is from a street location.
- D. Corner lots where street frontage dimensions do not exceed 120 feet or one-half block shall have frontage equal to one-half the sum of the street frontages. (Ord. 4987, 2015).

13.08.070 Sewer Construction plan Approval Required.

Notwithstanding the provisions of this chapter, the city council shall not be obligated to construct and install sanitary sewers to any property until the project has been approved and authorized by the city council, and the plans and specifications therefore have been approved by the City Engineer. All sanitary sewers hereafter constructed and installed in the city shall be under the direct supervision of the City Engineer, and their services shall be considered a cost of the project, and in the event any legal services are required, the cost of such services shall be considered a cost of the project. (Ord. 4987, 2015).

13.08.080 Unpaid Charges – Liens.

A. The city finance director is directed to enter all unpaid SDC, FDF, and associated charges in the docket of city liens, and thereupon said connection fees and charges shall become an assessment and lien upon individual lots and tracts of land involved. (Ord. 4987, 2015).

B. The city council may use such means of collection for all charges and fees collected under this chapter as may be provided by the laws of the state, and any delinquencies may be certified to the tax assessor of the county for collection in the manner provided in ORS [454.225](#) or any other statute subsequently enacted applicable thereto. (Ord. 4987, 2015).

13.08.100 Disposition of Moneys.

All fees and charges collected under this chapter shall be deposited by the city finance director in the sewer operations and capital funds. (Ord. 4987, 2015).

13.08.110 Violation – Penalty – City Right to Redress.

Any person, firm, or corporation violating any of the provisions of this chapter shall upon conviction be punished by a fine of not more than \$500 for each day that violation continues. Trial shall be before the court without a jury with no right to appeal. The city reserves the right to seek such other relief as is available from any court of competent jurisdiction to redress a violation of this chapter. (Ord. 4987, 2015).

Chapter 13.08
SANITARY SEWERS SYSTEM DEVELOPMENT CHARGES –
CONNECTION FEES

Sections:

- 13.08.010 Permit – Required.
- 13.08.020 Permit – Application – Issuance Conditions and Enforcement.
- 13.08.030 Connection Permit Duration and Forfeiture Upon Expiration.
- 13.08.040 New Service – Payment Guarantee.
- 13.08.050 System Development Charges – Designated – Method of Computation.
- 13.08.055 System Development Charge (SDC) – Credits.
- 13.08.060 Facility Development Fees – Designated – Method of Computation.
- 13.08.070 Sewer Construction plan Approval Required.
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- 13.08.090 Unpaid Charges – Collection.
- 13.08.100 Disposition of Moneys.
- 13.08.110 Violation – Penalty – City Right to Redress.

13.08.010 Permit – Required.

Prior to connection of any building sewer to any lateral sewer or any sewer main the person desiring to make such connection shall receive a permit therefore from the city building Official and shall comply with all of the requirements of Chapters [13.04](#) through [13.12](#) MMC. (Ord. 4987, 2015).

13.08.020 Permit – Application – Issuance Conditions and Enforcement.

A. All applications for sewer connections under this chapter will be made to the city ~~b~~Building ~~e~~Official. The applicant shall furnish satisfactory evidence to the ~~b~~Building Official supporting the proposed land use and a plot plan of the area to be served by the proposed sanitary sewer, and shall meet all the requirements of Chapters [13.04](#) through [13.12](#) MMC. The ~~b~~Building ~~e~~Official may issue the permit, or refer the application to the Director for approval or disapproval. Thereupon the Director shall make an investigation and report, with ~~his~~ **their** recommendation of ~~his~~ **their** approval or disapproval. In the event such an application is rejected by the Director, such application may be appealed to the city council at its next regular meeting. A building permit shall not be issued until all applicable Systems Development Charges (SDC), Frontage Development Fees (FDF), and associated charges have been paid or application for to pay in installments has been approved

by the finance department as specified in Ordinance No. [4495](#) and Ordinance No. [4585](#). It shall be the duty of the ~~b~~Building ~~e~~Official to enforce the provisions of this chapter.

B. Sewer connection charges are those charged for any and all of the following:

1. Sewer connections to the city sewer system;
2. Change in the use of an existing connection, including but not limited to, building additions or expansions which include sanitary facilities; and
3. Substantial increase(s) in the flow or alteration of the character of wastewater to an existing connection.

C. It is the responsibility of the ~~b~~Building Official to notify the Director in writing whenever a land parcel or a structure falls within the classifications listed in subsection [B](#) of this section. The Director shall compute and file with the ~~b~~Building Official ~~his~~ **their** findings in regard to this matter. (Ord. 4987, 2015).

13.08.030 Connection Permit Duration and Forfeiture Upon Expiration.

A sewer connection permit expires 180 days following its date of issuance. Failure to complete the sewer connection and obtain inspection and approval of such connection by the city, or designated approval authority, within 180 day period, or within any extension of time or reinstatement period as provided below, shall result in forfeiture of all connection fees paid and the nullification of the permit.

A. *Extensions of Time.* Upon submittal of a written request and fee (to be set by resolution) to the city prior to the expiration of the 180-day period described above, the city may, in its discretion grant an extension of time up to 30 days from the expiration date for good cause. Such request shall state the building permit number and the reason for the extension request. The request shall be signed by the property owner. Only one extension of time shall be allowed; thereafter, the property owner must apply for permit reinstatement.

B. *Reinstatement of Permit.* An expired connection permit may be reinstated upon showing of good cause for an additional 90-day period, provided the request for reinstatement has been made within 90 days of the original expiration date of the permit. The 90-day reinstatement period shall begin from the expiration date of the original permit. The application for reinstatement shall state the building permit number, the reason for the need for reinstatement; shall be signed by the property owner; and shall be accompanied by the reinstatement fee (to be set by resolution). A permit may be reinstated only once.

C. Sanitary sewer permits issued prior to February 12, 1991 shall be honored. The burden of proof of prepaid sewer connection shall be on the property owner. Credit will be given for number of Equivalent Dwelling Unit (EDU) originally purchased. Any additional EDU being constructed at the site shall pay the current connection fees and rates.

D. Permit fees will be computed at the rate in force at the time a building permit has been applied for and the plan check fee paid. (Ord. 4987, 2015).

13.08.040 New Service – Payment Guarantee.

In all new subdivisions and all new areas not served by existing sewer lines where sanitary sewer service is required, the city council may require the payment or guarantee of payment of the SDC covering the construction and installation of sanitary sewers in such areas. Such payments shall be made immediately upon demand and shall be credited against SDC and charges, or the city council may create a sanitary sewer district, and after the costs have been determined and apportioned, cause the premises to be assessed and such assessments entered in the docket of city liens. (Ord. 4987, 2015).

13.08.050 System Development Charges – Designated – Method of Computation.

A. The System Development Charge (SDC) to connect to a city sanitary sewer shall be computed by unit or Equivalent Dwelling Unit (EDU). Unit charges will be computed based on classification of service at the rate and charges as follows:

1. *Residential Method.*

a. Single family dwelling units, including manufactured homes:

CALCULATION: One EDU = One unit

b. Duplexes, apartments, condominiums, dormitories, convalescent/residential care facilities, hotels and motels in which the units include individual kitchens:

CALCULATION: One EDU = One unit

c. Dormitories, convalescent/residential care facilities, hotels, and motels in which the units do not include individual kitchens:

CALCULATION: One EDU = Two units (in the case of convalescent/residential care facilities, one unit=one bed)

d. Bed and breakfast facilities and other similar commercial lodging facilities:

CALCULATION: One EDU for the first five bedrooms plus one EDU for every two bedrooms over five.

e. Recreational vehicle park:

CALCULATION: One EDU = Two recreational vehicle spaces with sewer hookups.

The calculations for the residential method shall apply whether the dwelling unit is occupied or not. The calculated charge includes all facilities such as common laundries, kitchens and recreation areas, provided they are intended for the sole use of the residents and guests. If the structure also contains commercial operations available for use by the general public, the charges for those facilities used for commercial operations shall be calculated using the fixture count method.

An individual manufactured home located on a platted site will be charged for the SDC on the same basis as any other structure. A site for a manufactured home unit located within a manufactured home park will not be charged for each change of a manufactured home unit if the sanitary sewer connection has a trap and vent system independent of the structure.

2. *Fixture Count Method.*

a. This method shall apply to all nonresidential uses, when the Industrial Method is not required to be used. The Fixture Count Method shall apply to all commercial, nonmetered industrial uses, restaurants, laundries, Laundromats, schools, hospitals, public facilities, swimming pool filters, and all other similar nonresidential uses. The fixture unit values shall be as listed in subsection [\(A\)\(2\)\(b\)](#) of this section **or to the fixture unit values in the most current version the Oregon Plumbing Specialty Code, whichever is most current.**

CALCULATION: One EDU = 16 fixture units.

b. Fixture unit value shall be a shown below. Any fixture unit rating not addressed in this table shall be calculated pursuant to the current Oregon **State** Plumbing Specialty Code.

Fixture	Fixture Unit Value
Baptistery/font	4
Bath	
Jacuzzi/whirlpool	3
Tub/shower combination	3
Car Wash	
Each Stall	6
Drive Through	16
Cuspidor/water aspirator	1
Dishwasher	
Commercial	4
Residential	2
Drinking Fountain	1

The McMinnville Municipal Code is current through Ordinance 5111, passed March 8, 2022.

Fixture	Fixture Unit Value
Floor Drain, Mop Sink or Floor Sink	
2-inch	2 4
3-inch	5 6
4-inch	6 8
Garbage Disposal	
Residential 3/4 horsepower	0/16 ¹
Commercial 3/4-5 horsepower	32
Industrial more than 5	48
Ice Machine/Refrigerator Drains	1
Oil separator (gas stations)	6
Recreational Vehicle Dump Station	16
Shower	2 per head
Sink	
Bar or Lavatory	2
Commercial	3
Service	3
Wash fountain	3
Swimming Pool Filter	3
Washer, Clothes	6
Water Extractor	6
Water closet, toilet	6
Urinal	6

1 Fixture unit values for garbage disposals of 3/4 horsepower or less, installed in nonresidential applications, shall be based on the proposed use of the facility. Uses associated with commercial food processing, preparation, handling, or group food service (cafeterias) shall be charged 16 fixture units. Uses for individual employee support (e.g. employee lunchrooms) shall not be separately charged.

Note that a separate water meter is required for car washes, and that adjustments to the SDC for car washes may be made based on actual water use after six months of operation.

c. *Industrial Method.* Industrial connections are for those structures used primarily for manufacturing. Minor and major industrial connection and sewer service charges cover only the industrial waste/wastewater portion of the Industrial User’s discharge. The minor and major Industrial User must also pay connection and sewer service charges, based upon fixture units, for its nonindustrial wastewater discharge. There are three industrial categories as follows:

The McMinnville Municipal Code is current through Ordinance 5111, passed March 8, 2022.

i. *Category I.* Dry Industrial User does not generate or discharge any industrial waste or wastewater. Industrial Users that discharge less than 50 gallons of industrial wastewater on any one day may be included in this category with the approval of the Director.

CALCULATION: One EDU = 16 fixture units or fraction thereof.

ii. *Category II.* Minor metered water use or wastewater discharge is less than 25,000 gallons per day (gpd).

CALCULATION: One EDU = 300 gpd. If waste discharged is not known, then the fixture unit rates will be used. Any adjustment in connection charge will be made after six months of operation.

iii. *Category III.* Major metered water use or wastewater discharge is equal to or greater than 25,000 gpd or strength of waste discharged is more than:

- 700 mg/l Chemical Oxygen Demand (COD);
- 300 mg/l Biochemical Oxygen Demand (BOD);
- 350 mg/l Total Suspended Solids (TSS);
- 8 mg/l Total Phosphorus (TP);
- 25 mg/l Ammonia (NH₃)

CALCULATIONS: The Director shall select one or more of the following calculations for determining the connection charge:

- One EDU = 300 gpd average value;
- One EDU = 0.70 pounds BOD per day average value;
- One EDU = 1.4 pounds COD per day average value;
- One EDU = 0.70 pounds TSS per day average value;
- One EDU = .11 pounds NH₃ per day average value;
- One EDU = .028 pounds TP per day average value.

Such selection shall be made on the basis of the impact the Industrial User's discharge is anticipated to have upon the sewerage system and shall be aimed at ensuring that the Industrial User in question pays his/her fair share in light of the impact of its discharge, as determined by the city. The city may, in its discretion, require the user to separate its industrial wastewater discharge from its nonindustrial waste discharge.

- B. Large parcel depth over 120 feet or one-half block shall be subject to additional unit charges for any units lying therein and the cost of sewer line extensions required to service same.
- C. Where a sewer is financed and constructed by a developer for city ownership and operation, the facility development fee will be waived and only the SDC will be levied.
- D. All construction will conform to the applicable city and Oregon ~~State~~-Plumbing Specialty Code standards. The city reserves the right to reject any sewer constructed for connection to the sewer main. (Ord. 4987, 2015).

13.08.055 System Development Charge (SDC) – Credits.

Whenever a SDC is computed on property for which the SDC has been previously paid, a credit may, in the discretion of the Director, be allowed. The amount of credit shall be determined by the Director by taking into consideration the SDC calculation method at the time of the payment of the earlier SDC along with the number of existing and proposed Equivalent Dwelling Unit or EDUs and then computing the extent and amount of the credit, if any. If records of such previous charges are not available, the burden of proof shall be on the property owner to establish the amount of the earlier charges. The exact manner of calculation of any credit allowed shall be in the discretion of the Director. [SDC credits resulting from change of use are issued to the parcel associated with the permit for use with future SDC fees.](#) (Ord. 4987, 2015).

13.08.060 Facility Development Fees – Designated – Method of Computation.

- A. Owners of property applying to connect facilities directly to the city sanitary sewer system who will receive special and peculiar benefit from such connection, but who have not directly contributed to the cost of the line to which they will make connection shall, in addition to the regular sewer connection charge, be charged and assessed for the special and peculiar benefit the property received, as determined by the city. This charge shall be called the Facilities Development Fee (FDF) and shall be set by resolution.
- B. The FDF is derived from a frontage rate multiplied by the number of front feet. The minimum frontage assessment will be for 75 lineal feet.
- C. Frontage of large tracts (unplatted residential, commercial, and industrial) shall be measured as the amount of developed portion along the actual sewer line in cases where the sewer line crosses through the tract and measured as street frontage of the developed portion where the sewer service is from a street location.
- D. Corner lots where street frontage dimensions do not exceed 120 feet or one-half block shall have frontage equal to one-half the sum of the street frontages. (Ord. 4987, 2015).

13.08.070 Sewer Construction plan Approval Required.

Notwithstanding the provisions of this chapter, the city council shall not be obligated to construct and install sanitary sewers to any property until the project has been approved and authorized by the city council, and the plans and specifications therefore have been approved by the ~~Director~~City Engineer. All sanitary sewers hereafter constructed and installed in the city shall be under the direct supervision of the ~~Director~~City Engineer, and ~~his~~ their services shall be considered a cost of the project, and in the event any legal services are required, the cost of such services shall be considered a cost of the project. (Ord. 4987, 2015).

13.08.080 Unpaid Charges – Liens.

A. The city finance director is directed to enter all unpaid SDC, FDF, and associated charges in the docket of city liens, and thereupon said connection fees and charges shall become an assessment and lien upon individual lots and tracts of land involved. (Ord. 4987, 2015).

~~13.08.090 Unpaid Charges – Collection.~~

~~On the first day of July of each year, the city finance director shall prepare a list showing all the properties upon which SDC, FDF and associated charges, and assessments and liens are due and unpaid, and upon which no application for satisfactory installment payments have been made, and shall present said list to the city council at the next regular meeting, and the city council shall proceed to:~~

~~A. Cause the liens to be collected as soon as convenient;~~

B. The city council may use such means of collection for all charges and fees collected under this chapter as may be provided by the laws of the state, and any delinquencies may be certified to the tax assessor of the county for collection in the manner provided in ORS [454.225](#) or any other statute subsequently enacted applicable thereto. (Ord. 4987, 2015).

13.08.100 Disposition of Moneys.

All fees and charges collected under this chapter shall be deposited by the city finance director in the sewer operations and capital funds. (Ord. 4987, 2015).

Commented [DL1]: Why was this made permissive?

Commented [MB2R1]: I feel we made this change for a reason, but don't recall the details.

Commented [JC3R1]: I've never done this July action before so maybe that's why we changed it to may? Also, if the lien is part of the ordinance, why is there a collections section at all? The lien is the lien, right? There isnt anything else beyond that. Maybe want to consider adding a flat fee each month not paid like DPSL or describe your current late %. Then each month these would be added to the lien.

Internally, we need to improve our process because finance hasn't been getting information about whether any SDC or FDF charge is outstanding or if a credit has been issued.

FYI - we still don't have the one outstanding SDC I'm aware of included as a lien. Should we get that done?

I recommend that we do run SDC deferrals or outstanding payments through the financial software because that's the source we use for balancing liens we place on properties in the city's web-based system that title companies refer to.

Commented [MB4R1]: Jennifer has not done these reports. Also, we are not sure if part A is really meaningful. Engineering will work with Finance regarding SDC deferrals and future deferrals will be written much more clearly defined.

13.08.110 Violation – Penalty – City Right to Redress.

Any person, firm, or corporation violating any of the provisions of this chapter shall upon conviction be punished by a fine of not more than \$500 for each day that violation continues. Trial shall be before the court without a jury with no right to appeal. The city reserves the right to seek such other relief as is available from any court of competent jurisdiction to redress a violation of this chapter. (Ord. 4987, 2015).



STAFF REPORT

DATE: November 12, 2024
TO: Mayor and City Councilors
FROM: David Ligtenberg, City Attorney
SUBJECT: Comcast Franchise Agreement

Report in Brief:

The City has reached a tentative agreement with Comcast on a franchise. The attached ordinances would adopt the franchise as negotiated and would amend the Municipal Code to clarify applicability of telecommunications infrastructure requirements to cable operators.

Discussion:

The attached Memo from City's special legal counsel, Nancy Werner, details the relevant modifications and agreements in the tentative franchise agreement (Attachment 1). The proposed franchise agreement is contained in the recommended ordinance (Attachment 2).

At the same time, Comcast has agreed to comply with applicable provisions of Chapter 3.18 of the City's municipal code. However, they do not expressly agree in the franchise that Comcast is a "telecommunications carrier" for purposes of the chapter. Accordingly, the second attached ordinance amends the municipal code to clarify that relevant requirements also apply to cable operators. (Attachment 3).

Attachments:

1. Memorandum from Nancy Werner re: Summary of Changes to Franchise
2. Ordinance 5151: Approving the Cable Franchise between the City of McMinnville and Comcast of Oregon II, Inc.
3. Ordinance 5152: Amending McMinnville Municipal Code section 3.18.530 to clarify applicability of telecommunications infrastructure requirements to cable operators.

Fiscal Impact:

The new ordinance establishes what we believe will be a more sustainable source of revenue for the Public Education Governmental access channel (PEG) revenue to support capital investments as it moves from being based on number of subscribers to being based on gross revenue. Cable subscribership has been on a substantial decline with the advent of non-cable streaming services so we know on that basis PEG revenue will continue to decline. We believe gross cable subscription revenue is more likely to be a stable base. Currently McMinnville Community Media receives 100% of PEG revenues collected.

The definition of gross revenue for the franchise fees themselves no longer excludes allowable revenue types under the federal law for cable franchise agreements, an improvement over the previous agreement that will have a positive impact on the margins for franchise revenue receipts.

MEMORANDUM

To: Mayor and City Councilors
From: Nancy Werner, Special Legal Counsel
Re: Comcast Cable Franchise Renewal -- Summary of Changes to Franchise
Date: October 31, 2024

The City has been engaged in the informal cable franchise renewal process with Comcast to renew its cable franchise agreement. The franchise was set to expire on January 9, 2023, but has been extended to allow more time to complete renewal negotiations. The City has reached a tentative agreement with Comcast on a franchise that staff believes is a substantial improvement over the expiring franchise. The new ten year agreement will better meet the community needs and interests, particularly with respect to the City's local access channel, and better protect the City from risks related to Comcast's use of the public rights-of-way in the City. Below is a summary of the most significant changes to the franchise agreement.

Changes to Key Provisions of Cable Franchises

Scope of Authority Granted to Comcast

The renewed franchise retains the scope of authority included in the expiring franchise, which limits Comcast's authority to use the rights-of-way for its cable system to provide cable services. The limited authority in the renewed franchise protects the City's authority to manage use of the rights-of-way to provide non-cable services to the extent possible under applicable law.

The renewed franchise no longer includes a provision purporting to give Comcast access to City easements even if the easement was not provided for cable television facilities, eliminating a provision that exposed the City to the risk of either violating the terms of the cable franchise or potentially allowing an easement to be used in a manner that is not authorized by the easement terms.

Use of City Rights-of-Way

Comcast's expiring franchise includes detailed provisions addressing Comcast's construction and related activities in the rights-of-way. One of the City's priorities in the franchise renewal was to require Comcast to follow the rights-of-way requirements in McMinnville Municipal Code ("MMC") Chapter 3.18, which establishes rights-of-way requirements that apply to telecommunications carriers, including entities that operate cable systems. Comcast has agreed in the renewed franchise to comply with Chapter 3.18, and thus the detailed provisions, some of which were inconsistent with Chapter 3.18, have been removed from the franchise.

Competitive Equity

The expiring franchise includes provisions that allows Comcast to demand changes to the cable franchise if a competitor enters the market to provide video services on different terms than those provided in Comcast's franchise, even where State or federal law, not the City, authorized the new entrant to provide the competitive services. The renewed franchise narrows the scope of this provision so that it only applies if the City opts to grant another cable operator a franchise with more favorable terms when the City had the authority to impose comparable terms on the competitive cable operator. This better protects the City by removing Comcast's ability to demand changes to the cable franchise based on circumstances beyond the City's control.

Franchise Fees

Comcast pays the City a franchise fee equal to five percent of their gross revenues from their cable services, which is the maximum amount allowed in the federal Cable Act. One of the City's priorities in the renewal was to retain the status quo in terms of the amounts Comcast has used to calculate its franchise fee payments prior to the renewal, which Comcast has agreed to do. The renewed franchise also minimizes the ability for Comcast to unilaterally alter the amounts it includes in the gross revenues for purposes of paying franchise fees.

The renewed franchise also expressly requires Comcast to pay interest on any late payments. The City retains the right to audit Comcast's payments, and the renewed franchise lowers to 4% from 5% the threshold for underpayment that triggers Comcast's obligation to reimburse the City's audit costs up to \$15,000 (which was capped at \$10,000 in the expiring franchise).

PEG Access Channels

The renewed franchise preserves the existing PEG access channels operated by McMinnville Community Media ("MCM"), which include one channel in both standard definition and high-definition formats. The expiring franchise required Comcast to pay the City \$1.00 per month per cable subscriber, which the City provides to MCM to pay for PEG-related capital costs. The City also provides MCM with 2.25% of the cable franchise fees for operating and other expenses. Staff determined that Comcast's support for PEG-related capital costs in the expiring franchise was not sufficient to sustain MCM for the term of the renewed franchise. In the renewed franchise, Comcast has agreed to pay 1.5% of its gross revenues for PEG-related capital costs, which we anticipate will generate more revenue for MCM's capital costs over the franchise term.

Cable Service to Public Buildings

The expiring franchise requires Comcast to provide free basic cable service to any City buildings and school within the City limits upon request by the City. Comcast would not agree to retain the status quo, but instead would agree to continue serving the buildings it currently serves, without the ability for the City to add new or different locations. The City accepted Comcast's proposal, which is reflected in the renewed franchise.

The renewed franchise also allows Comcast to deduct from its franchise fee payment the marginal cost of providing the free services to the extent permitted by applicable law. This provision reflects an FCC rule change that occurred after the effective date of the expiring franchise. Comcast will be required to document its marginal costs in a manner acceptable to the City before any offset could occur. The City may opt not to accept the free service to avoid a reduction in franchise fees.

Service to Subscribers in the City

The expiring franchise requires Comcast to extend its system to serve new subscribers only if there are at least twelve residences per quarter mile of cable system. This is a “density requirement” often found in cable franchises to relieve the cable operator from the obligation to extend its cable system where there are too few subscribers for it to be cost effective to do so. In the renewed franchise, Comcast has agreed to a lower density requirement of ten residences per quarter mile, which may enable potential subscribers to receive cable service in areas that would not have met the density requirement in the expiring franchise.

Relocation Costs

The expiring franchise required the City to reimburse Comcast if any person or entity received reimbursement of costs incurred for City-required relocation of facilities in the rights-of-way. This provision exposed the City to the risk of additional costs for public works projects, including having to reimburse Comcast if the City opted to reimburse any residents’ costs. It also required the City to apply for funds on Comcast’s behalf if another government entity were providing funding for relocations. The renewed franchise eliminates these obligations. Comcast will be required to pay its own relocation costs, though it may apply for any funding that may be available to cover the costs.

Insurance and Indemnification

The renewed franchise clarifies Comcast’s obligation to maintain sufficient insurance and to indemnify the City to the same extent other communications provides indemnify the City pursuant to MMC Chapter 3.18.

ORDINANCE NO. 5151

An Ordinance Approving the Cable Franchise between the City of McMinnville and Comcast of Oregon II, Inc.

RECITALS:

On December 11, 2012, pursuant to Ordinance No. 4960, the City of McMinnville entered into a non-exclusive, ten year cable franchise with Comcast of Oregon II, Inc. for the installation, construction, operation, and regulation of a cable television system for the provision of cable services in McMinnville.

On February 11, 2020, Comcast of Oregon, II, Inc. requested renewal of its cable franchise with the City.

The City of McMinnville and Comcast of Oregon II, Inc. have recently negotiated a proposed successor cable franchise.

The franchise will read as follows:

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Affiliate" when used in connection with Grantee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- B. "Basic Cable" means any service tier that includes the retransmission of local television broadcast signals and other programming provided by the Grantee.
- C. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- D. "Cable Operator" means any Person or groups of Persons, including Grantee, who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.
- E. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

- F. "Cable System" shall have the meaning specified in the definition of "Cable System" in the Cable Act
- G. "Demarcation Point" means up to and including the device where the Designated Access Provider signal is converted into a format to be transmitted over a connection to the Grantee.
- H. "Designated Access Provider" means McMinnville Community Media or other local access entity as designated by the Franchising Authority.
- I. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- J. "Franchising Authority" means the City of McMinnville or the lawful successor, transferee, or assignee thereof.
- K. "Grantee" means Comcast of Oregon II, Inc., or its lawful successor, transferee, or assignee.
- L. "Gross Revenues" means any revenue derived by the Grantee or any Affiliate from the operation of the Cable System to provide Cable Services in the Service Area, consistent with federal and state law, provided, however, that such phrase shall not include: (1) any tax, fee, or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency; (2) unrecovered bad debt; and (3) advertising agency commissions that are retained by unaffiliated third parties and launch fees, to the extent consistent with GAAP. Gross Revenues shall include, without limitation, franchise fees, Public, Education, and Government (PEG) amounts and FCC user fees collected from Subscribers.

The parties acknowledge that Grantee maintains its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Grantee further agrees that it will not utilize GAAP to unlawfully, or in contravention of this agreement, avoid payment of franchise fees. At all times, Franchising Authority reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise required document at the time of submittal, identifying each revised Section or line item.

- M. "Hardwired Origination Point" means any point other than the DAP Location (as defined in Section 3.13.4) where Public, Educational or Government access programming originates and from which it is delivered to Grantee for transmission on the Cable System.
- N. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

- O. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area, but only to the extent of the Franchising Authority's right, title, interest, or authority to grant a franchise to occupy and use such areas for the purpose of installing, operating, repairing, and maintaining the Cable System to provide Cable Services.
- P. "Service Area" means the legal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- Q. "Standard Installation" is defined as 125 feet from the existing distribution system.
- R. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION 2 **Grant of Franchise**

2.1 Grant. Subject to the terms of this Franchise and applicable laws, the Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, or under the Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System. This Franchise shall constitute the authority and the obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

No rights, privileges or authority shall pass to Grantee by implication. Nothing in this Franchise shall be construed to authorize Grantee to provide or prohibit Grantee from providing services other than Cable Services. The Franchising Authority hereby reserves all of its rights to regulate such other services to the extent not prohibited by applicable law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance adopted pursuant to the Franchising Authority's police power. Neither the Franchising Authority nor the Grantee may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and an express provision of this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

2.3 Competitive Equity.

2.3.1 The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services over a Cable System within the Service Area. Subject to subsection 2.3.2, the Franchising Authority agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise, as requested by the Grantee and mutually agreed to by the Franchising Authority, to include any material terms or conditions that it makes available to the new Cable Operator, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent to the extent permissible under applicable laws. "Material terms and conditions" include: franchise fees; insurance; system build-out requirements; security instruments; customer service standards; required reports and related record keeping; PEG Channels and PEG Fees; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entry, so long as the regulatory and financial burdens on each entity are materially equivalent to the extent permissible under applicable laws. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

2.3.2 Subsection 2.3.1 does not apply:

- A. if the Franchising Authority is ordered or required to issue a franchise on different terms and conditions, or it is legally unable to comply with this Section;
- B. if the new Cable Operator does not actually commence the provision of Cable Service in the market to at least one residential customer. Should the new Cable Operator fail to continuously provide Cable Service for a period of six (6) months, the Franchising Authority has the right to implement this Franchise with its original terms upon sixty (60) days' notice to Grantee.
- C. to open video systems; common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. § 571; systems that serve less than five percent (5%) of the geographic area of the Franchising Authority; or to systems that only provide video service via the public Internet.

2.4 Term. The Franchise granted hereunder shall be for an initial term of ten (10) years, commencing on the effective date of the Franchise as set forth in Section 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5 Franchise Review. Within sixty (60) days of the second anniversary (or any one of the subsequent anniversaries) of the effective date of the Franchise, the Franchising Authority may, but is not required to, give written notice to Grantee of its intent to conduct a review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in light of new cable law and regulation, and community needs and interests, with consideration of all financial, technological, and operational impacts that may affect the Grantee, including Public, Education, and Government access channel(s) and provision of high definition (HD) format for the PEG channel(s). Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review. If, after completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the Franchise, the Franchising Authority, with the expressed agreement of the Grantee, may modify the obligations and/or extend the term of the Franchise.

SECTION 3 **Standards of Service**

3.1 Conditions of Occupancy. Subject to applicable laws, regulations, codes and ordinances of Franchising Authority and the provisions of this Franchise, Grantee may perform all construction in the Public Ways necessary for the operation of its Cable System to provide Cable Services. Grantee shall at all times comply with applicable provisions of the McMinnville Municipal Code related to work in the rights-of-way and the placement, location, relocation and other provisions related to communications facilities in the rights-of-way, including but not limited to MMC 3.18.200-.325, as amended from time to time. All construction and maintenance of any and all facilities within Public Ways incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility.

3.2 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority pursuant to MMC Chapter 15.08, protect, support, raise, lower, temporarily disconnect, relocate in, or remove from the Public Way as necessary any property of Grantee, provided: (A) the expense of such is paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section 3.2, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) business days for a permanent relocation. In the case of the failure of Grantee to comply with the terms of this Section 3.2, the superintendent of streets or other proper officer of the Franchising Authority may take action to relocate in or remove from the Public Way any property of Grantee, at the expense of the Grantee; provided, however, Grantee shall not be penalized for any good faith dispute regarding payment due from any such third party.

3.3 Reservation of Franchising Authority - Public Ways. Nothing in this Franchise shall prevent the Franchising Authority from constructing, repairing or removing sewers, grading, paving, repairing or altering any street, alley, or public highway, constructing, repairing or removing water mains, or maintaining, repairing, constructing, or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the use and operation of Grantee's Cable System.

3.4 Vegetation Management. The Grantee shall have the authority to trim trees or other natural growth within the Public Ways in order to access and maintain the Cable System, subject to the street tree maintenance guidelines contained in Chapter 17.58 of the McMinnville Municipal Code.

3.5 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.6 Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residents in the Service Area subject to the density requirements specified in this Section 3.6. Whenever the Grantee receives a request for Cable Service from a Subscriber in a

contiguous unserved area where there are at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the nearest point of Grantee's trunk or distribution system capable of supporting the additional distance for service, it shall extend its Cable System to such Subscriber at no cost to said Subscriber for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service.

3.7 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 3.6 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet (one-quarter cable mile) from Grantee's trunk or distribution cable capable of supporting the additional distance for service, and whose denominator equals ten (10). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.8 Cable Service to Public Buildings. The parties acknowledge that as of the effective date of this Franchise, Grantee continues to provide one outlet of Basic Cable and expanded basic service, or its reasonable equivalent ("Complimentary Services") to certain schools, libraries, and public buildings within the Service Area, and Grantee shall continue to provide these Complimentary Services throughout the term of this Franchise. In the event Grantee elects, to the extent expressly permitted by applicable laws, to deduct from its franchise fee payment the marginal cost to the Grantee of providing Complimentary Services, Grantee agrees that it will do so only after providing Franchising Authority with one hundred twenty (120) days' prior written notice that includes documentation of the Grantee's marginal costs reasonably acceptable to Franchising Authority. Grantee agrees not to unfairly or unreasonably discriminate against the Franchising Authority with respect to other Oregon served local franchising authorities, with respect to the deducted or calculation of costs for Complimentary Services.

The Franchising Authority shall have the right, at any time, to discontinue the receipt of all or a portion of the Complimentary Services provided by the Grantee in the event Grantee elects to deduct from its franchise fee payment Grantee's marginal cost to provide the Complimentary Services as set forth in the preceding paragraph.

3.9 Emergency Use. In accordance with, and at the time required by, the provisions of FCC Regulations 47 C.F.R. Part 11, as such provisions may from time to time be amended, EAS activation will be accomplished in compliance with such regulations and consistent with the FCC approved Oregon State EAS plan, and local area EAS plan applicable to Yamhill County.

3.10 Reimbursement of Costs. If public or private funds, other than the funds of Franchising

Authority or McMinnville Water and Light, are made available to any Person using the Public Way for the purpose of defraying the cost of any of the relocation of facilities as part of the same project for which Grantee must relocate, Grantee shall be afforded equal treatment subject to applicable law and regulations and nothing in this Franchise limits Grantee's ability to apply for such funds.

3.11 System Standards. The Cable System shall meet or exceed all applicable technical and performance standards of the FCC.

The Grantee shall also comply with all applicable testing requirements of the FCC. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing the Cable System within the Service Area to determine compliance with the provisions of applicable FCC technical standards. Representatives of the Franchising Authority may witness the tests. Written records of all system tests required to be performed by or for the Grantee shall be maintained at Grantee's business office, and shall be available for inspection by the Franchising Authority upon written request during Grantee's normal business hours. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copies of such test results prepared in accordance with FCC rule.

3.12 Customer Service Standards/Complaint Resolution. Grantee shall comply with the customer service standards set forth in 47 C.F.R. Part 76 of the FCC's rules and regulations, as amended, including but not limited to 47 C.F.R. §§ 76.309, 76.1602, 76.1603, 76.1619 and 76.1713. Nothing in this Franchise shall be deemed to waive any rights or authority the Franchising Authority may have pursuant to 47 U.S.C. § 552.

Grantee may arrange for payment stations or drop boxes or the equivalent within the city limits of the Franchising Authority where Subscribers may drop or deliver their bill payment for Cable Service. Grantee may operate and maintain a cable store within the city limits of the Franchising Authority where Subscribers may drop or pick-up equipment, or drop or deliver their bill payment related to their Cable Service.

3.13 Public, Education, and Government Access.

3.13.1 All Access Channels required by this Franchise shall be included by Grantee in Basic Cable Service, and shall throughout the term of the Franchise be fully available and accessible to every Subscriber without additional costs, charges or equipment. Grantee shall provide one (1) dedicated Public, Educational, and Government (PEG) access channel in high definition (HD) throughout the term of this Franchise. Grantee shall continue to provide the PEG access channel in standard definition (SD) format, until SD format is no longer utilized on the cable system. Grantee shall only be required to provide such PEG channel so long as all other Cable Operators within the Service Area provide it.

For purposes of this Franchise, "HD" format or signal refers to a PEG channel signal delivered by Grantee to Subscribers in the resolution received by Grantee from the Designated Access Provider without any degradation. The Franchising Authority acknowledges that receipt of HD format access channels may require Subscribers to buy or lease special equipment or pay additional HD charges applicable to all HD services.

3.13.2 Grantee shall not change PEG access channel designations without Franchising Authority's consent, which shall not be unreasonable withheld in cases of master channel

alignment or if someone else has the legal right to the channel. The current PEG access channel designations are channel 11 for the SD channel and channel 331 for the HD channel.

3.13.3 Grantee shall carry all components of access channel signals provided by the Franchising Authority or its Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the programming. The Designated Access Provider shall be responsible for providing the access channel signal in an HD format to the Demarcation Point at the designated point of origination for the access channel. Grantee shall transport and distribute the access channel signal on its Cable System and shall not discriminate against the PEG access channel with respect to the functionality, signal quality, and features from those of the local broadcast channels carried on the Cable System. With respect to signal quality, Grantee shall not be required to carry a PEG access channel in a higher quality format than that of the channel signal delivered to Grantee, but Grantee shall distribute the access channel signal without degradation. Upon reasonable written request by the Franchising Authority or its Designated Access Provider, Grantee shall verify signal delivery to Subscribers with Franchising Authority or its Designated Access Provider, consistent with the requirements of this Section.

3.13.4 PEG Transport.

- A. Grantee shall continue to provide to Franchising Authority the existing fiber paths, equipment and existing connectivity between 823 NE Third Street, McMinnville, Oregon ("DAP Location"), all other existing Hardwired Origination Points and Grantee's headend to permit the transport of PEG programming during the term of this Franchise. Grantee shall continue to provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to Subscribers. Grantee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Grantee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Franchising Authority as is reasonably necessary for Grantee to fulfill such obligations.
- B. Such upstream transmission provided by Grantee shall comply with all applicable FCC standards governing the transport and distribution of PEG signals to Subscribers.
- C. If Grantee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Franchise, then Grantee shall, without charge to Franchising Authority, make such changes in either the equipment and/or facilities referred to in Section 3.13.4.A or in Grantee's video channel aggregation point, distribution equipment, and facilities in order to permit the continuation of such intended use.
- D. At the Franchising Authority's request, Grantee shall construct a dedicated connection to facilitate the transmission of character-generated, pre-recorded, and live cablecasts from additional Hardwired Origination Points, to enable the

distribution of PEG access programming on the Cable System on access channels. In the event the DAP Location changes during the term of this Franchise, Grantee shall construct a dedicated connection to the new DAP location that complies with the provisions of this Section 3. Dedicated connections between additional Hardwired Origination Points and the DAP Location or master control site, and/or dedicated connections to a new DAP location, shall be at the Grantee's marginal cost. In the alternative, notwithstanding any other provision of this subsection, the Franchising Authority (or Designated Access Provider) may construct the connections referenced in this subsection on its own behalf, using contractor(s) of its choice. Whether constructed by Grantee or by Franchising Authority (or Designated Access Provider), Franchising Authority may utilize PEG capital support provided in Section 3.13.6 to pay all costs to construct the connection(s).

- E. All Hardwired Origination Points the Franchising Authority or Designated Access Provider requires Grantee to construct pursuant to subsection 3.13.4.D shall be provided within one hundred twenty (120) days following receipt of written notice from Franchising Authority and not before payment for the construction has been paid to Grantee by the Franchising Authority or Designated Access Provider.
- F. Except as otherwise provided herein, there shall be no charge to the Franchising Authority, Designated Access Provider, nor to any other Person, for the use of the upstream capacity from the DAP Location or any Hardwired Origination Points described in this Section, except to the extent expressly permitted by applicable law. In the event applicable law expressly permits Grantee to deduct from its franchise fee payment any costs of compliance with this Section, if Grantee elects to take the deduction, the amount deducted shall be consistent with applicable law, which as of the effective date is defined as Grantee's marginal cost to provide the service, and Grantee and the Franchising Authority shall agree on the calculation of marginal cost prior to Grantee taking any deductions.

3.13.5 Navigation to PEG Channels and Electronic Programming Guide. Grantee will maintain the existing ability of the Designated Access Provider to place PEG channel programming information on the interactive channel guide via the electronic programming guide ("EPG"). So long as the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow Franchising Authority or the Designated Access Provider to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Franchising Authority or Designated Access Provider will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service.

3.13.6 Support for Access Capital Costs.

- A. Grantee shall pay to the Franchising Authority as capital support for access facilities and equipment ("PEG Capital Support"), an amount specified by the Franchising Authority up to a maximum one and one half percent (1.5%) of Gross Revenues. The Grantee shall make such payments quarterly, following

the effective date of this Franchise for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. If at any point during the term of this Franchise, Franchising Authority or its designee shall cease to operate an access channel, Grantee's obligation for capital support under this Section 3.13.6 shall end.

- B. If Franchising Authority enters into a franchise, or amends an existing franchise with another Cable Operator after the effective date of this Franchise to provide Cable Service in all or any portion of the Grantee's Service Area that includes PEG Capital Support that is less than one and one half percent (1.5%) of Gross Revenues, then Grantee shall be entitled to reduce the PEG Capital Support to match that of the other Cable Operator(s).
- C. The Franchising Authority shall provide a report annually to the Grantee on the use of the PEG Capital Support provided to the Franchising Authority under this Section 3.13.6. The annual report shall be submitted to Grantee within one-hundred twenty (120) days of the close of the Franchising Authority's fiscal year, which fiscal year runs for twelve (12) consecutive months from July 1 to and including June 30. Grantee may review records of the Franchising Authority regarding the use of the PEG Capital Support described in such report. The Franchising Authority agrees that the report shall document the amounts spent or encumbered for capital support for PEG access. If the report indicates the PEG Capital Support is higher than the need for said funds, Grantee may request in writing, within sixty (60) days of receiving the annual report, that the PEG Capital Support be reduced to a more appropriate level. To the extent permitted by federal law, the Grantee shall be allowed to recover the costs of the PEG Capital Support and any other costs arising from the provision of the PEG services from the residential Subscribers and to include such costs as a separately billed line item on each residential Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Grantee may externalize, line-item, or otherwise pass through these costs to Subscribers. Notwithstanding the foregoing, in no event shall Grantee be allowed to in any way recover from or pass through to Subscribers any costs that Grantee is collecting, has collected or will collect from the Franchising Authority or Designated Access Provider or that Grantee offsets or deducts from any franchise fee payment to the extent such offset or deduction is permitted by this Franchise and applicable law.
- D. In recognition that the Franchising Authority has identified certain PEG capital needs and the projected needs may change, after the third anniversary of the effective date of this Franchise, Grantee may request to review the use of the PEG Capital Support to date. To the extent the PEG capital needs have been lower than projected by twenty percent (20%) or more, the PEG Capital Support may be adjusted.

3.14 Franchising Authority Non-Liability. The Franchising Authority reserves the right and privilege to cut or remove any cables, wires, equipment or any other portion of the Cable

System of Grantee as the Franchising Authority may determine to be necessary, appropriate, or useful in response to a public health or safety emergency and/or in order to get fire ladders or other apparatus to a building during a city conflagration or emergency. The Franchising Authority will attempt to inform Grantee of any cutting or moving of facilities, provided that the Franchising Authority has notice of the existence of those facilities, in advance or immediately after city action. The Franchising Authority shall not be liable for any damage done to such cables, wires, equipment or any other portion of the Cable System, or for any consequential losses resulting directly or indirectly therefrom.

SECTION 4 **Regulation by the Franchising Authority**

4.1 Franchise Fee.

4.1.1 The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of annual Gross Revenues (as defined in Section 1.1 of this Franchise). In accordance with the Cable Act, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The Grantee shall make such payments quarterly, following the effective date of this Franchise for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

4.1.2 In the event that a franchise fee payment or other sum is not received by the Franchising Authority on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Oregon.

4.2 Audit of Franchise Fee Payments.

4.2.1 Franchising Authority or its designee may conduct an audit or other inquiry in relation to payments made by Grantee (any of which shall be an "audit" for purposes of this section 4.2) no more than once every three (3) years during the term of the Franchise. As a part of the audit process, Grantee shall provide Franchising Authority or Franchising Authority's designee access to books of accounts and any other records of Grantee and/or any Affiliate relative to Franchising Authority and/or calculation and payment of the franchise fee and PEG fees required pursuant to this Franchise any time during regular business hours and after thirty (30) calendar days written notice.

4.2.2 All books and records deemed by Franchising Authority or Franchising Authority's designee to be reasonably necessary for such audit, including books and records of any Affiliate relative to Franchising Authority, shall be made available by Grantee in a mutually agreeable format within thirty (30) calendar days after written notice from Franchising Authority or its designee. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. If agreed upon in writing by the Franchising Authority, Grantee may provide such responses within a reasonable time after the expiration of the response period above, so long as Grantee has made a good faith effort to procure any such requested information.

4.2.3 The cost of any such audit shall be borne by the Franchising Authority, except that

if through the audit it is established that the Grantee has made underpayment of four percent (4%) or more in franchise fees than required by this Franchise, then Grantee shall, within thirty (30) days of being requested to do so by the Franchising Authority, reimburse the Franchising Authority for the cost of the audit up to fifteen thousand dollars (\$15,000.00). If any audit discloses an underpayment of the franchise fee in any amount, Grantee shall pay Franchising Authority the amount of the underpayment, together with interest computed from the applicable due date, compounded at the at the rate of one percent (1%) per month from the due date.

4.2.4 Grantee shall be provided with a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to Franchising Authority. The Franchising Authority agrees to require a third-party auditor to execute a mutually agreed upon nondisclosure agreement with the Grantee in connection with any such audit if the auditor will have access to the Grantee's confidential or proprietary information.

4.2.5 The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

4.3 Renewal of Franchise.

4.3.1 The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (47 U.S.C. § 546).

4.3.2 The Grantee and Franchising Authority consider the terms set forth in this Section 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness, or a transfer to an entity directly owned or controlled by Comcast Corporation and which entity will remain directly owned or controlled by Comcast Corporation after the transfer. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial, and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given, unless the Grantee and Franchising Authority agree to an extension of time.

SECTION 5 **Books, Records, and Maps**

5.1 Books and Records The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its or its Affiliates relative to Franchising Authority, books and records regarding the operation of the Cable System and the provision of Cable Service in the Service Area which are reasonably necessary to monitor Grantee's

compliance with the provisions of this Franchise at the Grantee's business office, during normal business hours, and on a non-disruptive basis. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. In the event the Grantee asserts that certain information is proprietary or confidential in nature, the Grantee shall identify generally the information which it deems proprietary or confidential and the reasons for its confidentiality in writing at the time of disclosure.

Insofar as possible under the Oregon Public Records law, the Franchising Authority agrees to treat any information disclosed by the Grantee as confidential under applicable federal and state law, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Maps. Grantee shall maintain as built drawings for the Cable System at Grantee's business office and make them available to the Franchising Authority for inspection during normal business hours upon written request. As built drawings shall be updated as changes occur in the Cable System serving the Service Area. Upon written request of the Franchising Authority, Grantee shall maintain and make available to the Franchising Authority copies of maps showing the location of Grantee's lines within the Public Ways in the Service Area within ten (10) days of request for the same. The Franchising Authority recognizes that the information contained in such maps is confidential and proprietary and remains the property of the Grantee. The Franchising Authority shall safeguard such information from the public record unless affirmatively and expressly required to disclose and provide access by state or federal law.

SECTION 6 **Insurance and Indemnification**

6.1 Insurance Requirements.

6.1.1 Grantee shall secure and maintain the following liability insurance policies including the Franchising Authority and its elected and appointed officers, officials, agents, and employees as additional insured under the required Commercial General and Automotive Liability policies:

- A. Commercial general liability insurance with limits not less than Three Million Dollars (\$3,000,000) for bodily injury or death and property damage per occurrence.
- B. Automobile liability for owned, non-owned, and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each accident.
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).

6.1.2 The liability insurance policies required by this Section shall be maintained by the

Grantee throughout the term of this Franchise, and such other period of time during which the grantee is operating without a franchise, or is engaged in the removal of its Cable System. Each such insurance policy shall provide for notice of cancellation thirty (30) days' prior to cancellation by e-mail, save that ten (10) days' notice may be given for cancellation due to non-payment of premiums.

6.1.3 Grantee shall provide a certificate or certificates of insurance evidencing compliance with the requirements upon request of Franchising Authority at any time when such coverage is required hereunder to be maintained.

6.1.4 The minimum amounts of insurance set out in subsection 6.1.1 of this Section shall be increased upon thirty (30) days' notice by the Franchising Authority from time to time to the extent necessary to provide coverage at least as great as the limits on the Franchising Authority's liability under the Oregon Tort Claims Act.

6.2 Indemnification. The Grantee agrees to indemnify, defend and hold the Franchising Authority harmless as required in MCM 3.18.545, which currently requires the Grantee to defend, indemnify, and hold the Franchising Authority and its officers, employees, agents, and representatives harmless from and against any and all damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failures to act, or misconduct of the Grantee or its Affiliates, officers, employees, agents, contractors, or subcontractors in the construction, operation, maintenance, repair, or removal of its Cable System, and in providing or offering Cable Services over the Cable System, whether such acts or omissions are authorized, allowed, or prohibited by this Franchise.

6.3 Bonds and Other Surety. Within sixty (60) days of the effective date of the Franchise, the Grantee shall furnish a performance bond in the amount of \$10,000.00 guaranteeing that the Grantee shall observe, fulfill, and perform each term and condition of the Franchise. The guarantee shall be conditioned that in the event the Grantee fails to comply with any one or more of the provisions of this Franchise, then there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by the Franchising Authority as a result thereof, including the full amount of compensation, indemnification, or cost of removal or abandonment of property as prescribed; said condition to be a continuing obligation for the duration of the Franchise and thereafter until the Grantee has liquidated all of its obligations with the Franchising Authority that may have arisen from the acceptance of the Franchise by the Grantee or from its exercise of any privilege herein granted.

SECTION 7 **Enforcement and Termination of Franchise**

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from

receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of the default, the default cannot be cured within the thirty (30) day period, to initiate reasonable steps to remedy the default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed, which projection shall be subject to approval by the Franchising Authority, which shall not be unreasonable denied.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2 (C) above, or in the event the Franchising Authority does not approve Grantee's projected completion date, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place, and purpose of such hearing, and shall provide Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Impose liquidated damages in accordance with Section 7.5; or
- B. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- C. Commence an action at law for monetary damages or seek other equitable relief; or
- D. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 7.6.

7.5 Liquidated Damages.

7.5.1 In the event the Franchising Authority determines that the Grantee has violated the Franchise after the procedures set forth in Sections 7.1 through 7.3, the Franchising Authority may assess, as liquidated damages and not as a penalty, the following sums up to twenty five thousand dollars (\$25,000) per year.

- A. For failure to extend Cable Services within the Service Area as required by this Franchise, two hundred fifty dollars (\$250) per day, per affected subscriber;
- B. For failure to provide any capability for Public, Education, and Government access use of the Cable System required in the Franchise, two hundred fifty dollars (\$250) for each violation, per day;
- C. For failure to provide data, documents, reports, or information when and as required in this Franchise or applicable law, two hundred fifty dollars (\$250.00) per day;

- D. For all other material violations of this Franchise for which actual damages may not be ascertainable, excluding those specified in subsections A, B, and C of this subsection 7.5.1, two hundred fifty dollars (\$250) per day for each provision of this Franchise that is violated.

7.5.2 Grantee shall pay any liquidated damages assessed by Franchising Authority within thirty (30) calendar days after they are assessed. If liquidated damages are not paid within the thirty (30) day period, Franchising Authority may proceed against the performance bond required by Section 6.3.

7.6 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in Section 7.1-7.3 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees, or consultants of the Franchising Authority, and to compel the testimony of other persons as permitted by law. Upon Grantee's request and at Grantee's cost, a complete verbatim record and transcript shall be made of the hearing. Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, Grantee may appeal such determination to an appropriate court. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.7 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged default occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System within the Service Area is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures, or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Franchising Authority or on Subscribers within the Service Area, or

where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

SECTION 8 **Miscellaneous Provisions**

8.1 Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms of this Franchise, the party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms of this Franchise, the approval or consent shall not be unreasonably withheld.

8.2 Entire Document. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to the Franchise shall be mutually agreed to in writing by the parties.

8.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail. General updates may be communicated electronically as appropriate and agreed to by both parties.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of McMinnville
Attention: City Manager
230 NE 2nd Street
McMinnville, OR 97128

The notices or responses to the Grantee shall be addressed as follows:

Comcast of Oregon II, Inc.
Attention: Government Affairs
11308 SW 68th Parkway
Tigard, OR 97223

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section 8.3.

8.4 Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, that determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision

hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 Effective Date. The effective date of this Franchise is December 12, 2024, pursuant to the provisions of applicable law. This Franchise shall expire on December 12, 2034 unless extended by the mutual agreement of the parties, revoked pursuant to Section 7.6 or rendered null and void pursuant to Section 8.7 hereof.

8.7 Acceptance. This Franchise shall take effect thirty (30) days after its enactment by the City Council and approval by the Mayor, but shall become null and void unless, within sixty (60) days after enactment, the Grantee shall file with the Recorder Grantee's acceptance of the terms, conditions, and obligations to be complied with or performed by it hereunder.

NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

1. The financial, legal and technical ability of Comcast of Oregon II, Inc. is reasonably sufficient to provide Cable Services necessary to meet the future cable-related needs of the community.
2. The terms of the Franchise as set out in this Ordinance are acceptable and approved.

Passed by the McMinnville City Council this 12th day of November, 2024, by the following votes:

Ayes: _____

Nays: _____

Mayor

Approved as to form:

Attest:

City Attorney

City Recorder

Accepted this _____ day of _____ 2024, subject to applicable federal, state and local law.

COMCAST OF OREGON II, INC.

Name/Title: _____

Date: _____

ORDINANCE NO. 5152

AN ORDINANCE AMENDING MCMINNVILLE MUNICIPAL CODE SECTION 3.18.530 TO CLARIFY APPLICABILITY OF TELECOMMUNICATIONS INFRASTRUCTURE REQUIREMENTS TO CABLE OPERATORS.

RECITALS:

WHEREAS, in 2000, the City of McMinnville adopted Chapter 3.18 of the McMinnville Municipal Code related to Telecommunications Infrastructure; and

WHEREAS, section 3.18.530 of that Chapter required all telecommunications carriers providing cable service to meet cable franchise requirements of Ordinance No. 4110; and

WHEREAS, the City now clarifies that any cable operator shall meet all requirements related to construction and location of facilities in the City’s right-of-way, regardless of such operator’s definition as a telecommunications carrier; and

WHEREAS, the City further clarifies that telecommunications carriers shall meet federal Cable Act franchise standards, rather than the local standards of Ordinance No. 4110;

NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

- 1. McMinnville Municipal Code Section 8.36.010 is amended as follows: [underlined language is new, ~~striketrough~~ language is to be repealed].

3.18.530 Cable franchise.

~~Telecommunications carriers providing cable service shall be subject to the cable franchise requirements in ordinance no. 4110 or as it may be amended from time to time. A telecommunications carrier providing cable service must obtain a cable franchise consistent with the Cable Act. Unless otherwise provided in a cable franchise, cable operators shall comply with all provisions of this Chapter related to construction and location of facilities in the rights-of-way, including but not limited to MMC 3.18.200-.325.~~

- 2. This Ordinance will take effect 30 days after passage by the City Council.

Passed by the McMinnville City Council this 12th day of November, 2024 by the following votes:

Ayes: _____

Nays: _____

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder